FEDERAL REGISTER

Vol. 82 Friday,

No. 207 October 27, 2017

Pages 49737–50058

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 82 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Contents

Federal Register

Vol. 82, No. 207

Friday, October 27, 2017

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
9664 50053

Executive Orders:
13780 50055
13815 50055

Administrative Orders:
Memorandums:
Memorandum of October 11, 2017 50051
Presidential Determinations:
No. 2017–15 of September 30, 2017 50047

12 CFR

Proposed Rules:
3 49984
46 49764
217 49984
324 49984

16 CFR
1307 49937

Proposed Rules:
1112 49767

33 CFR
183 49757

40 CFR
180 49745

41 CFR
51–11 49747

49 CFR

Proposed Rules:
395 (2 documents) 49700, 49701

50 CFR
17 49751

Proposed Rules:
635 49773

Rules and Regulations

Federal Register
Vol. 82, No. 207
Friday, October 27, 2017

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 183

[Docket No. USCG–2016–1012]

RIN 1625–AC37

Recreational Boat Flotation Standards—Update of Outboard Engine Weight Test Requirements

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard finalizes, without change, an interim rule to update the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material. The engine weight table was last updated in 1984, and the Coast Guard Authorization Act of 2015 requires that the Coast Guard update the table to reflect a specific standard. Finalizing the interim rule will acknowledge the two public comments received, and contribute to public awareness of and certainty about the June 1, 2018, effective date.

DATES: This final rule is effective on June 1, 2018.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2016–1012 and are available using the Federal eRulemaking Portal. You can find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2016–1012 in the ''Search'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Mr. Jeffrey Ludwig, Coast Guard; telephone 202–372–1061, email *Jeffrey.A.Ludwig@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

ABYC American Boat and Yacht Council
ABYC S–30 American Boat and Yacht Council S–30—Outboard Engines and Related Equipment Weights
CGAA Coast Guard Authorization Act of 2015 (Pub. L. 114–120, 130 Stat. 27; Feb. 8, 2016)
CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
MIC Manufacturer Identification Code
NAICS North American Industry Classification System
NBSAC National Boating Safety Advisory Council
NMMA National Marine Manufacturers Association
OMB Office of Management and Budget
Pub. L. Public Law
RA Regulatory analysis
§ Section symbol
SBA Small Business Administration
U.S.C. United States Code

II. Basis and Purpose

Section 308 of the Coast Guard Authorization Act of 2015 (Pub. L. 114–120, 130 Stat. 27) (CGAA) requires the Coast Guard to issue regulations, not later than 180 days after enactment, updating Table 4 of subpart H in Title 33 of the Code of Federal Regulations (CFR) part 183 to reflect the American Boat and Yacht Council S–30—Outboard Engines and Related Equipment Weights (ABYC S–30) standard.

Additionally, 46 U.S.C. 4302(b), which provides authority for 33 CFR part 183, requires the effective date for rules issued under that provision be delayed at least 180 days after publication, but not more than 2 years for cases involving major product design, retooling, or changes in the manufacturing process. Section 4302(b) also requires consultation with the National Boating Safety Advisory Council (NBSAC).[1] Because this rule amends regulations issued pursuant to section 4302, the 180-day delay is appropriate to provide manufacturers with time to adjust their operations to comply with the new standard. The Coast Guard has implemented that delay of effective date in this final rule.

III. Regulatory History

On April 5, 2017, the Coast Guard published an interim rule with request for comments (82 FR 16512). We received two public comments on the interim rule. No public meeting was requested, and none was held.

IV. Background

Congress has authorized the Coast Guard to prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment. In 1977, the Coast Guard established flotation requirements for boats less than 20 feet in length, and established a weight table (Table 4 of subpart H in 33 CFR part 183) used to assist the boat manufacturer in determining the amount of flotation to be included in a boat's design and construction.

Table 4 was last updated in 1984, but the size and weight of outboard engines have evolved over the years to the point that Table 4 no longer accurately represents the weights of outboard engines available on the market.

The American Boat and Yacht Council (ABYC) is a non-profit organization that develops voluntary safety standards for the design, construction, maintenance, and repair of recreational boats. Among the voluntary safety standards that ABYC develops and updates on a regular basis is S–30—Outboard Engines and Related Equipment Weights (ABYC S–30). This standard reflects the current state of marine outboard engine weights.

[1] The NBSAC recommended to the Coast Guard in 2000 that the weight table be updated (Resolution number 2000–66–05), and discussed the replacement of Table 4 with the ABYC standard at their April 2016 meeting.

V. Discussion of the Rule

This rulemaking adopts the current ABYC S–30 to replace Table 4 of subpart H in 33 CFR part 183. The current ABYC S–30 is dated July 2012, and was the standard in effect on the date of enactment of the CGAA.

In the CFR, Table 4 applies to monohull outboard boats that are less than 20 feet in length, which includes recreational vessels as well as some commercial fishing vessels. Table 4 is also used indirectly for flotation requirements for survival craft covered by 46 CFR part 25 (uninspected vessels), 46 CFR part 117 (small passenger vessels carrying more than 150 passengers), 46 CFR part 141 (towing vessels) and 46 CFR part 180 (small passenger vessels under 100 gross tons). Changing the figures in Table 4, as required by the CGAA, will require more flotation in each new boat, to support the weight of heavier engines.

The interim rule removed Table 4 and replaced it with a new section (section 183.75) in subpart E of part 183. That section contains the table of the ABYC S–30 standard and its corresponding footnotes. The Coast Guard made minor edits to the footnotes developed by ABYC to accommodate the location of the table in the CFR and to reflect the removal of Table 4. We also made conforming changes to several sections that referenced Table 4.

Finalizing the rule will acknowledge the public comments received, and contribute to public awareness of and certainty about the June 1, 2018, effective date.

VI. Discussion of Comments and Changes

The Coast Guard received two public comments in response to the interim rule. One commenter was supportive of the changes made in the interim rule. The other comment stated that in addition to small boat flotation, other factors that contribute to boat safety should be considered. The Coast Guard agrees that other factors can contribute to boat safety. However, they are outside of the scope of this rulemaking, in which we are focused on the requirements of the CGAA and the ABYC S–30 standard. This final rule makes no changes to the interim rule.

VII. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017). A regulatory analysis (RA) follows. This RA is unchanged from the RA included in the interim rule (82 FR 16512; April 5, 2017).

This RA provides an evaluation of the economic impacts associated with this final rule. The Coast Guard is issuing a final rule to implement section 308 of the CGAA. The CGAA mandates that the Coast Guard issue regulations to amend Table 4 of subpart H in 33 CFR part 183 to reflect the standards in ABYC S–30. Consequently, 100 percent of the costs of this rule are due to a Congressional mandate and the Coast Guard has no discretion to adopt a different standard that would lower the cost of this rule. Changes in the design and construction of modern outboard engines necessitate a change in the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material in the Safe Loading and Flotation Standards found in 33 CFR part 183, subparts G and H.

Table 1 of this document provides a summary of the affected population, costs, and benefits of this rule.

TABLE 1—SUMMARY OF THE IMPACTS OF THE FINAL RULE

Category	Summary
Applicability	Update Table 4 of subpart H in 33 CFR part 183 with ABYC S–30.
Affected Population	1,427 manufacturers of monohull outboard boats of less than 20 feet in length.
Costs to Industry ($, 7% discount rate)	10-year: $6,624,488. Annualized: $943,178.
Unquantified Benefits	Creates uniformity by aligning all boats to the same standard. Brings those boats not currently in compliance with ABYC S–30 to a higher level of safety than the standard currently in regulation.

Affected Population

This final rule adopts the current ABYC S–30 to replace Table 4 of subpart H in 33 CFR part 183. Table 4 applies to monohull outboard boats that are less than 20 feet in length, including recreational vessels and some commercial fishing vessels.

Table 4 is also used indirectly for flotation requirements for survival craft covered by 46 CFR part 25 (uninspected vessels), 46 CFR part 117 (small passenger vessels carrying more than 150 passengers), 46 CFR part 141 (towing vessels), and 46 CFR part 180 (small passenger vessels under 100 gross tons). Small passenger vessels are required to carry certain survival craft, depending on their route and construction, in order to have the capacity to evacuate a certain percentage of the number of people on board. These survival craft are generally life rafts or floats, which do not have engines and are not impacted by this final rule. However, small passenger

vessels could voluntarily carry a small boat that can be used to carry some of the passengers, thereby reducing the number of other survival craft they are required to carry (46 CFR 117.200(b) and 46 CFR 180.200(b)). Because this is a voluntary option available for these vessels, we do not include them in our analysis. However, we do note that if the uninspected vessels, small passenger vessels carrying more than 150 passengers, towing vessels, or small passenger vessels under 100 gross tons choose to carry a small boat on board that does not meet ABYC S–30 standard, they could be indirectly affected by this final rule. Because this final rule applies only to new boats manufactured after June 1, 2018, any small passenger vessels already carrying small boats subject to Table 4 of subpart H are not affected. If they choose to replace their small boat with a boat built after June 1, 2018, they may be indirectly affected if the manufacturer passes the costs of this final rule on to the consumers. We account for the direct costs to manufacturers in this analysis.

The final rule affects manufacturers that produce monohull outboard boats that are less than 20 feet in length and that are not currently building boats to ABYC S–30 standard. The Coast Guard used the list of active Manufacturer Identification Code (MIC) holders, as required by 33 CFR 181 subpart C, to determine the affected population. This list represents all recreational boat MICs that are currently active. We then removed any MICs that will not be affected by this rule from the list of manufacturers. This includes: (1) Manufacturers with multiple MICs; (2) MICs belonging to manufacturers that only build boats greater than 20 feet in length; (3) MICs belonging to manufacturers that do not build monohull outboard boats; and (4) MICs belonging to manufacturers that only produce boats exempted from this regulation by 33 CFR 183.201(b), including sailboats, canoes, kayaks, inflatable boats, submersibles, surface effect vessels, amphibious vessels, and raceboats. We found there are no more than 1,519 affected manufacturers that produce monohull outboard boats that are less than 20 feet in length.

Some of these 1,519 monohull manufacturers are currently in compliance with ABYC S–30 standard, and therefore will not incur additional costs because of this rule. The National Marine Manufacturers Association (NMMA) requires its members to build boats to the ABYC standard.[2] These NMMA builders produce about 85 percent of the recreational boats built each year.[3] We found 92 monohull manufacturers that are currently NMMA members and therefore we assume they are in compliance. We assume the remaining 1,427 monohull manufacturers are not compliant with the current voluntary standard and will be affected by this rule.

Costs to Industry

This final rule adopts the current ABYC S–30, to replace Table 4 of subpart H. This change will increase costs to 1,427 monohull manufacturers that are assumed to be not in compliance. The increase in the weight table figures will require an additional 1 to 2 cubic feet of flotation to be added to each boat manufactured after the effective date of June 1, 2018. We estimate the foam for the additional flotation will cost an average of $10 per boat.[4] Some manufacturers may need to make minor adjustments such as enclosing an aft seat and adding foam under the seat to accommodate the additional foam in the boats. Therefore, Coast Guard uses an estimate of $50 per boat to account for the foam and any minor adjustments that may be necessary.[5] Manufacturers could incur costs related to determining where to put the additional flotation on a vessel, but we believe redesign costs would not be needed as the additional flotation material is minimal and the placement of the material is fairly standard. The manufacturers are already required to add flotation to boats, so there will be no costs for new equipment, facilities, or retrofitting of facilities.

To estimate the total cost to industry, we then estimated the total number of outboard boats less than 20 feet in length manufactured per year by the monohull manufacturers that are not in compliance. The Coast Guard used data from the NMMA's 2015 Recreational Boating Statistical Abstract[6] to estimate the total affected outboard boats. The NMMA breaks down outboard boat sales by two hull materials: Fiberglass and aluminum. The NMMA estimates that in 2015, 51,300 fiberglass outboard boats and 104,500 aluminum outboard boats were sold. Of these boats sold, 42.7 percent of the fiberglass outboard boats and 60.4 percent of the aluminum outboard boats were less than 20 feet in length. Multiplying the percentage market share of boats less than 20 feet by the total sales of boats by material, we found there were 21,905 fiberglass boats and 63,118 aluminum outboard boats less than 20 feet sold in 2015 (see Table 2).

[2] *See* Michael Vatalaro, *What ''NMMA-Certified'' Really Means,* BoatUS, Feb. 2014, *http://www.boatus.com/magazine/2014/february/what-nnma-certified-means.asp.*

[3] *Id.*

[4] The $10 estimate is based on 2 LB Density Urethane Foam estimates from US Composites (*http://www.uscomposites.com/foam.html*) and conversations with manufacturers. Foam prices vary based on the size of the kits. The cost of kits range from a 2 cubic foot kit cost of $22.50 ($11.25 per cubic foot) to $264 for a 40 cubic foot kit ($6.60 per cubic foot). Conversations with manufacturers confirmed $10 is a reasonable average estimate for adding 1 to 2 cubic feet of additional flotation, that takes into account the varying costs based on the size of kits purchased and that manufacturers may pay less than the listed prices based on their purchasing agreements with the suppliers.

[5] Based on discussions with manufacturers, the additional $40 estimate is to cover the cost of enclosing a rear seat to add flotation foam under it or to add small chambers, especially on open aluminum boats, to accommodate the additional flotation foam.

[6] A summary of the NMMA abstract is available at *https://www.nmma.org/statistics/publications/statistical-abstract.* The full report is available for purchase through NMMA. The Coast Guard used data from Powerboat Sales Trends, Table 1: Outboard boats: Estimated sales by hull market; Table 2: Fiberglass outboard boats: Estimated market share by length; and Table 3: Aluminum outboard boats: Estimated market share by length.

TABLE 2—TOTAL SALES AND MARKET SHARE OF OUTBOARD BOATS BY MATERIAL TYPE

Outboard boat by material	Estimated total sales	Percentage market share outboard boats less than 20 feet	Total outboard boats less than 20 feet sold in 2015
Fiberglass	51,300	42.7	21,905
Aluminum	104,500	60.4	63,118
Total	155,800		85,023

The total 85,023 outboard boats less than 20 feet that were sold in 2015 were produced by a mix of manufacturers that are already in compliance with the ABYC S–30 standard and manufacturers that are not in compliance and will be impacted by this rule. The NMMA estimates that around 85 percent of the boats sold in the United States are already in compliance with the ABYC S–30 standard. Therefore, the Coast Guard estimates 15 percent of the total outboard boats less than 20 feet sold were produced by manufacturers not in compliance with the ABYC standard. These 12,753 boats (15 percent of the 85,023 outboard boats less than 20 feet, rounded) will require $50 of additional flotation materials to align with the new standard.

To estimate the affected outboard boats over the 10-year period of analysis, we used NMMA data to forecast future boat building production.[7] The NMMA anticipates annual production will rise through at least 2018 before leveling off into at least early 2019. The NMMA does not have estimates for production past 2019. Since the NMMA anticipates production will plateau once it reaches the levels of production estimated in 2019, the Coast Guard assumes production will hold at 2019 levels. Production could decrease or increase, resulting in higher or lower industry costs, but for the purposes of this analysis we assume production remains constant past 2019. Table 3 shows our baseline affected population, the forecasted percentage increases over the previous year estimated by NMMA, and the resulting number of affected outboard boats.[8]

TABLE 3—FORECASTED AFFECTED OUTBOARD BOATS

Year	Forecasted percentage increase over previous year	Affected outboard boats manufactured annually
2015		12,753
2016	11.6	14,232
2017	15.2	16,402
2018	9.2	17,916
2019	6.1	19,009
2020+	0.0	19,009

As this final rule will be effective June 1, 2018, any outboard boats manufactured after this date will need to be in compliance with ABYC S–30 standard. The Coast Guard anticipates most manufacturers will begin making the necessary changes at the beginning of 2018. All manufacturers will be in compliance by June 1, 2018 of Year 1, which corresponds with the 2018 estimated affected outboard boats in Table 3. We estimate there will be 17,916 affected outboard boats in Year 1 and 19,009 affected outboard boats in Years 2 through 10. Table 4 summarizes the estimated affected population of outboard boats that we used to estimate the 10-year costs of this final rule.

TABLE 4—TEN-YEAR PROJECTION OF AFFECTED OUTBOARD BOATS

Year	Affected outboard boats
1	17,916
2	19,009
3	19,009
4	19,009
5	19,009
6	19,009
7	19,009
8	19,009
9	19,009
10	19,009

We then multiplied the projected number of affected outboard boats each year in Table 4 by the estimated cost per boat of $50. Table 5 shows the total costs of this final rule on an undiscounted basis, and discounted at 7 and 3 percent.

TABLE 5—TOTAL COSTS OF FINAL RULE

Year	Total undiscounted costs	Total, discounted	
		7%	3%
1	$895,800	$837,196	$869,709
2	950,450	830,160	895,890
3	950,450	775,850	869,796
4	950,450	725,094	844,463
5	950,450	677,658	819,867
6	950,450	633,325	795,987
7	950,450	591,892	772,803
8	950,450	553,171	750,294
9	950,450	516,982	728,441
10	950,450	483,161	707,224

[7] Production forecasts are internal NMMA estimates that were provided to the Coast Guard on 9/7/2016.

[8] Forecasted percentages for 2016 and 2019 were given in NMMA data. Forecasted percentages for years 2017 and 2018 were calculated from NMMA's forecasted annual production index. For 2017, the affected outboard boats manufactured annually are calculated as [1 + ((170.1 − 147.6)/147.6)] * 14,232 = 16,402, rounded. For 2018, the affected outboard boats manufactured annually are calculated as [1 + (185.8 − 170.1)/170.1] * 16,402, rounded.

TABLE 5—TOTAL COSTS OF FINAL RULE—Continued

Year	Total undiscounted costs	Total, discounted	
		7%	3%
Total	9,449,850	6,624,488	8,054,473
Annualized	.....	943,178	944,230

The total 10-year undiscounted cost of this final rule is $9,449,850. The total 10-year discounted cost of this final rule is $6,624,488 and the annualized cost is $943,178, both discounted at 7 percent. The manufacturers of outboard boats less than 20 feet in length not in compliance with ABYC S–30 standard will bear these costs. However, it is possible that manufacturers may pass these costs onto the recreational boat owners by incorporating the additional costs of this final rule into the sales price. The sale price of the affected boats can range from $3,000 through $50,000. If we use an average of $26,500 per boat, the $50 average cost per boat represents 0.2 percent of the sales price. However, 85 percent of the boats sold in the United States are already in compliance and include this cost of floatation in the sales prices.

Benefits

This rule does not provide any quantitative benefits. However, it does have qualitative benefits. This rule creates uniformity by aligning all boats to the same standard. The ABYC S–30 provides a higher level of safety than that provided by the standard currently in the regulation. Requiring all boats less than 20 feet in length that currently do not meet ABYC S–30 standard weights to comply with that standard will improve the buoyancy of these boats, and therefore, improve their operational safety.

B. Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard prepared this Final Regulatory Flexibility Analysis (FRFA) that examines the impacts of the final rule on small entities (5 U.S.C. 601 *et seq.*). We recognize that a FRFA is not required for a final rule that was not preceded by a general notice of proposed rulemaking. We are including an analysis of the final rule requirements on small entities for informational purposes.

A small entity may be: A small independent business, defined as independently owned and operated, is organized for profit, and is not dominant in its field per the Small Business Act (5 U.S.C. 632); a small not-for-profit organization (any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (locality with fewer than 50,000 people) per the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612.

A FRFA addresses the following:

(1) A statement of the need for, and objectives of, the rule;

(2) A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the interim final rule as a result of such comments;

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the interim final rule, and a detailed statement of any change made to the interim final rule in the final rule as a result of the comments;

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. A statement of the need for, and objectives of, the rule.

Section 308 of the CGAA requires the Coast Guard to issue regulations updating Table 4 of subpart H in Title 33 CFR part 183 to reflect the ABYC S–30 standard.

Congress has authorized the Coast Guard to prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment. In 1977, the Coast Guard established flotation requirements for boats less than 20 feet in length, and established a weight table (Table 4 of subpart H in 33 CFR part 183) used to assist the boat manufacturer in determining the amount of flotation to be included in a boat's design and construction.

Table 4 was last updated in 1984, but the size and weight of outboard engines has evolved over the years to the point where Table 4 no longer accurately represents the weights of outboard engines available on the market. Changes in the design and construction of modern outboard engines necessitate a change in the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material in the Safe Loading and Flotation Standards found in 33 CFR part 183, subparts G and H.

2. A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the interim final rule as a result of the comments.

The Coast Guard did not receive any comments on the initial regulatory flexibility analysis.

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the interim final rule, and a detailed statement of any change made to the interim final rule in the final rule as a result of the comments.

The Coast Guard did not receive any comments from the Small Business Administration's (SBA) Office of Advocacy regarding the impact that the interim final rule would have on small entities.

4. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This final rule affects manufacturers that produce monohull outboard boats that are less than 20 feet in length that are not currently building boats to ABYC S–30 standard.

Based on Coast Guard's list of active MIC holders, we estimate this final rule will affect 1,427 U.S. companies. We researched the number of employees and revenue of these companies using proprietary and public business databases.[9] We then measured company size data using the SBA's business size standards to assess how many companies in this industry may be small entities.[10] The SBA provides business size standards for all sectors of the North American Industry Classification System (NAICS).[11]

Using a random sample of companies out of the total population of 1,427 affected U.S. companies, we researched 749 companies and found company-specific revenue and employment information and data on 388 of them.[12] We assumed that the remaining 361 companies (for which the revenue and employment information was unavailable) are small entities for the purpose of this analysis. Of the 388 companies for which revenue and employment information was available, we found three entities that exceeded the small entity thresholds for their relevant NAICS code. The remaining 385 companies are small entities as defined by the SBA thresholds. Adding these small entities to the companies without revenue and employment information, we estimate a total of 746 of the companies are small entities. Using the results of this random sample, we calculated the fraction of small entities by dividing the total small entities by the sample size. Therefore, we estimate that 99.6 percent of all monohull companies not currently building to ABYC S–30 standard fall below the threshold for small businesses. Table 6 summarizes the findings of our small entity threshold analysis.

TABLE 6—NUMBER OF COMPANIES AND SMALL ENTITIES RESEARCHED

Category	Number of companies
(a) Sample Size	749
(b) Without Revenue or Employment Data	361
(c) With Revenue or Employee Data	388
(d) Exceeded Small Entity Threshold	3
(e) Below the Small Business Threshold	385
Total Small Entities, (b) + (e)	746
Total, (a)	749
Fraction Small Entities	99.6%

Our analysis of the available company information revealed 64 primary NAICS codes. Table 7 displays the NAICS codes of the small entities found in our sample.

TABLE 7—NAICS CODES OF IDENTIFIED SMALL ENTITIES

Title	NAICS code	Count of companies	SBA size standard type	SBA size threshold
Boat Building	336612	151	Employees	1,000
Boat Dealers	441222	56	Revenue	$32,500,000
Other Personal and Household Goods Repair and Maintenance	811490	32	Revenue	$7,500,000
Marinas	713930	28	Revenue	$7,500,000
All Other Support Services	561990	14	Revenue	$11,000,000
Mineral Wool Manufacturing	327993	11	Employees	1,500
Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	811310	8	Revenue	$7,500,000
All Other Miscellaneous Manufacturing	339999	5	Employees	500
Fabricated Structural Metal Manufacturing	332312	4	Employees	500
New Single-family Housing Construction (Except For-Sale Builders)	236115	3	Revenue	$36,500,000
All Other Plastics Product Manufacturing	326199	3	Employees	750
Sporting and Recreational Goods and Supplies Merchant Wholesalers	423910	3	Employees	100
Other Miscellaneous Durable Goods Merchant Wholesalers	423990	3	Employees	100
Other Building Material Dealers	444190	3	Revenue	$20,500,000
Engineering Services	541330	3	Revenue	$15,000,000
All Other Business Support Services	561499	3	Revenue	$15,000,000
Site Preparation Contractors	238910	2	Revenue	$15,000,000
Sheet Metal Work Manufacturing	332322	2	Employees	500
Special Die and Tool, Die Set, Jig and Fixture Manufacturing	333514	2	Employees	500
Travel Trailer and Camper Manufacturing	336214	2	Employees	1,000
Wholesale Trade Agents and Brokers	425120	2	Employees	100
All Other Miscellaneous Store Retailers (except Tobacco Stores)	453998	2	Revenue	$7,500,000
Museums	712110	2	Revenue	$27,500,000
Hunting and Trapping	114210	1	Revenue	$5,500,000
Water Supply and Irrigation Systems	221310	1	Revenue	$27,500,000

[9] Data sources: ReferenceUSA (*www.referenceusagov.com*) and Manta (*www.manta.com*).

[10] ''Small entities'' include small businesses that meet the Small Business Administration size standard for small business concerns at 13 CFR 121.201, small governmental jurisdictions with a population of less than 50,000, and small organizations that are independently owned not-for-profit enterprises and which are not dominant in their field. *See* 5 U.S.C. 601(3)–(5).

[11] SBA size standards are matched to NAICS, effective February 26, 2016. *See Contracting: Table of Small Business Size Standards, https://www.sba.gov/content/small-business-size-standards.*

[12] Using a 95 percent confidence level, a sample size of 385 companies is sufficient. Our research started with a random sample of 749 companies that yielded 388 entities for which requisite information was found.

TABLE 7—NAICS CODES OF IDENTIFIED SMALL ENTITIES—Continued

Title	NAICS code	Count of companies	SBA size standard type	SBA size threshold
Commercial and Institutional Building Construction	236220	1	Revenue	$36,500,000
Other Heavy and Civil Engineering Construction	237990	1	Revenue	$36,500,000
Plumbing, Heating, and Air-Conditioning Contractors	238220	1	Revenue	$15,000,000
All Other Specialty Trade Contractors	238990	1	Revenue	$15,000,000
Fabric Coating Mills	313320	1	Employees	1,000
Other Millwork (including Flooring)	321918	1	Employees	500
Plastics Material and Resin Manufacturing	325211	1	Employees	1,250
Fertilizer (Mixing Only) Manufacturing	325314	1	Employees	500
All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	327999	1	Employees	500
Alumina Refining and Primary Aluminum Production	331313	1	Employees	1,000
Aluminum Sheet, Plate and Foil Manufacturing	331315	1	Employees	1,250
Other Aluminum Rolling, Drawing, and Extruding	331318	1	Employees	750
Plate Work Manufacturing	332313	1	Employees	750
Farm Machinery and Equipment Manufacturing	333111	1	Employees	1,250
Overhead Traveling Crane, Hoist and Monorail System Manufacturing	333923	1	Employees	1,250
All Other Miscellaneous General Purpose Machinery Manufacturing	333999	1	Employees	500
Other Communications Equipment Manufacturing	334290	1	Employees	750
Truck Trailer Manufacturing	336212	1	Employees	1,000
Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	336330	1	Employees	1,000
Ship Building and Repairing	336611	1	Employees	1,250
All Other Transportation Equipment Manufacturing	336999	1	Employees	1,000
Sporting and Athletic Goods Manufacturing	339920	1	Employees	750
Hobby, Toy and Game Stores	451120	1	Revenue	$27,500,000
Scenic and Sightseeing Transportation, Water	487210	1	Revenue	$7,500,000
Navigational Services to Shipping	488330	1	Revenue	$38,500,000
Miscellaneous Intermediation	523910	1	Revenue	$38,500,000
Recreational Goods Rental	532292	1	Revenue	$7,500,000
Landscape Architectural Services	541320	1	Revenue	$7,500,000
Industrial Design Services	541420	1	Revenue	$7,500,000
Graphic Design Services	541430	1	Revenue	$7,500,000
Administrative Management and General Management Consulting Services	541611	1	Revenue	$15,000,000
Other Management Consulting Services	541618	1	Revenue	$15,000,000
All Other Professional, Scientific and Technical Services	541990	1	Revenue	$15,000,000
Landscaping Services	561730	1	Revenue	$7,500,000
All Other Miscellaneous Schools and Instruction	611699	1	Revenue	$11,000,000
Emergency and Other Relief Services	624230	1	Revenue	$32,500,000
Fitness and Recreational Sports Centers	713940	1	Revenue	$7,500,000
RV (Recreational Vehicle) Parks and Campgrounds	721211	1	Revenue	$7,500,000
Civic and Social Organizations	813410	1	Revenue	$7,500,000

Revenue Impacts of the Final Rule. To determine the impacts of the final rule on small monohull manufacturers, we used information on revenues or employee size as available on business directory Web sites.[13]

As discussed in the ''Cost to Industry'' section of the RA, we estimate that there are 17,916 outboard boats less than 20 feet produced by manufacturers annually that will require additional flotation materials to align with this final rule in Year 1. Coast Guard does not have information on the market share of the small entity manufacturers and the number of boats they produce each year. Therefore, we assume each manufacturer consistently produces the same number of boats each year and that each manufacturer has the same market share. With 1,427 affected U.S. companies, this is an average of about 13 outboard boats per manufacturer (rounded). In Years 2 through 10, the Coast Guard estimates there are 19,009 outboard boats affected, at an average of about 13 outboard boats per manufacturer (19,009 boats divided by 1,427 manufacturers, rounded). At an estimated cost of $50 per outboard boat, the average total cost per manufacturer is $650 in Years 1 through 10. Table 8 summarizes the average costs per manufacturer of the final rule by year.

TABLE 8—FINAL RULE AVERAGE COSTS PER MANUFACTURER

Year(s)	Affected outboard boats	Manufacturers not in compliance	Average outboard boats produced by manufacturer	Cost per outboard boats	Average cost per manufacturer
1	17,916	1,427	13	$50	$650
2–10	19,009	1,427	13	50	650

Next, we compared the average cost per manufacturer to the revenue of the manufacturers in our sample. As shown in Table 6, we found revenue or company data for 385 small entities. We found revenue information for 371 of these small entities, and we were only able to find employee data for 14 entities. Therefore, we could not compare the cost per manufacturer to the revenues for the 14 entities with only employee data. Table 9 summarizes the results. In Years 1 through 10, 94.6 percent of the affected manufacturers will incur a cost of 1

[13] As indicated by either the revenue or employee data for businesses, we use ReferenceUSA (*www.referenceusagov.com*) and Manta (*www.manta.com*).

percent or less of revenue in any given year, while 0.3 percent will incur a cost impact of greater than 10 percent of revenue.

TABLE 9—FINAL RULE REVENUE IMPACTS

Impact range	Number of affected manufacturers	Percent of affected manufacturers
0% < Impact ≤ 1%	352	94.9
1% < Impact ≤ 3%	17	4.6
3% < Impact ≤ 5%	1	0.3
5% < Impact ≤ 10%	0	0
≥ 10%	1	0.3
Total	371	100

5. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This final rule implements section 308 of CGAA. The CGAA mandates the update of Table 4 in 33 CFR part 183. As such, the Coast Guard has no discretion to offer alternatives that minimize the impact on small entities while accomplishing the stated objective of the statute. To ease implementation of this requirement, the Coast Guard is delaying the effective date until June 1, 2018, so that the new requirements will apply only to boat manufacturers who build boats after that date.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (''Federalism''), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under E.O. 13132 and have determined that it is consistent with the fundamental federalism principles and requirements described in Executive Order 13132. Our analysis is explained below.

Congress directed the Coast Guard to ''establish minimum safety standards for recreational vessels'' (46 U.S.C. 4302). This rulemaking revises regulations issued pursuant to that statute and Congress has expressly limited States from regulating in this field, as specified in 46 U.S.C. 4306. Under 46 U.S.C. 4306, ''a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated or equipment performance or other safety standard . . . that is not identical to a regulation prescribed under'' 46 U.S.C. 4302. As a result, States or local governments are expressly prohibited from regulating within this category unless the regulation is identical to regulation prescribed under 46 U.S.C. 4302 or an exemption is granted under 46 U.S.C. 4305. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630 (''Governmental Actions and Interference with Constitutionally Protected Property Rights'').

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, (''Civil Justice Reform''), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045 (''Protection of Children from Environmental Health Risks and Safety Risks''). This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175 (''Consultation and Coordination with Indian Tribal Governments''), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under E.O. 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses a voluntary consensus standard: The current ABYC S–30.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This final rule is categorically excluded under section 2.B.2, figure 2–1, paragraphs (34)(d) and (e) of the Instruction and under section 6(a) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243, July 23, 2002). This final rule involves the safe loading capacity and required amount of flotation material for certain recreational boats, which concerns equipping of vessels, as well as equipment and vessel operation safety standards. This rule supports the Coast Guard's maritime safety mission. A Record of Environmental Consideration (REC) supporting this determination is available in the docket as discussed in the **ADDRESSES** section of this rule.

List of Subjects in 33 CFR Part 183

Marine safety.

■ For the reasons discussed in the preamble, the interim rule amending 33 CFR part 183 that was published at 82 FR 16512 on April 5, 2017, is adopted as a final rule without change.

Dated: October 23, 2017.

Jennifer F. Williams,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2017–23384 Filed 10–26–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0348; FRL–9968–40]

Bacillus amyloliquefaciens Strain F727; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Bacillus amyloliquefaciens* strain F727 in or on all food commodities when used in accordance with label directions and good agricultural practices. Marrone Bio Innovations submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus amyloliquefaciens* strain F727 under FFDCA.

DATES: This regulation is effective October 27, 2017. Objections and requests for hearings must be received on or before December 26, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0348, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0348 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 26, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0348, by one of the following methods:

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

II. Background

In the **Federal Register** of August 29, 2016 (81 FR 59165) (FRL–9950–22), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F8444) by Marrone Bio Innovations, 1540 Drew Ave., Davis, CA 95618. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus amyloliquefaciens* strain F727 in and on all food commodities. That document referenced a summary of the petition prepared by the petitioner Marrone Bio Innovations, which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

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

EPA evaluated the available toxicological and exposure data on *Bacillus amyloliquefaciens* strain F727 and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the August 24, 2017, document, entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Bacillus amyloliquefaciens* strain F727.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based upon its evaluation, EPA concludes that *Bacillus amyloliquefaciens* strain F727 is not toxic, pathogenic, or infective. Although there may be some exposure to residues when used on all food commodities in accordance with label directions and good agricultural practices, there is a reasonable certainty that such exposure will be safe due to the lack of potential for adverse effects. EPA also determined that retention of the Food Quality Protection Act (FQPA) safety factor was not necessary as part of the qualitative assessment conducted for *Bacillus amyloliquefaciens* strain F727.

Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus amyloliquefaciens* strain F727. Therefore, an exemption from the requirement of a tolerance is established for residues of *Bacillus amyloliquefaciens* strain F727 in and on all food commodities when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

Due to the lack of toxicity, infectivity, or pathogenicity of *Bacillus amyloliquefaciens* strain F727, EPA has determined that there is no need for an analytical method to measure and detect residues in or on food.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of

Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 11, 2017.

Richard P. Keigwin, Jr.,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.1347 to subpart D to read as follows:

§ 180.1347 *Bacillus amyloliquefaciens* strain F727; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Bacillus amyloliquefaciens* strain F727 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2017–23469 Filed 10–26–17; 8:45 am]

BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Part 51–11

RIN 3037–AA04

Touhy Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) has revised procedures to respond to subpoenas or other official demands for information and testimony served upon itself or its employees.

DATES: This rule is effective November 27, 2017

FOR FURTHER INFORMATION CONTACT: Timi Kenealy, (703) 603–2100, Email: *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Committee, operating as the U.S. AbilityOne Commission, administers the AbilityOne Program pursuant to the authority of 41 U.S.C. 8501. Through this program, employment opportunities are provided to people who are blind or severely disabled through the provisions of products and services to the Federal Government.

Pursuant to 5 U.S.C. 301, the head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. The part does not authorize withholding information from the public or limiting the availability of records to the public.

The United States Supreme Court held in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), that the head of a Federal agency may make the determination on his/her sole authority to produce documents and authorize employee's testimony in response to a subpoena or other demand for information.

This regulation governs the Committee's procedures for authorizing or denying such demands. In addition to the updates for the Touhy case, the Committee made technical corrections to include changes to the mailing address and changed ''JWOD'' to ''AbilityOne'' the operating name of the agency since 2010. Changes to this section of the CFR were last made in 1994. On July 18, 2017, the Committee published a proposed rule outlining these changes on *https://www.federalregister.gov/.* No comments were received and this rule is being finalized with no additional changes.

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

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, distribute 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 benefits the public and the United States Government by providing clear procedures for members of the public and Government employees to follow when official

testimony or official documents, records, files or information are sought from the Committee or from Committee personnel in connection with legal proceedings. This rule has not been designated a significant regulatory action.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, Regulatory Flexibility Act

The Committee certifies this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. Ch. 6) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule will provide clarity to U.S. Government personnel and outside counsel on the proper rules and procedures to serve process on U.S. Government officials in their official capacity and to obtain official U.S. Government testimony or documents for use in legal proceedings. Therefore, the Regulatory Flexibility Act, as amended, does not require the Committee to prepare a regulatory flexibility analysis.

Executive Order 13132, Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

Public Law 96–511, Paperwork Reduction Act

It has been determined that this rule does not impose reporting or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 41 CFR Part 51–11

Administrative practices and procedures, Courts, Disclosure, Exemptions, Government employees, Subpoenas, Records, Testimony.

■ For the reasons set forth above, the Committee amends chapter 51 of title 41 by adding part 51–11 to read as follows:

PART 51–11—PRODUCTION OR DISCLOSURE IN FEDERAL AND STATE PROCEEDINGS

Sec.

Authority: 41 U.S.C. 8503(d); 41 CFR Ch. 51.

§ 51–11.1 Scope and purpose.

(a) This part sets forth policies and procedures of the Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) regarding the testimony of current and former employees as witnesses and the production or disclosure of Committee documents or information:

(1) In all Federal and State proceedings in which the United States is a party; and

(2) In all Federal and State proceedings in which the United States is not a party, when a demand pursuant to a subpoena, order or request (collectively referred to in this part as a ''demand'') of a court or other authority is issued for such material, testimony, or information.

(b) The Committee intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving the Committee in controversial issues not related to its functions;

(3) Prevent the misuse of the Committee's employees as involuntary expert witnesses for private interests or as inappropriate expert witnesses as to the state of the law;

(4) Maintain the Committee's impartiality among private litigants where neither the Committee nor any other Federal entity is a named party; and

(5) Protect sensitive, confidential information and the deliberative processes of the Committee.

(c) In providing for these requirements, the Committee does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of the Committee. The procedures specified in this part, or the failure of any Committee employee to follow the procedures specified in this part, are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 51–11.2 Applicability.

This part applies to demands and requests to employees of the Committee in legal proceedings, for factual or expert testimony relating to official information or for production of official records or information. However, it does not apply to:

(a) Demands for a current Committee employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the Committee;

(b) Demands for a former Committee employee to testify as to matters in which the former employee was not directly or materially involved while at the Committee;

(c) Requests for the release of non-exempt records under the Freedom of Information Act, 5 U.S.C. 552 (41 CFR part 51–8), or the Privacy Act, 5 U.S.C. 552(a) (41 CFR part 51–9); and

(d) Congressional or Government Accountability Office (GAO) demands and requests for testimony or records.

§ 51–11.3 Definitions.

As used in this part:

Committee means the Committee for Purchase From People Who Are Blind or Severely Disabled.

Committee employee or *employee* means:

(1) Any current or former officer or employee of the Committee;

(2) Any other individual hired through contractual agreement by or on behalf of the Committee or who has performed or is performing services under such an agreement for the Committee; and

(3) Any individual who served or is serving in any consulting or advisory

capacity to the Committee, whether formal or informal.

(4) Provided, that this definition does not include persons who are no longer employed by the Committee and who are retained or hired as expert witnesses or who agree to testify about general matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the Committee.

Demand means a subpoena, request, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or information related to, for the appearance and testimony of a Committee employee that is issued in a legal proceeding.

General Counsel means Committee General Counsel or Committee employee to whom the General Counsel has delegated authority to act under this part.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of discovery, litigation and informal requests by attorneys or others involved in legal proceedings seeking interviews or the like.

Records or *official records and information* mean all documents and materials, however stored, that is in the custody and control of the Committee, relating to information in the custody and control of the Committee, or acquired by a Committee employee in the performance of his or her official duties or because of his or her official status, while such individual was employed.

Request means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, recorded interviews, and statements made by an individual in connection with a legal proceeding.

§ 51–11.4 General prohibition.

(a) In any Federal or State case or matter in which the United States is not a party, no employee or former employee of the Committee shall, in response to a demand, produce any record contained in the files of the Committee, or disclose any information relating to or based upon record contained in the files of the Department, or disclose any information or produce any record acquired as part of the performance of that person's official duties or because of that person's official status without prior written approval of the General Counsel in accordance with § 51–11.9.

(1) Whenever a demand is made upon an employee or former employee as described in this paragraph (a), the employee shall immediately notify the General Counsel. The General Counsel shall follow procedures set forth in § 51–11.8.

(2) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the General Counsel. Any authorization for testimony by a present or former employee of the Committee shall be limited to the scope of the demand as summarized in such statement.

(3) When information other than oral testimony is sought by a demand, the General Counsel shall request a summary of the information sought and its relevance to the proceeding.

(b) In any Federal or State case or matter in which the United States is a party, the General Counsel is authorized to reveal and furnish to any person, including an actual or prospective witness, a grand jury, counsel, or a court, either during or preparatory to a proceeding, such testimony, and relevant unclassified material, documents, or information secured by the employee or former employee of the Committee, as the General Counsel shall deem necessary or desirable to the discharge of the attorney's official duties: *Provided,* Such an attorney shall consider, with respect to any disclosure, the factors set forth in § 51–11.7.

(1) If oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the agency attorney handling the case or matter.

(2) [Reserved]

(c) In appropriate cases, the General Counsel shall notify the United States Department of Justice (DOJ) of the demand and coordinate with the DOJ to file any appropriate motions or other pleadings.

§ 51–11.5 Service of demand.

(a) Written demands directed to the Committee or requests for official records, information or testimony shall be served in accordance with the requirements of the Federal Rules of Civil or Criminal Procedure, or applicable State procedures, as appropriate. If the demand is served by U.S. mail, it should be addressed to the General Counsel, Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, VA 22202. The Committee's acceptance of service of a demand shall not constitute an admission or waiver of any objection with respect to the propriety of jurisdiction, service of process, venue or any other defense in law or equity available under applicable law.

(b) If any doubt exists, whether a demand relates to purely personal matters or arises out of the performance of official duties, copies of the demand may be delivered to the General Counsel for such determination.

§ 51–11.6 Filing requirements for demands for documents or testimony.

Compliance with the following requirements is required when issuing demands or requests for official records, information or testimony.

(a) Requests must be in writing and must be submitted to the General Counsel. If a subpoena is served on the Committee or a Committee employee before submitting a written request and receiving a final determination, the Committee will object to the subpoena on grounds that it was not submitted in accordance with this part.

(b) Written requests must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show the relevance of the information sought;

(3) A detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on the Committee to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a Committee employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require with each Committee employee for time spent by the employee to prepare for testimony, in travel, and for attendance at the legal proceeding.

(c) The Committee reserves the right to require additional information to complete any request where appropriate.

(d) Requests should be submitted at least 45 calendar days before the date that records or testimony is required. Requests submitted in less than 45 calendar days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with the request.

§ 51–11.7 Factors the Committee will consider.

The General Counsel in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to an appropriate demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) The Committee has an interest in the decision that may be rendered in the legal proceeding;

(d) Allowing such testimony or production of records would assist or hinder the Committee in performing its statutory duties or use the Committee resources in a way that will interfere with the ability of the Committee employees to do their regular work;

(e) Allowing such testimony or production of records would be in the best interest of the Committee or the United States;

(f) The records or testimony can be obtained from other sources;

(g) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(h) Disclosure would violate a statute, Executive order or regulation;

(i) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, otherwise protected information, or would otherwise be inappropriate for release;

(j) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(k) Disclosure would result in the Committee appearing to favor one private litigant over another private litigant;

(l) Disclosure relates to documents that originate from another agency;

(m) A substantial Government interest is implicated;

(n) The demand or request is within the authority of the party making it;

(o) The demand improperly seeks to compel a Committee employee to serve as an expert witness for a private interest;

(p) The demand improperly seeks to compel a Committee employee to testify as to a matter of law; and/or

(q) The demand or request is sufficiently specific to be answered.

§ 51–11.8 Processing demands or requests.

(a) After service of a demand or request, the General Counsel will review the demand or request and, in accordance with the provisions of this part, determine whether, or under what conditions, to authorize an employee to testify on matters relating to Committee records and/or produce records.

(b) The Committee will process requests in the order in which they are received. Absent exigent or unusual circumstances, the Committee will respond within 45 calendar days from the date of receipt. The time for response will depend upon the scope of the request.

(c) The General Counsel may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of the Committee or the United States or for other good cause.

§ 51–11.9 Final determination.

The General Counsel makes the final determination on demands and requests for production of official records and information or testimony. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and the court or other authority of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of a Committee employee.

§ 51–11.10 Restrictions that apply to testimony.

(a) Conditions or restrictions may be imposed on the testimony of the Committee employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that they will seek to file the transcript of the testimony under seal and that it will be used or made available only in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript or testimony be provided to the Committee at the requester's expense.

(b) The Committee may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information;

(2) Testify as to any information outside the scope of the General Counsel's authorization (*see* § 51–11.7); or

(3) For a current Committee employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the Committee unless testimony is being given on behalf of the United States whether or not the United States is a party.

§ 51–11.11 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements

have already been executed, the Committee may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original Committee records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official Committee records, and they are not to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes.

§ 51–11.12 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination previously referred to, the General Counsel when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand or request is being reviewed, and seek a stay of the demand or request pending a final determination.

§ 51–11.13 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay the demand, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear at the stated time and place, produce a copy of this part, state that the employee has not been authorized to provide the requested testimony or produce documents, and respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). A written response may be offered to a request, or to a demand, if permitted by the court or other competent authority.

§ 51–11.14 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to the Committee.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by the Committee in its Freedom of Information Act regulations at 41 CFR part 51–8.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, travel time and expenses, and for attendance in the legal proceeding.

(d) *Payment of fees.* Witness fees for current Committee employees and any records certification fees shall be paid by check or money order presented to the Committee made payable to the United States Department of Treasury. Applicable fees for former Committee employees' testimony must be paid directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Certification (authentication) of copies of records.* The Committee Records Manager may certify that records are true copies in order to facilitate their use as evidence. Certification requests require 45 calendar days for processing and a fee of $15.00 for each document certified.

(f) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) *De minimis fees.* Fees will not be assessed if the total charge would be $10.00 or less.

§ 51–11.15 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the Committee, or as ordered by a Federal court after the Committee has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former Committee employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current Committee employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2017–23388 Filed 10–26–17; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2015–0009; 4500090023]

RIN 1018–BA80

Endangered and Threatened Wildlife and Plants; Removing Textual Descriptions of Critical Habitat Boundaries for Plants on the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the textual descriptions of critical habitat boundaries from those designations for plants on the Hawaiian Islands of Kauai, Niihau, and Hawaii for which the maps have been determined to be sufficient to stand as the official delineation of critical habitat. For these entries, the boundaries of critical habitat as mapped or otherwise described will be the official delineation of the designation. The coordinates and/or plot points that we are removing from the Code of Federal Regulations will be available to the public at the lead field office of the Service responsible for the designation and online at the Federal eRulemaking Portal. This action does not increase, decrease, or otherwise change the boundaries of any critical habitat designation. We are taking this action in accordance with our May 1, 2012, revision of the regulations related to publishing textual descriptions of critical habitat boundaries in the Code of Federal Regulations and as part of our response to Executive Order 13563 (January 18, 2011) directing Federal agencies to review their existing regulations and then to modify or streamline them in accordance with what they learned.

DATES: This rule is effective November 27, 2017.

ADDRESSES: This final rule is available online at the Federal eRulemaking Portal at *http://www.regulations.gov.* Supporting documentation used in the preparation of this rule will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Branch of Listing Policy and Support, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2171; facsimile 703–358–1735.

FOR FURTHER INFORMATION CONTACT: Carey Galst, U.S. Fish and Wildlife

Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–1954; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2012, we published a final rule (77 FR 25611) revising our regulations related to publishing textual descriptions of proposed and final critical habitat boundaries in the **Federal Register** for codification in the Code of Federal Regulations (CFR). In the interest of making the process of designating critical habitat more user-friendly for affected parties and the public as a whole, as well as more efficient and cost effective, we maintained the publication of maps of proposed and final critical habitat designations, but made optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register** for codification in the CFR. The boundaries of critical habitat as mapped or otherwise described in the Regulation Promulgation section of a rulemaking that is published in the **Federal Register** is the official delineation of the critical habitat designation. This approach began with rules published after the effective date of the final rule (May 31, 2012).

Specifically, for critical habitat rules published after May 31, 2012, the map(s), as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a critical habitat. Each critical habitat area is shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register**. The map published in the CFR is generated from the coordinates and/or plot points corresponding to the location of the boundaries. These coordinates and/or plot points are included in the administrative record for the designation, and are available to the public either online or at the Service field office responsible for the designation or both. In addition, if the Service concludes that additional tools or supporting information are appropriate and would help the public understand the official boundary map, we make the additional tools and supporting information available on our Internet site and at the Service field office responsible for the critical habitat designation.

This Rule

The preamble to the May 1, 2012, final rule (77 FR 25611) also explained how the Service would handle boundaries for critical habitat that had already been designated before May 31, 2012; the rule states that ''for existing critical habitat designations, we also intend to remove the textual descriptions of final critical habitat boundaries set forth in the CFR in order to save the annual reprinting cost, but we must do so in separate rulemakings to ensure that removing the textual descriptions does not change the existing boundaries of those designations'' (77 FR 25618). We have now begun applying this approach to critical habitat designations promulgated prior to May 31, 2012. This rule is the first in a series of rules based on our evaluation of the map(s) in each critical habitat designation at 50 CFR 17.95, 17.96, and 17.99 to determine whether or not the map(s) will be sufficient to inform the public of the boundaries of the designations and can therefore stand as the official delineation of the designation.

In this rule, we are removing the textual descriptions of critical habitat boundaries from those entries at 50 CFR 17.99 (plants on the Hawaiian Islands) where we have determined that the maps are sufficient to stand as the official delineation of the designation. Unlike 50 CFR 17.95, which is organized by wildlife group (*e.g.,* mammals) and then by species, and 50 CFR 17.96, which is organized by plant family (*e.g.,* Asteraceae) and then by species, 50 CFR 17.99 is organized geographically: By Hawaiian island and then, for the most part, by ecosystem on that island (*e.g.,* montane wet ecosystem). As such, the criteria we use for evaluating the sufficiency of the maps set forth at 50 CFR 17.99 differ slightly from the criteria we use for evaluating the maps set forth at 50 CFR 17.95 and 17.96.

For the maps at 50 CFR 17.99, we look for a combination of certain map elements, including, but not limited to, the unit name, a clear map key, and an appropriate map scale, to determine whether or not a map is sufficient to serve as the official delineation of the designation. We do not require that there be a State or County name on the map because each Hawaiian island has its own paragraph within 50 CFR 17.99: Critical habitat designations for Kauai are set forth at § 17.99(a)(1); for Niihau, at § 17.99(a)(2); for Molokai, at § 17.99(c); for Maui, at § 17.99(e)(1); for Kahoolawe, at § 17.99(e)(2); for the northwestern Hawaiian islands (Nihoa, Necker, and Laysan), at § 17.99(g); for Oahu, at § 17.99(i); and for Hawaii (the big island), at § 17.99(k). In addition, given that the designations at 50 CFR 17.99 are ecosystem-based, we do not require that there be a full listing of the species names on each map, because an ecosystem may have many species designated within it. In most entries, the text preceding the map gives a full listing of species within the designated critical habitat unit, and each island (or island group) also has a Table of Protected Species that lists the species occupied and unoccupied in each unit. Other entries, such as those for the islands of Kauai and Niihau, include the species name as part of the unit name. Our evaluation of the maps at 50 CFR 17.99 found that nearly every map meets our sufficiency criteria; the only maps that do not meet our criteria are those that we need to correct. Specifically, at 50 CFR 17.99(k), Maps 97, 100, 101, and 102 are either a duplicate of another unit map or labeled with the incorrect species name. We plan to make these map corrections in a future rulemaking, and in this rule we retain the textual descriptions of those units with maps that need correction. The only textual descriptions we are removing in this rule are those set forth for the islands of Kauai, Niihau, and Hawaii at 50 CFR 17.99(a)(1), (a)(2), and (k), respectively. All of the critical habitat designations for plants on the other Hawaiian Islands have been recently updated and/or do not include detailed textual descriptions.

This rule does not increase, decrease, or in any other way change the critical habitat designations from which we are removing the textual descriptions of boundaries. This administrative action will save taxpayer resources. The Service spent $75,225 to reprint the critical habitat designations at 50 CFR 17.99 for the most-recent print edition of the CFR. Based on a review of the print edition of the CFR, we estimate that this rule will remove approximately 132 pages of the relevant CFR volumes, amounting to a savings of approximately $11,220 per year in printing costs for the Service. Over many years, eliminating the need to reprint Universal Transverse Mercator (UTM) coordinate pairs at 50 CFR 17.99 will result in a considerable cumulative cost savings for the Service and the public as a whole.

We will publish a series of rules, of which this is the first, to remove the textual descriptions from all of the critical habitat designations at 50 CFR 17.95, 17.96, and 17.99 that have map(s) sufficient to stand as the official delineation of the designation.

The detailed UTM coordinates or other textual descriptions we are removing in this rule will continue to be available online at the Federal eRulemaking Portal (see **ADDRESSES**) and at the lead field office responsible for the designation to assist the public in understanding the official boundary.

We note that the Service never maintained that requiring detailed textual descriptions was legally necessary. Instead, the first critical habitat regulations required only that critical habitat designations be ''accompanied by maps and/or geographical descriptions'' (43 FR 870, 876; January 4, 1978). Although the Service subsequently added the requirement that critical habitat designations include textual descriptions describing the specific boundary limits of the critical habitat, there is nothing in the preamble to that rule indicating that the Service did so because the Act required it. Rather, it was in response to several commenters, who had opined that the proposed rule was not sufficiently clear in setting out the method by which critical habitat boundaries would be described (45 FR 13009, 13015; February 27, 1980).

Removing these unnecessary textual descriptions will significantly reduce the length of some critical habitat designations, making each designation easier to locate in the CFR; will not weaken the effectiveness of the Act; and will not undermine the public's ability to identify the boundaries of critical habitat designations.

The information printed in the CFR is the legally binding delineation of critical habitat. If there is ambiguity due to the scale of the map such that additional regulatory text is needed to ensure that the public has adequate notice of the boundaries, we provide additional regulation text. The only change to the CFR that we are making with this action is removing the detailed coordinate data of the boundaries of the specific areas designated as critical habitat (*i.e.,* latitude-longitude and UTM coordinates). We still generate those data, and make them available at *http://www.regulations.gov* and at the lead field office of the Service responsible for the critical habitat designation. Neither the critical habitat designation nor the underlying data on which it is based can be changed without undergoing a further rulemaking.

As stated earlier, the actions we are taking in this rule do not increase, decrease, or otherwise change the critical habitat boundaries or areas. For 50 CFR 17.99(a)(1), (a)(2), and (k), we are merely removing the reference points (*i.e.,* UTM coordinates) of the textual descriptions from existing final critical habitat designations, and we are doing so only where we have determined that the existing maps are sufficient to inform the public of the boundaries of the designations and can therefore stand as the official delineation of critical habitat. However, we will continue to provide the reference points of the textual descriptions at *http://www.regulations.gov* and at the lead field office of the Service responsible for the critical habitat designation.

The actions we are taking in this rule require that we also revise 50 CFR 17.94(b) to make clear which critical habitat designations have maps that stand as the official delineation of critical habitat and which do not. Our revisions to 50 CFR 17.94 also correct the inadvertent omission of a reference to critical habitat areas designated at ''§ 17.99 (plants on the Hawaiian Islands)'' from paragraph (a) and remove paragraphs (c) and (d). We are removing paragraph (c) because not all of our critical habitat designations include information in the CFR on the biological or physical constituent elements that are known to require special management considerations or protection in a designated area. Such information can still be found in the **Federal Register** publications proposing and finalizing individual critical habitat designations, as well as in the record for each critical habitat designation. This is also consistent with our regulations, which we recently updated to clarify the procedures for designating and revising critical habitat (81 FR 7414, February 11, 2016). We are removing paragraph (d) because not all of our critical habitat designations follow the sequence of species in the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12 (*e.g.,* one designation for several species, such as the designation for five Tennessee and Cumberland River Basin mussel species at 50 CFR 17.95(f), and the designations at 50 CFR 17.99 that are organized by Hawaiian island and ecosystem).

We are publishing this final rule without a prior proposal because we find that there is good cause for doing so pursuant to 5 U.S.C. 553(b)(3)(B). The ''good cause'' exception applies when an agency finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Publication of a proposed rule for this action is unnecessary because this is an administrative action that does not increase, decrease, or otherwise change critical habitat boundaries or areas. Therefore, this action will not affect any legal rights. Rather, it will merely reduce the publication length of some rules designating critical habitat, which will save taxpayer resources and make each designation easier to locate in the CFR. We find that it is in the best interest of the public to promulgate these administrative and technical changes to 50 CFR 17.99 and without undergoing procedures that are unnecessary.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

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

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

Executive Order 13771

This rule is not an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility

analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, and retail and service businesses with less than $5 million in annual sales. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

This rule will not have a significant economic effect on a substantial number of small entities as defined under the RFA. This rule is an administrative action to remove the textual descriptions from critical habitat designations that have a map(s) sufficient to stand as the official delineation of critical habitat at 50 CFR 17.99(a)(1), (a)(2), and (k). This action does not increase, decrease, or in any other way alter the areas or boundaries of the critical habitat designations from which we are removing the textual descriptions of boundaries.

This administrative action will save taxpayer resources. The Service spent $75,225 to reprint the critical habitat designations at 50 CFR 17.99 for the most-recent print edition of the CFR. Based on a review of the print edition of the CFR, we estimate that this rule will remove approximately 132 pages of the relevant CFR volumes, amounting to a savings of approximately $11,220 per year in printing costs paid by the Service. While over many years, eliminating the need to reprint Universal Transverse Mercator (UTM) coordinate pairs at 50 CFR 17.99 will result in a considerable cumulative cost savings to the Service and the public as a whole, this rule will result in only a small annual savings to the Service and the public.

Therefore, for the reasons above, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Services make the following findings:

a. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions: (1) ''a condition of Federal assistance'' or (2) ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority''; the provision would either ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding''; and the State, local, or tribal governments ''lack authority . . . to amend their financial or programmatic responsibilities to continue providing required services.'' At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.'' This rule does not produce a Federal mandate under either of these definitions.

b. This rule will not significantly or uniquely affect small governments because the revisions to the regulations in this rule should make our critical habitat designations more reader-friendly and will make the process more cost-effective for the Service and the public as a whole. As such, we do not believe that a Small Government Agency Plan is required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have evaluated this rule, and we have determined that this rule does not pose significant takings implications. The revisions to the regulations set forth in this rule do not involve individual property rights.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A federalism summary impact statement is not required. The revisions to the regulations addressed in this rule are intended to promote the usability of the regulations and make the process of designating critical habitat more cost-effective, and thus should not significantly affect or burden the authority of the States to govern themselves.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), this rule follows the Civil Justice Reform principles for regulations that do not unduly burden the Federal judicial system, by meeting the requirements of sections 3(a) and 3(b) of the Executive Order. The revisions to the regulations addressed in this rule should not significantly affect or burden the judicial system.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), 43 CFR part 46, and 516 Departmental Manual (DM) 2 and 8.

A categorical exclusion from NEPA documentation applies to policies, directives, regulations, and guidelines that are ''of an administrative, financial, legal, technical, or procedural nature''

(43 CFR 46.210(i)). However, even if an individual Federal action falls within a categorical exclusion, the Service must still prepare environmental documents pursuant to NEPA if one of the 12 exceptions listed in 43 CFR 46.215 applies.

We have reviewed each of the 12 exceptions and have found that because this rule is administrative in nature, none of the exceptions apply. Therefore, this action meets the requirements for a categorical exclusion from the NEPA process.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Native American Tribes on a government-to-government basis. We have evaluated the potential effects on federally recognized Tribes from these revisions to our regulations. We have determined that there are no potential effects to federally recognized Tribes, because the revisions to the regulations are intended to promote the usability of critical habitat designations and save taxpayer monies. However, we will continue to coordinate with Tribes as we promulgate critical habitat designations.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. ''Significant energy action'' means any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that is a significant regulatory action under Executive Order 12866 or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rule does not qualify as a significant regulatory action under Executive Order 12866; will not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Revise § 17.94 to read as follows:

§ 17.94 Critical habitats.

(a) The areas listed in § 17.95 (fish and wildlife), § 17.96 (plants), and § 17.99 (plants on the Hawaiian Islands) and referred to in the lists at §§ 17.11 and 17.12 have been determined by the Director to be critical habitat. All Federal agencies must insure that any action authorized, funded, or carried out by them is not likely to result in the destruction or adverse modification of the constituent elements essential to the conservation of the listed species within these defined critical habitats. (See part 402 for rules concerning this prohibition; see also part 424 for rules concerning the determination of critical habitat).

(b) *Maps.*

If the critical habitat map appears in . . .	Then . . .
(1) A critical habitat designation in § 17.99, or (2) A critical habitat designation published and effective after May 31, 2012,	The map provided by the Secretary of the Interior, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a critical habitat. Each critical habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead field office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the critical habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.
(3) A critical habitat designation that specifically states that the map(s) is for informational purposes only, or (4) A critical habitat designation published and effective on or prior to May 31, 2012, that is set forth at § 17.95 or § 17.96,	The map provided by the Secretary of the Interior is for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat. The map does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat. Critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat description, the State and county(ies) names are provided for informational purposes only.

§ 17.99 [Amended]

■ 3. Amend § 17.99 in paragraphs (a) and (k) as demonstrated in the following tables:

Amend	By removing and reserving paragraph(s):	By removing paragraph(s):	By removing the second sentence of paragraph:	By removing the word "NOTE:" from paragraph:
(a)(1)(ii)	(A)			(B)
(a)(1)(iii)	(A)			(B)
(a)(1)(iv)	(A)			(B)
(a)(1)(v)	(A)			(B)
(a)(1)(vi)			(A)	(B)
(a)(1)(vii)	(A)			
(a)(1)(viii)	(A)			(B)
(a)(1)(ix)	(A)			
(a)(1)(x)	(A)			(B)
(a)(1)(xi)	(A)			(B)
(a)(1)(xii)	(A)			(B)
(a)(1)(xiii)	(A)			(B)
(a)(1)(xiv)	(A)			(B)
(a)(1)(xv)	(A)			(B)
(a)(1)(xvi)	(A)			
(a)(1)(xvii)	(A)			
(a)(1)(xviii)	(A)			
(a)(1)(xix)	(A)			(B)
(a)(1)(xx)	(A)			(B)
(a)(1)(xxi)	(A)			(B)
(a)(1)(xxii)	(A)			(B)
(a)(1)(xxiii)	(A)			(B)
(a)(1)(xxiv)	(A)			(B)
(a)(1)(xxv)	(A)			
(a)(1)(xxvi)	(A)			
(a)(1)(xxvii)	(A)			
(a)(1)(xxviii)	(A)			(B)
(a)(1)(xxix)	(A)			
(a)(1)(xxx)	(A)			(B)
(a)(1)(xxxi)	(A)			(B)
(a)(1)(xxxii)	(A)			(B)
(a)(1)(xxxiii)	(A)			(B)
(a)(1)(xxxiv)			(A)	(B)
(a)(1)(xxxv)	(A)			
(a)(1)(xxxvi)	(A)			
(a)(1)(xxxvii)	(A)			
(a)(1)(xxxviii)	(A)			(B)
(a)(1)(xxxix)	(A)			
(a)(1)(xl)	(A)			
(a)(1)(xli)	(A)			(B)
(a)(1)(xlii)	(A)			
(a)(1)(xliii)	(A)			(B)
(a)(1)(xliv)	(A)			(B)
(a)(1)(xlv)	(A)			(B)
(a)(1)(xlvi)	(A)			(B)
(a)(1)(xlvii)	(A)			(B)
(a)(1)(xlviii)	(A)			
(a)(1)(xlix)	(A)			
(a)(1)(l)	(A)			
(a)(1)(li)	(A)			(B)
(a)(1)(lii)	(A)			(B)
(a)(1)(liii)	(A)			
(a)(1)(liv)	(A)			(B)
(a)(1)(lv)	(A)			(B)
(a)(1)(lvi)	(A)			(B)
(a)(1)(lvii)			(A)	(B)
(a)(1)(lviii)	(A)			(B)
(a)(1)(lix)		(A)(1) and (2)		(B)
(a)(1)(lx)			(A)	(B)
(a)(1)(lxi)	(A)			
(a)(1)(lxii)	(A)			
(a)(1)(lxiii)	(A)			
(a)(1)(lxiv)	(A)			
(a)(1)(lxv)	(A)			(B)
(a)(1)(lxvi)	(A)			
(a)(1)(lxvii)	(A)			
(a)(1)(lxviii)	(A)			
(a)(1)(lxix)	(A)			
(a)(1)(lxx)	(A)			(B)
(a)(1)(lxxi)	(A)			(B)
(a)(1)(lxxii)	(A)			(B)
(a)(1)(lxxiii)	(A)			
(a)(1)(lxxiv)	(A)			

Amend	By removing and reserving paragraph(s):	By removing paragraph(s):	By removing the second sentence of paragraph:	By removing the word "NOTE:" from paragraph:
(a)(1)(lxxv)	(A)			
(a)(1)(lxxvi)	(A)			
(a)(1)(lxxvii)	(A)			
(a)(1)(lxxviii)	(A)			
(a)(1)(lxxix)	(A)			(B)
(a)(1)(lxxx)	(A)			
(a)(1)(lxxxi)	(A)			
(a)(1)(lxxxii)	(A)			(B)
(a)(1)(lxxxiii)	(A)			
(a)(1)(lxxxiv)	(A)			(B)
(a)(1)(lxxxv)	(A)			(B)
(a)(1)(lxxxvi)	(A)			
(a)(1)(lxxxvii)	(A)			
(a)(1)(lxxxviii)	(A)			
(a)(1)(lxxxix)	(A)			
(a)(1)(xc)	(A)			(B)
(a)(1)(xci)	(A)			
(a)(1)(xcii)	(A)			(B)
(a)(1)(xciii)	(A)			
(a)(1)(xciv)	(A)			(B)
(a)(1)(xcv)	(A)			
(a)(1)(xcvi)	(A)			
(a)(1)(xcvii)	(A)			
(a)(1)(xcviii)	(A)			
(a)(1)(xcix)	(A)			
(a)(1)(c)	(A)			
(a)(1)(ci)	(A)			
(a)(1)(cii)	(A)			(B)
(a)(1)(ciii)	(A)			
(a)(1)(civ)	(A)			(B)
(a)(1)(cv)	(A)			
(a)(1)(cvi)	(A)			
(a)(1)(cvii)	(A)			(B)
(a)(1)(cviii)	(A)			
(a)(1)(cix)	(A)			
(a)(1)(cx)	(A)			
(a)(1)(cxi)	(A)			
(a)(1)(cxii)	(A)			(B)
(a)(1)(cxiii)	(A)			
(a)(1)(cxiv)	(A)			
(a)(1)(cxv)	(A)			
(a)(1)(cxvi)	(A)			
(a)(1)(cxvii)	(A)			(B)
(a)(1)(cxviii)	(A)			(B)
(a)(1)(cxix)	(A)			(B)
(a)(1)(cxx)	(A)			(B)
(a)(1)(cxxi)	(A)			(C)
(a)(1)(cxxii)	(A)			(B)
(a)(1)(cxxiii)	(A)			(B)
(a)(1)(cxxiv)	(A)			(B)
(a)(1)(cxxv)	(A)			(B)
(a)(1)(cxxvi)	(A)			(B)
(a)(1)(cxxvii)	(A)			(B)
(a)(1)(cxxviii)	(A)			(B)
(a)(1)(cxxix)	(A)			(B)
(a)(1)(cxxx)		(A)(1) through (5)		(B)
(a)(1)(cxxxi)	(A)			(B)
(a)(1)(cxxxii)	(A)			(B)
(a)(1)(cxxxiii)		(A)(1) through (4)		(B)
(a)(1)(cxxxiv)	(A)			(B)
(a)(1)(cxxxv)	(A)			
(a)(1)(cxxxvi)		(A)(1) and (2)		(B)
(a)(1)(cxxxvii)	(A)			(B)
(a)(1)(cxxxviii)	(A)			(B)
(a)(1)(cxxxix)	(A)			(B)
(a)(1)(cxl)		(A)(1) through (4)		(B)
(a)(1)(cxli)			(A)	(B)
(a)(1)(cxlii)	(A)			
(a)(1)(cxliii)	(A)			
(a)(1)(cxliv)	(A)			
(a)(1)(cxlv)	(A)			
(a)(1)(cxlvi)		(A)(1) and (2)		(B)
(a)(1)(cxlvii)	(A)			

Amend	By removing and reserving paragraph(s):	By removing paragraph(s):	By removing the second sentence of paragraph:	By removing the word "NOTE:" from paragraph:
(a)(1)(cxlviii)	(A)			
(a)(1)(cxlix)	(A)			(B)
(a)(1)(cl)	(A)			
(a)(1)(cli)	(A)			
(a)(1)(clii)	(A)			
(a)(1)(cliii)	(A)			
(a)(1)(cliv)	(A)			(B)
(a)(1)(clv)	(A)			(B)
(a)(1)(clvi)	(A)			(B)
(a)(1)(clvii)	(A)			(B)
(a)(1)(clviii)	(A)			(B)
(a)(1)(clix)	(A)			(B)
(a)(1)(clx)	(A)			(B)
(a)(1)(clxi)	(A)			(B)
(a)(1)(clxii)	(A)			(B)
(a)(1)(clxiii)	(A)			
(a)(1)(clxiv)	(A)			
(a)(1)(clxv)	(A)			
(a)(1)(clxvi)	(A)			(B)
(a)(1)(clxvii)	(A)			(B)
(a)(1)(clxviii)	(A)			(B)
(a)(1)(clxix)	(A)			(B)
(a)(1)(clxx)	(A)			(B)
(a)(1)(clxxi)	(A)			(B)
(a)(1)(clxxii)	(A)			
(a)(1)(clxxiii)	(A)			(B)
(a)(1)(clxxiv)	(A)			(B)
(a)(1)(clxxv)	(A)			(B)
(a)(1)(clxxvi)	(A)			
(a)(1)(clxxvii)	(A)			
(a)(1)(clxxviii)	(A)			
(a)(1)(clxxix)	(A)			
(a)(1)(clxxx)	(A)			
(a)(1)(clxxxi)	(A)			(B)
(a)(1)(clxxxii)	(A)			(C)
(a)(1)(clxxxiii)	(A)			(B)
(a)(1)(clxxxiv)	(A)			
(a)(1)(clxxxv)	(A)			
(a)(1)(clxxxvi)	(A)			(B)
(a)(1)(clxxxvii)	(A)			(B)
(a)(1)(clxxxviii)	(A)			(C)
(a)(1)(clxxxix)	(A)			(B)
(a)(1)(cxc)	(A)			(B)
(a)(1)(cxci)	(A)			(B)
(a)(1)(cxcii)	(A)			(C)
(a)(1)(cxciii)	(A)			(B)
(a)(1)(cxciv)	(A)			(B)
(a)(1)(cxcv)	(A)			(B)
(a)(1)(cxcvi)	(A)			(B)
(a)(1)(cxcvii)	(A)			(B)
(a)(1)(cxcviii)	(A)			(B)
(a)(1)(cxcix)	(A)			
(a)(1)(cc)	(A)			(B)
(a)(1)(cci)	(A)			(B)
(a)(1)(ccii)	(A)			(B)
(a)(1)(cciii)	(A)			(B)
(a)(1)(cciv)	(A)			(B)
(a)(1)(ccv)	(A)			(B)
(a)(1)(ccvi)	(A)			(B)
(a)(1)(ccvii)	(A)			(B)
(a)(1)(ccviii)	(A)			(B)
(a)(1)(ccix)	(A)			(B)
(a)(1)(ccx)	(A)			(B)
(a)(1)(ccxi)	(A)			(B)
(a)(1)(ccxii)	(A)			(B)
(a)(1)(ccxiii)	(A)			(B)
(a)(1)(ccxiv)	(A)			(B)
(a)(1)(ccxv)	(A)			(B)
(a)(1)(ccxvi)	(A)			
(a)(1)(ccxvii)	(A)			
(a)(1)(ccxviii)	(A)			(B)
(a)(1)(ccxix)	(A)			(B)
(a)(1)(ccxx)	(A)			(B)

Amend	By removing and reserving paragraph(s):	By removing paragraph(s):	By removing the second sentence of paragraph:	By removing the word "NOTE:" from paragraph:
(a)(1)(ccxxi)	(A)			(B)
(a)(1)(ccxxii)	(A)			
(a)(1)(ccxxiii)	(A)			
(a)(1)(ccxxiv)	(A)			
(a)(1)(ccxxv)	(A)			
(a)(1)(ccxxvi)	(A)			(B)
(a)(1)(ccxxvii)	(A)			(B)
(a)(1)(ccxxviii)	(A)			(B)
(a)(1)(ccxxix)	(A)			
(a)(1)(ccxxx)	(A)			(B)
(a)(1)(ccxxxi)	(A)			(B)
(a)(1)(ccxxxii)	(A)			(B)
(a)(1)(ccxxxiii)	(A)			(B)
(a)(1)(ccxxxiv)	(A)			(B)
(a)(1)(ccxxxv)	(A)			
(a)(1)(ccxxxvi)	(A)			
(a)(1)(ccxxxvii)	(A)			
(a)(1)(ccxxxviii)	(A)			
(a)(1)(ccxxxix)	(A)			
(a)(1)(ccxl)	(A)			(B)
(a)(1)(ccxli)	(A)			
(a)(1)(ccxlii)	(A)			(B)
(a)(1)(ccxliii)	(A)			(B)
(a)(1)(ccxliv)	(A)			(B)
(a)(1)(ccxlv)	(A)			(C)
(a)(1)(ccxlvi)	(A)			(B)
(a)(1)(ccxlvii)	(A)			(B)
(a)(1)(ccxlviii)	(A)			
(a)(1)(ccxlix)	(A)			
(a)(1)(ccl)	(A)			
(a)(1)(ccli)	(A)			(B)
(a)(1)(cclii)	(A)			(B)
(a)(1)(ccliii)	(A)			
(a)(1)(ccliv)	(A)			(B)
(a)(1)(cclv)	(A)			(B)
(a)(1)(cclvi)	(A)			(C)
(a)(1)(cclvii)	(A)			(B)
(a)(1)(cclviii)	(A)			
(a)(1)(cclix)	(A)			
(a)(1)(cclx)	(A)			(B)
(a)(1)(cclxi)	(A)			(C)
(a)(1)(cclxii)	(A)			(B)
(a)(1)(cclxiii)	(A)			(B)
(a)(1)(cclxiv)	(A)			(B)
(a)(1)(cclxv)	(A)			(B)
(a)(1)(cclxvi)	(A)			
(a)(1)(cclxvii)	(A)			
(a)(1)(cclxviii)	(A)			(B)
(a)(1)(cclxix)	(A)			(B)
(a)(1)(cclxx)	(A)			(B)
(a)(1)(cclxxi)	(A)			(C)
(a)(1)(cclxxii)	(A)			
(a)(1)(cclxxiii)	(A)			(B)
(a)(1)(cclxxiv)	(A)			(B)
(a)(1)(cclxxv)	(A)			(B)
(a)(1)(cclxxvi)	(A)			(B)
(a)(1)(cclxxvii)	(A)			
(a)(1)(cclxxviii)	(A)			
(a)(1)(cclxxix)	(A)			
(a)(1)(cclxxx)	(A)			
(a)(1)(cclxxxi)	(A)			
(a)(1)(cclxxxii)	(A)			(B)
(a)(1)(cclxxxiii)	(A)			(B)
(a)(1)(cclxxxiv)	(A)			(B)
(a)(1)(cclxxxv)	(A)			(B)
(a)(1)(cclxxxvi)	(A)			(B)
(a)(1)(cclxxxvii)	(A)			(B)
(a)(1)(cclxxxviii)	(A)			(C)
(a)(1)(cclxxxix)	(A)			(B)
(a)(1)(ccxc)	(A)			
(a)(1)(ccxci)	(A)			
(a)(1)(ccxcii)	(A)			
(a)(1)(ccxciii)	(A)			(B)

Amend	By removing and reserving paragraph(s):	By removing paragraph(s):	By removing the second sentence of paragraph:	By removing the word "NOTE:" from paragraph:
(a)(1)(ccxciv)	(A)			(B)
(a)(1)(ccxcv)	(A)			(B)
(a)(1)(ccxcvi)	(A)			(C)
(a)(1)(ccxcvii)	(A)			(B)
(a)(1)(ccxcviii)	(A)			(B)
(a)(1)(ccxcix)	(A)			(B)
(a)(1)(ccc)	(A)			(B)
(a)(1)(ccci)	(A)			(B)
(a)(1)(cccii)	(A)			(B)
(a)(1)(ccciii)	(A)			(B)
(a)(1)(ccciv)	(A)			(B)
(a)(1)(cccv)	(A)			(B)
(a)(1)(cccvi)	(A)			(B)
(a)(1)(cccvii)	(A)			(B)
(a)(1)(cccviii)	(A)			(B)
(a)(1)(cccix)	(A)			
(a)(1)(cccx)	(A)			(B)
(a)(1)(cccxi)	(A)			(B)
(a)(1)(cccxii)	(A)			(B)
(a)(1)(cccxiii)	(A)			(B)
(a)(1)(cccxiv)	(A)			(B)
(a)(1)(cccxv)	(A)			(B)
(a)(1)(cccxvi)	(A)			(B)
(a)(1)(cccxvii)	(A)			(B)
(a)(1)(cccxviii)	(A)			(B)
(a)(1)(cccxix)	(A)			(B)
(a)(1)(cccxx)	(A)			(B)
(a)(1)(cccxxi)	(A)			(B)
(a)(1)(cccxxii)	(A)			(C)
(a)(1)(cccxxiii)	(A)			(C)
(a)(1)(cccxxiv)	(A)			(B)
(a)(1)(cccxxv)	(A)			(C)
(a)(1)(cccxxvi)	(A)			(B)
(a)(1)(cccxxvii)	(A)			(B)
(a)(1)(cccxxviii)	(A)			(B)
(a)(1)(cccxxix)	(A)			
(a)(1)(cccxxx)	(A)			
(a)(1)(cccxxxi)	(A)			
(a)(1)(cccxxxii)	(A)			
(a)(1)(cccxxxiii)	(A)			
(a)(1)(cccxxxiv)	(A)			
(a)(1)(cccxxxv)	(A)			
(a)(1)(cccxxxvi)	(A)			
(a)(1)(cccxxxvii)	(A)			(B)
(a)(1)(cccxxxviii)	(A)			(B)
(a)(1)(cccxxxix)	(A)			(C)
(a)(1)(cccxl)	(A)			(B)
(a)(1)(cccxli)	(A)			(B)
(a)(1)(cccxlii)	(A)			(B)
(a)(1)(cccxliii)	(A)			(B)
(a)(1)(cccxliv)	(A)			(B)
(a)(1)(cccxlv)	(A)			(B)
(a)(1)(cccxlvi)	(A)			(B)
(a)(1)(cccxlvii)	(A)			(B)
(a)(1)(cccxlviii)	(A)			(B)
(a)(1)(cccxlix)	(A)			(B)
(a)(1)(ccccl)	(A)			(B)
(a)(1)(ccccli)			(A)	(B)
(a)(1)(ccclii)	(A)			
(a)(1)(ccccliii)	(A)			
(a)(1)(ccccliv)	(A)			
(a)(1)(ccclv)	(A)			
(a)(1)(ccclvi)	(A)			
(a)(1)(ccclvii)	(A)			
(a)(1)(ccclviii)	(A)			
(a)(1)(ccclix)	(A)			
(a)(1)(ccclx)	(A)			
(a)(1)(ccclxi)			(A)	(B)
(a)(1)(ccclxii)	(A)			
(a)(1)(ccclxiii)	(A)			
(a)(1)(ccclxiv)	(A)			
(a)(1)(ccclxv)	(A)			
(a)(1)(ccclxvi)	(A)			

Amend	By removing and reserving paragraph(s):	By removing paragraph(s):	By removing the second sentence of paragraph:	By removing the word "NOTE:" from paragraph:
(a)(1)(ccclxvii)	(A)			
(a)(1)(ccclxviii)	(A)			
(a)(1)(ccclxix)	(A)			
(a)(1)(ccclxx)	(A)			
(a)(1)(ccclxxi)			(A)	(B)
(a)(1)(ccclxxii)	(A)			
(a)(1)(ccclxxiii)	(A)			
(a)(1)(ccclxxiv)	(A)			
(a)(1)(ccclxxv)	(A)			
(a)(1)(ccclxxvi)	(A)			
(a)(1)(ccclxxvii)	(A)			
(a)(1)(ccclxxviii)	(A)			
(a)(1)(ccclxxix)	(A)			
(a)(1)(ccclxxx)	(A)			
(a)(1)(ccclxxxi)	(A)			
(a)(1)(ccclxxxii)	(A)			
(a)(1)(ccclxxxiii)	(A)			
(a)(1)(ccclxxxiv)	(A)			
(a)(1)(ccclxxxv)	(A)			
(a)(1)(ccclxxxvi)	(A)			
(a)(1)(ccclxxxvii)			(A)	(B)
(a)(1)(ccclxxxviii)	(A)			
(a)(1)(ccclxxxix)	(A)			
(a)(1)(cccxc)	(A)			
(a)(1)(cccxci)	(A)			
(a)(1)(cccxcii)	(A)			
(a)(1)(cccxciii)	(A)			
(a)(1)(cccxciv)	(A)			
(a)(1)(cccxcv)	(A)			
(a)(1)(cccxcvi)			(A)	(B)
(a)(1)(cccxcvii)	(A)			
(a)(1)(cccxcviii)	(A)			
(a)(1)(cccxcix)	(A)			
(a)(1)(cd)	(A)			
(a)(1)(cdi)	(A)			
(a)(1)(cdii)	(A)			
(a)(1)(cdiii)	(A)			
(a)(1)(cdiv)	(A)			
(a)(1)(cdv)			(A)	(B)
(a)(1)(cdvi)	(A)			
(a)(1)(cdvii)	(A)			
(a)(1)(cdviii)	(A)			
(a)(1)(cdix)	(A)			
(a)(1)(cdx)	(A)			
(a)(1)(cdxi)	(A)			
(a)(1)(cdxii)	(A)			
(a)(1)(cdxiii)	(A)			
(a)(1)(cdxiv)	(A)			
(a)(1)(cdxv)	(A)			
(a)(1)(cdxvi)	(A)			
(a)(1)(cdxvii)	(A)			
(a)(1)(cdxviii)	(A)			
(a)(1)(cdxix)	(A)			
(a)(1)(cdxx)	(A)			
(a)(1)(cdxxi)	(A)			
(a)(1)(cdxxii)	(A)			
(a)(1)(cdxxiii)			(A)	(B)
(a)(1)(cdxxiv)	(A)			
(a)(1)(cdxxv)	(A)			
(a)(1)(cdxxvi)	(A)			
(a)(1)(cdxxvii)	(A)			
(a)(1)(cdxxviii)	(A)			
(a)(1)(cdxxix)	(A)			
(a)(1)(cdxxx)	(A)			
(a)(1)(cdxxxi)	(A)			
(a)(1)(cdxxxii)	(A)			
(a)(1)(cdxxxiii)	(A)			
(a)(1)(cdxxxiv)	(A)			
(a)(1)(cdxxxv)	(A)			
(a)(1)(cdxxxvi)	(A)			
(a)(1)(cdxxxvii)	(A)			
(a)(1)(cdxxxviii)	(A)			
(a)(1)(cdxxxix)	(A)			

Amend	By removing and reserving paragraph(s):	By removing paragraph(s):	By removing the second sentence of paragraph:	By removing the word "NOTE:" from paragraph:
(a)(1)(cdxl)	(A)			
(a)(1)(cdxli)			(A)	(B)
(a)(1)(cdxlii)	(A)			
(a)(1)(cdxliii)	(A)			
(a)(1)(cdxliv)	(A)			
(a)(1)(cdxlv)	(A)			
(a)(1)(cdxlvi)	(A)			
(a)(1)(cdxlvii)	(A)			
(a)(1)(cdxlviii)	(A)			
(a)(1)(cdxlix)	(A)			
(a)(1)(cdl)	(A)			
(a)(1)(cdli)	(A)			
(a)(1)(cdlii)	(A)			
(a)(1)(cdliii)	(A)			
(a)(1)(cdliv)	(A)			
(a)(1)(cdlv)	(A)			
(a)(1)(cdlvi)	(A)			
(a)(1)(cdlvii)	(A)			
(a)(1)(cdlviii)	(A)			
(a)(2)(i)	(A)			(B)

Amend	By removing and reserving paragraph(s):	By removing the word "NOTE:" from paragraph:
(k)(2)	(i)	(ii)
(k)(3)	(i)	(ii)
(k)(4)	(i)	(ii)
(k)(5)	(i)	(ii)
(k)(6)	(i)	(ii)
(k)(7)	(i)	(ii)
(k)(8)	(i)	(ii)
(k)(9)	(i)	(ii)
(k)(10)	(i)	(ii)
(k)(11)	(i)	(ii)
(k)(12)	(i)	(ii)
(k)(13)	(i)	(ii)
(k)(14)	(i)	(ii)
(k)(15)	(i)	(ii)
(k)(16)	(i)	(ii)
(k)(17)	(i)	(ii)
(k)(18)	(i)	(ii)
(k)(19)	(i)	(ii)
(k)(20)	(i)	(ii)
(k)(21)	(i)	(ii)
(k)(22)	(i)	(ii)
(k)(23)	(i)	(ii)
(k)(24)	(i)	(ii)
(k)(25)	(i)	(ii)
(k)(26)	(i)	(ii)
(k)(27)	(i)	(ii)
(k)(28)	(i)	(ii)
(k)(29)	(i)	(iii)
(k)(30)	(i)	(iii)
(k)(31)	(i)	(ii)
(k)(32)	(i)	(ii)
(k)(33)	(i)	(iii)
(k)(34)	(i)	(ii)
(k)(35)	(i)	(ii)
(k)(36)	(i)	(ii)
(k)(37)	(i)	(ii)
(k)(38)	(i)	(ii)
(k)(39)	(i)	(ii)
(k)(40)	(i)	(ii)
(k)(41)	(i)	(ii)
(k)(42)	(i)	(ii)
(k)(43)	(i)	(ii)
(k)(44)	(i)	(iii)
(k)(45)	(i)	(ii)
(k)(46)	(i)	(ii)
(k)(47)	(i)	(ii)
(k)(48)	(i)	(ii)
(k)(49)	(i)	(ii)
(k)(50)	(i)	(ii)

Amend	By removing and reserving paragraph(s):	By removing the word "NOTE:" from paragraph:
(k)(51)	(i)	(ii)
(k)(52)	(i)	(ii)
(k)(57)	(i)	(ii)
(k)(58)	(i)	(ii)
(k)(59)	(i)	(ii)
(k)(60)	(i)	(ii)
(k)(61)	(i)	(ii)
(k)(62)	(i)	(ii)
(k)(63)	(i)	(ii)
(k)(64)	(i)	(ii)
(k)(65)	(i)	(ii)
(k)(66)	(i)	(ii)
(k)(67)	(i)	(ii)
(k)(68)	(i)	(ii)
(k)(69)	(i)	(ii)
(k)(70)	(i)	(ii)
(k)(71)	(i)	(ii)
(k)(72)	(i)	(ii)
(k)(73)	(i)	(ii)
(k)(74)	(i)	(ii)
(k)(75)	(i)	(ii)
(k)(76)	(i)	(ii)
(k)(77)	(i)	(ii)
(k)(78)	(i)	(ii)
(k)(79)	(i)	(ii)
(k)(80)	(i)	(ii)
(k)(81)	(i)	(ii)
(k)(82)	(i)	(ii)
(k)(83)	(i)	(ii)
(k)(84)	(i)	(ii)
(k)(85)	(i)	(ii)
(k)(86)	(i)	(ii)
(k)(87)	(i)	(ii)
(k)(88)	(i)	(ii)
(k)(89)	(i)	(ii)
(k)(90)	(i)	(ii)
(k)(91)	(i)	(ii)
(k)(92)	(i)	(ii)
(k)(93)	(i)	(ii)
(k)(94)	(i)	(ii)
(k)(95)	(i)	(ii)
(k)(96)	(i)	(ii)
(k)(98)	(i)	(ii)
(k)(99)	(i)	(ii)
(k)(103)	(i)	(ii)

Dated: August 30, 2017.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–23399 Filed 10–26–17; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 82, No. 207
Friday, October 27, 2017

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

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 46

[Docket ID. OCC–2017–0021]

RIN 1557–AD85

Annual Stress Test—Technical and Conforming Changes

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is inviting comment on a proposed rule that would make several revisions to its stress testing rule. The proposed rule would change the range of possible ''as-of'' dates used in the global market shock component to conform to changes recently made by the Board of Governors of the Federal Reserve System (Board) to its stress testing regulations. The proposed rule would also change the transition process for covered institutions with $50 billion or more in assets. Under the proposed rule, a covered institution that becomes an over $50 billion covered institution, as that term is defined in the OCC stress testing regulation, before September 30 would become subject to the requirements applicable to an over $50 billion covered institution beginning on January 1 of the second calendar year after the covered institution becomes an over $50 billion covered institution, and a covered institution that becomes an over $50 billion covered institution after September 30 would become subject to the requirements applicable to an over $50 billion covered institution beginning on January 1 of the third calendar year after the covered institution becomes an over $50 billion covered institution. The proposed rule would also make certain technical changes to clarify the requirements of the OCC's stress testing regulation.

DATES: Comments must be received on or before December 26, 2017.

ADDRESSES: You may submit comments to the OCC by any of the methods set forth below. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Annual Stress Test—Technical and Conforming Changes'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2017–0021'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2017–0021'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2017–0021'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Hein Bogaard, Lead Economic Expert, International Analysis and Banking Condition, (202) 649–5450; Andrew Tschirhart, Financial Analyst, Large Bank Supervision, (202) 649–6210; Kari Falkenborg, Senior Financial Analyst, Midsize and Community Bank Supervision, (312) 917–5000; Henry Barkhausen, Counsel, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 649–5490; for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Background

Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (''Dodd-Frank Act'') requires two types of stress tests. Section 165(i)(1) requires the Board to conduct annual stress tests of holding companies with $50 billion or more in assets (''supervisory stress tests''). Section 165(i)(2) requires the federal banking agencies to issue regulations requiring financial companies with more than $10 billion in assets to conduct annual stress tests themselves (''company-run stress tests''). In October 2012, the OCC, the Board, and the Federal Deposit Insurance Corporation issued final rules

[1] Public Law 111–203, 124 Stat. 1376 (2010).

implementing the company-run stress tests.

The Dodd-Frank Act requires that the OCC and other federal primary financial regulatory agencies issue consistent and comparable regulations to implement the statutory stress testing requirement. In order to fulfill this requirement and minimize regulatory burden, the OCC has worked to ensure that its stress testing regulation remains consistent and comparable to the regulations enacted by other regulatory agencies, including the Board.

II. Description of the Proposed Rule

A. New Range of Possible As-Of Dates for Trading and Counterparty Scenario Component

Under 12 CFR 46.5(c) the OCC may require a covered institution with significant trading activities to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component is as of a date between January 1 and March 1 of a calendar year. On February 3, 2017 the Board issued a final rule that extended this range to run from October 1 of the calendar year preceding the year of the stress test to March 1 of the calendar year of the stress test.[2] The proposed rule would make the same change to the OCC's stress testing regulation. Extending this range would increase the OCC's flexibility to choose an appropriate as-of date. The OCC continues to coordinate its stress testing program with the Board in order to minimize regulatory burden.

B. New Applicability Transition and Terminology for Covered Institutions With $50 Billion or More in Assets

The proposed rule would change the term ''over $50 billion covered institution'' to ''$50 billion or over covered institution.'' The change would not alter the scope of this defined term and would not change the substantive requirements of the regulation. The new defined term would be a more precise description of the entities included within this category, which includes all national banks and federal savings associations ''with average total consolidated assets . . . that are not less than $50 billion.'' [3] While the proposed rule would change the defined term ''over $50 billion covered institution'' to ''$50 billion or over covered institution,'' this supplementary information section will continue to use the defined term ''over $50 billion covered institution'' since that is the term used in the current regulatory text.

The proposed rule would also change the transition process for covered institutions that become an ''over $50 billion covered institution.'' On February 3, 2017, the Board issued a final rule that provides additional time for bank holding companies that cross the $50 billion asset threshold close to the April 5 submission date.[4] The proposed rule would make a parallel amendment to the OCC's stress testing regulation. Under the proposed rule, a national bank or federal savings association that becomes an over $50 billion covered institution in the fourth quarter of a calendar year [5] would not be subject to the stress testing requirements applicable to over $50 billion covered institutions until the third year after it crosses the asset threshold. For example, if a national bank or federal savings association became an over $50 billion covered institution on September 15, 2017, the institution would be expected to comply with the requirements applicable to over $50 billion covered institutions beginning in 2019 and file the OCC DFAST–14A in April 2019. If a national bank or federal savings association became an over $50 billion covered institution on October 15, 2017, the institution would be required to comply with the stress testing requirements applicable to over $50 billion covered institutions beginning in 2020 and file the OCC DFAST–14A in April 2020.

The stress testing timeline and transition process for national banks or federal savings associations which become $10 to $50 billion covered institutions remains unchanged. A national bank or federal savings association that becomes a $10 to $50 billion covered institution on or before March 31 of a given year would be required to conduct its first stress test in the next calendar year. For example, a national bank or federal savings association that becomes a $10 to $50 billion covered institution as of March 31, 2017 would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2018. A national bank or federal savings association that becomes a $10 to $50 billion covered institution after March 31 of a given year would be required to conduct its first stress test in the second calendar year after the date the national bank or federal savings association becomes a covered institution. For example, a national bank or federal savings association that becomes a $10 to $50 billion covered institution on June 30, 2017 would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2019.

C. Remove Obsolete Transition Language

In 2014 the OCC, in coordination with the Board and Federal Deposit Insurance Corporation, shifted the dates of the annual stress testing cycle by approximately three months.[6] The OCC's stress testing regulation continues to include transition language to facilitate this schedule shift. The transition to the new schedule is now complete, and the proposed rule would remove this obsolete transition language.

III. Request for Comment

The OCC requests comment on all aspects of the proposal.

IV. Regulatory Analysis

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. This notice of proposed rulemaking amends 12 CFR part 46, which has an approved information collection under the PRA (OMB Control No. 1557–0319). The amendments proposed today do not introduce any new collections of information, nor do they amend 12 CFR part 46 in a way that modifies the collection of information that OMB has approved. Therefore, this proposal does not require a PRA submission to OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires generally that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include banking organizations

[2] 82 FR 9308 (February 3, 2017).

[3] 12 CFR 46.2.

[4] 82 FR 9308 (February 3, 2017).

[5] An institution becomes an over $50 billion covered institution when its average total consolidated assets, as reported on the covered institution's Call Reports, for the four most recent consecutive quarters, equals $50 billion or more. 12 CFR 46.3(a).

[6] 79 FR 71630 (December 3, 2014).

with total assets of less than or equal to $500 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

As discussed in the **SUPPLEMENTARY INFORMATION** above, the proposed changes will only affect institutions with more than $10 billion in total assets. Therefore, the rule will not affect any small entities. As such, pursuant to section 605(b) of the RFA, the OCC certifies that this proposal would not have a significant economic impact on a substantial number of small entities because no small national banks or federal savings associations would be affected by the proposal. Accordingly, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The OCC has determined that this proposed rule will not result in expenditures by state, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, this proposal is not subject to section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[7] The proposed rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language. For example:

- Has the OCC organized the material to suit your needs? If not, how could the OCC present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the OCC incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 46

Banking, Banks, Capital, Disclosures, National banks, Recordkeeping, Risk, Savings associations, Stress test.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR part 46 as follows:

PART 46—ANNUAL STRESS TEST

■ 1. The authority citation for part 46 continues to read as follows:

Authority: 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

PART 46—[Amended]

■ 2. Remove the phrase ''over $50 billion covered institution'' and add the phrase ''$50 billion or over covered institution'' in its place wherever it appears.

■ 3. Section 46.2 is amended by removing the definition of ''over $50 billion covered institution'' and adding the definition for ''$50 billion or over covered institution'' in its place:

§ 46.2 Definitions.

* * * * *

$50 billion or over covered institution means a national bank or Federal savings association with average total consolidated assets, calculated as required under this part, that are not less than $50 billion.

* * * * *

■ 4. Section 46.3 is amended by:

■ a. Removing paragraph (b);

■ b. Redesignating paragraphs (c) through (e) as paragraphs (b) through (d), respectively; and

■ c. Revising newly redesignated paragraphs (b) and (c).

The revisions read as follows:

§ 46.3 Applicability.

* * * * *

(b) *Covered institutions that become subject to stress testing requirements.* A national bank or Federal savings association that becomes a $10 to $50 billion covered institution on or before March 31 of a given year shall conduct its first annual stress test under this part in the next calendar year after the date the national bank or Federal savings association becomes a $10 to $50 billion covered institution, unless that time is extended by the OCC in writing. A national bank or Federal savings association that becomes a $10 to $50 billion covered institution after March 31 of a given year shall conduct its first annual stress test under this part in the second calendar year after the calendar year in which the national bank or Federal savings association becomes a $10 to $50 billion covered institution, unless that time is extended by the OCC in writing.

(c) *Ceasing to be a covered institution or changing categories.* (1) A covered institution shall remain subject to the stress test requirements based on its applicable category, as defined in § 46.2, unless and until total consolidated assets of the covered institution falls below the relevant size threshold for each of four consecutive quarters as reported by the covered institution's most recent Call Reports. The calculation shall be effective on the ''as of'' date of the fourth consecutive Call Report.

(2) Notwithstanding paragraph (c)(1) of this section, a national bank or Federal savings association that becomes a $50 billion or over covered institution, whether by migrating from being a $10 to $50 billion covered institution or by directly becoming a $50 billion or over covered institution, after September 30 of a calendar year

[7] 12 U.S.C. 4802.

must comply with the requirements applicable to a $50 billion or over covered institution beginning on January 1 of the third calendar year after the national bank or Federal savings association becomes a $50 billion or over covered institution, unless that time is extended by the OCC in writing. A national bank or Federal savings association that becomes a $50 billion or over covered institution on or before September 30 of a calendar year must comply with the requirements applicable to a $50 billion or over covered institution beginning on January 1 of the second calendar year after the national bank or Federal savings association becomes a $50 billion or over covered institution, unless that time is extended by the OCC in writing.

* * * * *

■ 5. Revise § 46.5 to read as follows:

§ 46.5 Annual stress test.

Each covered institution must conduct the annual stress test under this part subject to the following requirements:

(a) *Financial data.* A covered institution must use financial data as of December 31 of the previous calendar year.

(b) *Scenarios provided by the OCC.* In conducting the stress test under this part, each covered institution must use the scenarios provided by the OCC. The scenarios provided by the OCC will reflect a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios. The OCC will provide a description of the scenarios required to be used by each covered institution no later than February 15 of that calendar year.

(c) *Significant trading activities.* The OCC may require a covered institution with significant trading activities, as determined by the OCC, to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component will be as of a date between October 1 of the previous calendar year and March 1 of that calendar year in which the stress test is performed, and the OCC will communicate a description of the component to the covered institution no later than March 1 of that calendar year.

(d) *Use of stress test results.* The board of directors and senior management of each covered institution must consider the results of the stress tests conducted under this section in the normal course of business, including but not limited to the covered institution's capital planning, assessment of capital adequacy, and risk management practices.

■ 6. Section 46.7 is amended by revising paragraphs (a) and (b) to read as follows:

§ 46.7 Reports to the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

(a) *$10 to $50 billion covered institution.* A $10 to $50 billion covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before July 31, the results of the stress test in the manner and form specified by the OCC.

(b) *$50 billion or over covered institution.* A $50 billion or over covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before April 5, the results of the stress test in the manner and form specified by the OCC.

* * * * *

■ 7. Section 46.8 is amended by revising paragraph (a) to read as follows:

§ 46.8 Publication of disclosures.

(a) *Publication date.* (1) *$50 billion or over covered institution.* A $50 billion or over covered institution must publish a summary of the results of its annual stress test in the period starting June 15 and ending July 15 provided:

(i) Unless the OCC determines otherwise, if the $50 billion or over covered institution is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of the Federal Reserve System pursuant to 12 CFR part 252, then within the June 15 to July 15 period such covered institution may not publish the required summary of its annual stress test earlier than the date that the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company.

(ii) If the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered institution's parent holding company prior to June 15, then such covered institution may publish its stress test results prior to June 15, but no later than July 15, through actual publication by the covered institution or through publication by the parent holding company pursuant to paragraph (b) of this section.

(2) *$10 to $50 billion covered institution.* A $10 to $50 billion covered institution must publish a summary of the results of its annual stress test in the period starting October 15 and ending October 31.

* * * * *

Dated: October 19, 2017.

Keith A. Noreika,

Acting Comptroller of the Currency.

[FR Doc. 2017–23353 Filed 10–26–17; 8:45 am]

BILLING CODE 4810–33–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2017–0043]

16 CFR Part 1112

CPSC Acceptance of Third Party Laboratories: Revision to the Notice of Requirements for Prohibitions of Children's Toys and Child Care Articles Containing Specified Phthalates

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPR) would update the existing notice of requirements (NOR) for prohibitions of children's toys and child care articles containing specified phthalates that provide the criteria and process for Commission acceptance of accreditation pursuant to the Consumer Product Safety Act (CPSA). The proposed NOR would revise the current NOR to be consistent with the final phthalates rule, which is published elsewhere in this same issue of the **Federal Register** and will be codified in the Code of Federal Regulations (CFR).

DATES: Submit comments by January 10, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2017–0043, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and

docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2017–0043, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Scott R. Heh, Project Manager, Directorate for Laboratory Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–504–7646; email: *sheh@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) established requirements concerning concentration limits for specified phthalates in children's toys and child care articles. In this same issue of the **Federal Register**, the Commission is publishing a final rule that changes some of the statutory phthalate restrictions currently in place pursuant to section 108(b)(3) of the CPSIA. 15 U.S.C. 2063c(a). The Commission's phthalates rule makes permanent the interim prohibition on children's toys that can be placed in a child's mouth and child care articles that contain concentrations of more than 0.1 percent of diisononyl phthalate (DINP). The phthalates rule extends this prohibition to cover all children's toys and child care articles containing concentrations of more than 0.1 percent of DINP. The phthalates rule also lifts the interim prohibitions on children's toys that can be placed in a child's mouth and child care articles that contain concentrations of more than 0.1 percent of di-n-octyl phthalate (DNOP) or diisodecyl phthalate (DIDP). In addition, the phthalates rule prohibits children's toys and child care articles that contain concentrations of more than 0.1 percent of diisobutyl phthalate (DIBP), Di-n-pentyl phthalate (DPENP), di-n-hexyl phthalate (DHEXP), and dicyclohexyl phthalate (DCHP). The permanent prohibitions on children's toys and child care articles that contain concentrations of more than 0.1 percent on the use of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP) in children's toys and child care articles in section 108 of the CPSIA are unchanged by the phthalate rule.

Because the phthalates rule revises the list of statutorily prohibited phthalates in children's toys and child care articles in section 108 of the CPSIA, this NPR proposes to amend the existing NOR for the prohibitions of children's toys and child care articles containing specified phthalates to reflect those changes.

B. Notice of Requirements

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. The Commission's phthalates rule is considered a ''consumer product safety standard.'' 15 U.S.C. 2063c(f). Thus, products subject to the phthalates rule are subject to the testing and certification requirements of section 14 of the CPSA.

Because children's toys and child care articles are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the requirements of the toy standard, 16 CFR part 1250, and the tracking label requirement in section 14(a)(5) of the CPSA.

In accordance with section 14(a)(3)(B)(vi) of the CPSIA, the Commission has previously published two NORs for accreditation of third party conformity assessment bodies for testing children's toys and child care articles under section 108 of the CPSIA (76 FR 49286 (Aug. 10, 2011), 78 FR 15836 (March 12, 2013)).

If the Commission finalizes the NOR as proposed, the following process would be used during the transition period from test method CPSC–CH–C1001–09.3 (2010) to a revised version of the method, currently titled, draft test method CPSC–CH–C1001–09.4 (2017). CPSC would accept testing to support children's toys and child care article certifications to the new phthalates prohibitions if the laboratory is already CPSC-accepted to test to CPSC–CH–C1001–09.3 (2010). Laboratories that conduct testing to support product certifications to the new phthalates prohibitions must list in their test reports ''16 CFR part 1307'' and CPSC–CH–C1001–09.3 until laboratories have transitioned their accreditation scope and CPSC listing to CPSC–CH–C1001–09.4.

The CPSC would open the laboratory application process for draft test method CPSC–CH–C1001–09.4 (2017) on the date the final NOR rule is published in the **Federal Register**. Laboratories that seek CPSC acceptance to the revised prohibitions for children's toys and child care articles in 16 CFR part 1307 would be required to update their accreditation scope. To be CPSC-accepted, a laboratory's scope of accreditation must include the reference to draft CPSC–CH–C1001–09.4 (2017). Laboratories that are currently CPSC-accepted to CPSC–CH–C1001–09.3 (2010) would be instructed to update their accreditation scope to include draft CPSC–CH–C1001–09.4 (2017) as soon as possible, and submit their application for CPSC acceptance. Laboratories that were not previously CPSC-accepted to CPSC–CH–C1001–09.3 (2010) would be instructed to work with their accreditation bodies to include ''CPSC–CH–C1001–09.4 (2017)'' in their scope documents.

CPSC would accept testing results to the new phthalates prohibitions in 16 CFR part 1307 from laboratories that are CPSC-accepted to CPSC–CH–C1001–09.3 (2010) for two years from the date of publication of the final rule NOR in the **Federal Register**. This should allow adequate time for laboratories to work with their accreditation bodies to make official updates to their accreditation scope document to include the revised CPSC method ''CPSC–CH–C1001–09.4 (2017)'' and submit applications to the CPSC. Two years after the date the final rule NOR publishes in the **Federal Register**, the CPSC will no longer accept laboratory applications that reference CPSC–CH–C1001–09.3 (2010), and any application to CPSC must reference ''CPSC–CH–C1001–09.4 (2017).''

C. Description of the Proposed Rule

The proposed rule would amend 16 CFR 1112(b)(31), (31)(i) and (c)(3)(i) to update the references to reflect the promulgation of 16 CFR part 1307 and draft CPSC test method CPSC–CH–C1001–09.4 (2017). The draft test method would provide detailed

information on testing that will be used by the CPSC testing laboratory for the analysis of phthalate content in children's toys and child care articles. CPSC staff has determined that using an appropriate combination of the methods of extraction and analysis presented in the test method is sufficient to determine the concentration of the regulated phthalates in most children's toys and child care articles. The general approach is to dissolve the sample completely in tetrahydrofuran, precipitate any PVC polymer with a second solvent, then analyze by Gas Chromatography-Mass Spectrometry (GC–MS). The draft test method provides definitions, a list of equipment and supplies needed for testing, procedures to measure phthalate concentration, instructions for sample preparation, and descriptions of the phthalate extraction method and instrument parameters. The draft test method is available at Tab A of the CPSC staff's briefing package available on CPSC's Web site at: *https://www.cpsc.gov/s3fs-public/Notice%20of%20Proposed%20Rulemaking%20for%20NOR%20for%20Phthalates%20-%20September%2013%202017.pdf?pH5_n4seuAb0.USRYqPfsnmLuTKC8F_2.* Draft CPSC test method CPSC–CH–C1001–09.4 (2017) has been updated to reflect the list of phthalates prohibited in children's toys and child care articles in 16 CFR part 1307 ((di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), butyl benzyl phthalate (BBP), di-*n*-octyl phthalate (DNOP) diisobutyl phthalate (DIBP), di-*n*-pentyl phthalate (DPENP), di-*n*-hexyl phthalate (DHEXP), or dicyclohexyl phthalate (DCHP)). The draft test method CPSC–CH–C1001–09.4 (2017) is substantially the same as the current testing procedure. The Commission encourages comments on draft CPSC test method CPSC–CH–C1001–09.4 (2017). We note that the draft test method could change in the final rule.

D. Effective Date

The APA generally requires that a substantive rule must be published not less than 30 days before its effective date. 5 U.S.C. 553(d)(1). Because the proposed rule would allow testing to continue under the existing testing method by testing laboratories that meet certain criteria for a period of up to two years after the publication of a final rule, the Commission proposes a 30 day effective date for the final rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the APA, or any other statute, unless the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The impact of the proposed rule on small testing laboratories would be minimal. The only laboratories that would be impacted are those that offer to test children's toys and child care articles for prohibited phthalates. These laboratories are already accredited by one or more accreditation bodies that are signatories to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC–MRA) and have had their accreditations accepted by the Commission. These laboratories would have to revise their procedures for testing for phthalate content to be consistent with the revised phthalate test method (CPSC–CH–C1001–09.4) which would replace the current phthalate test method (CPSC–CH–C1001–09.3) if the proposed NOR is finalized. Staff expects that the impact of revising testing procedures will be low for qualified laboratories because the same sample preparation, extraction methods, and equipment is used for both methods. Moreover, the additional phthalates included in draft CPSC–CH–C1001–09.4 can be isolated at unique elution times by gas chromatography and, therefore, the analysis should not be a burden for those qualified to perform such testing.

Additionally, within two years of the publication of the final NOR rule, laboratories would need to update their scope accreditation documents to include the revised phthalate test method (CPSC–CH–C1001–09.4). Staff expects that the burden of this requirement will also be low because testing laboratories typically must undergo a reassessment every two years in order to maintain their accreditations. Updating the accreditation scope documents to include the revised phthalate test method is a minor change and should result in little or no additional cost to a testing laboratory if completed during the periodic reassessment, which the 2-year window would allow testing laboratories to do.

After considering the economic impacts of this proposed rule on small entities, the Commission certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

F. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

List of Subjects in 16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Incorporation by reference, Reporting and recordkeeping requirements, Third party conformity assessment body.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 CFR chapter II, as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008).

■ 2. Amend § 1112.15 by:

■ a. Revising the introductory text to paragraph (b)(31);

■ b. Revising paragraph (b)(31)(i); and

■ c. Revising paragraph (c)(3)(i).

The revisions read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(31) 16 CFR part 1307, Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates. For its accreditation to be accepted by the Commission to test for phthalates in children's toys and child care articles, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–1001–09.4, ''Standard Operating Procedure for Determination of Phthalates;

* * * * *

(c) * * *

(3) * * *

(i) CPSC–CH–C1001–9.4, ''Standard Operating Procedure for Determination of Phthalates'', September 1, 2017.

* * * * *

Alberta E. Mills,

Acting Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2017–23266 Filed 10–26–17; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2017–0296]

Hours of Service of Drivers: Application for Exemption; Western Equipment Dealers Association (WEDA)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Application for exemption; request for comments.

SUMMARY: FMCSA announces that the Western Equipment Dealers Association (WEDA) has requested an exemption on behalf of several other organizations and their membership from the requirement that no later than December 18, 2017, a motor carrier require each of its drivers to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS). WEDA states that equipment dealer operations in agriculture constitute unique circumstances that warrant the requested exemption, and not granting it will pose an undue burden on equipment dealers and their customers without any measurable safety benefit. In its application, WEDA seeks a five-year, renewable exemption from the ELD requirements which, the organization states, if granted will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. FMCSA requests public comment on WEDA's application for exemption.

DATES: Comments must be received on or before November 27, 2017.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2017–0296 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2017–0296), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2017–0296'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

WEDA filed this application for exemption on behalf of its own organization and the following: Northeast Equipment Dealers Association; North Dakota Implement Dealers Association; Midwest-South Eastern Equipment Dealers Association; Far West Equipment Dealers Association; Deep South Equipment Dealers Association; Equipment Dealers Association and the United Equipment Dealers Association.

These groups represent approximately 6,000 farm, industrial and outdoor power equipment dealers in North America. WEDA states that in the agriculture sector, equipment dealers play a key role in selling and servicing equipment for farmers and ranchers, as they transport machinery to and from farms and between dealerships. They partner with agricultural producers to increase productivity through the training and use of new equipment technologies. Complying with the ELD requirement will be unduly burdensome for equipment dealers and their customers—farmers and ranchers, without providing the sought-after safety advancements contemplated by the rule.

Many of the vehicles owned by equipment dealers require a commercial driver's license to operate. When transporting equipment to and from the farm, on behalf of the farmer, they are either delivering new equipment or transporting equipment to a dealership to be serviced. Equipment dealers also employ service trucks that drive to farms and ranches to work on customer's equipment and deliver parts to the customer's location. In either instance, these vehicles usually operate within a confined distance from the dealership of less than 150 miles, and are primarily in rural regions of their respective states.

WEDA states that due to the seasonal, unpredictable and rural nature of agriculture production, Congress has granted agriculture businesses numerous exemptions from transportation requirements. The clear intent was to accommodate agricultural operations by broadening the scope of existing agribusiness exemptions in terms of distance and types of entities covered by the exemption because the reality of farming and ranching operations required it.

WEDA explains that the agribusiness exemption to the HOS rules is separate and distinct from the short-haul exemption. Under 49 CFR (k)(1–3), equipment dealers are exempt from HOS and log book requirements during State-defined harvest and planting seasons when: (1) Transporting farm supplies for an agricultural purpose; (2) from the dealership to a farm; and (3) within a 150 air-mile radius of the distribution point. This exemption, however, does not cover transportation of equipment from the farm to a dealership.

The ELD rule, according to WEDA, creates confusing and overlapping scenarios due to the conflicting rules placed on equipment dealers. Depending on the State definition of harvest and planting season, an equipment dealer may be required to install an ELD for only the couple of months of the year when the agribusiness exemption is not in effect. The agribusiness exemption is limited in scope; therefore, an equipment dealer could be exempt from using an ELD in certain cases, while still required to utilize an ELD in others.

The ELD requirements threaten to limit the exemptions and weave a complex regulatory framework that would be difficult for equipment dealers to comply with, advises WEDA. The short-haul and agribusiness exceptions apply in different scenarios at different times, and it is unclear in the first instance whether both can be combined to cover a single driving operation. For example, the agribusiness exemption would not currently apply to an equipment dealer hauling a broken tractor from a farm to the dealership for repair. The short-haul exemption would apply, though, so long as the farm is within 100 miles and the HOS requirements are met. However, suppose a service truck hauling a trailer visits a farm 120 miles from the dealership to repair a tractor. After attempting repairs for several hours and working beyond 12 hours in the day, the technician must return with the tractor or another piece of equipment to perform services at the dealership. The short haul exemption would not apply because it is beyond the 100-mile radius and the HOS requirements have been exceeded, nor would the agribusiness exemption apply because a driver is not covered while transporting equipment from a farm to the dealership. The driver would then be required to record the entirety of the day's driving on an ELD because no exemption applies. This is but one scenario of many where three complex rules overlap at different intervals to create confusion about the regulations that should be followed, and do not contribute to increased safety for the driver or the driving public.

As a practical matter, WEDA states that equipment dealers are required to install ELDs in all of their commercial vehicles despite never or very rarely utilizing them. Because of the complex and confusing overlap, many dealers will install and utilize ELDs when unnecessary to avoid harsh penalties including thousands of dollars in fines and potential shutdown orders. Equipment dealers will not claim the exemptions intended for them by Congress because the confusion and complexity spawned by the ELD rule creates the risk of penalties being imposed which outweigh the benefits. The result will be severely diminished hours of operation for equipment dealers, and, consequently, reduced responsiveness to their customers. Costs and downtime for farmers and ranchers will undoubtedly increase making their agriculture producers less competitive in a global market.

IV. Method To Ensure an Equivalent or Greater Level of Safety

WEDA states that its request falls within the FMCSA's discretion to grant because the law currently provides overlapping exemptions and exceptions that, taken together with the ELD mandate, create confusing and contradicting requirements for equipment dealers. In addition, equipment dealers' operations constitute unique aspects that should warrant an exemption from the ELD rules. WEDA therefore seeks a five-year, renewable exemption from the ELD requirements in the Federal regulations. WEDA believes the request should be granted because the exemption will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption.

A copy of WEDA's application for exemption is available for review in the docket for this notice.

Issued on: October 23, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–23403 Filed 10–26–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2017–0298]

Hours of Service of Drivers: Application for Exemption; Motion Picture Association of America

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Application for exemption; request for comments.

SUMMARY: FMCSA announces that the Motion Picture Association of America (MPAA) has requested an exemption from the electronic logging device (ELD) requirements for all commercial motor vehicle (CMV) drivers providing transportation to or from a theatrical or television motion picture production site. MPAA request this exemption to allow these drivers to complete paper records of duty status (RODS) instead of using an ELD device. MPAA believes that the exemption would not have any adverse impacts on operational safety because drivers would remain subject to the hours-of-service (HOS) regulations as well as the requirements to maintain paper RODS. FMCSA requests public comment on MPAA's application for exemption.

DATES: Comments must be received on or before November 27, 2017.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2017–0298 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2017–0298), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2017–0298'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

MPAA is requesting an exemption from the ELD requirements in 49 CFR part 395 published in the **Federal Register** on December 16, 2015 (80 FR 78292). If granted, the exemption would allow all drivers of CMVs providing transportation of property to and from a theatrical or television motion picture production site to complete paper RODS instead of using an ELD device on or after the December 18, 2017 compliance date. The term of the requested exemption is for five years, subject to renewal.

MPAA reports that approximately 6,500 CMV drivers operate CMVs on a full or part-time basis for the motion picture industry. According to HOS data developed by third party compliance services, these drivers spend on average less than four hours each day driving and drive about 40 miles per day. Their resulting RODs are often very complex, as are the driver HOS records that employing motor carriers must keep. Through close cooperation, the industry has been able to manage the extensive interchange of paper RODs that this work pattern requires. MPAA asserts that industry's success in HOS management is based on a system that is driver-based rather than vehicle-based.

According to MPAA, few production drivers qualify for the short-haul driver exception in 49 CFR 395.1(e)(1) and

(e)(2) and will be subject to the ELD requirements when compliance becomes mandatory. Each time a production driver operates a CMV for a different studio or production company the motor carrier and the driver must reconcile the driver's HOS record for the past week. At present, cooperation between production companies, various Teamsters locals, and drivers can reduce the burden of this detailed reconciliation. And under the current rules, drivers themselves can manage the necessary paper RODS, carry them to each new CMV, and transfer paper copies to each new motor carrier as needed. When a roadside inspection occurs, a driver can produce paper RODS for review by the enforcement official.

MPAA contends that the lack of interoperability among ELD platforms developed by various manufacturers means that motion picture company drivers will not be able to transfer HOS data from one carrier or vehicle to other carriers or vehicles. A driver who is required to use an ELD may operate a CMV that has one operating system installed on the truck. When the driver transfers to operating for another studio or production company, that company may use a different ELD operating system for its vehicles. The HOS data cannot automatically be transferred from the first company's vehicle to the second company's system unless both ELD devices are on the same platform.

MPAA believes that requiring production company drivers to record their HOS using incompatible ELD platforms would prevent them from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the requested exemption. Allowing production company drivers to continue using paper RODS to record their HOS data will not jeopardize operational safety or increase fatigue-related crashes.

MPAA states that Congress and FMCSA already recognized the minimal safety concerns presented by motion picture production drivers due to the limited numbers of hours and miles they operate CMVs and the availability of frequent and extended periods of off duty time throughout the workday. As a result production drivers are already exempted from the typical HOS driving and on duty time limits as long as they operate within a 100 air-mile radius of the location where the driver reports to and is released from work.

Because production drivers operate CMVs so few miles and hours per day, motion picture production companies have driver and vehicle out-of-service rates that are substantially below the national averages for carriers in general. Until such time as all ELD platforms are fully interoperable, motion picture production drivers should be allowed to continue recording their HOS data using paper RODS.

A copy of MPAA's application for exemption is available for review in the docket for this notice.

Issued on: October 23, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–23404 Filed 10–26–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170901859–7999–01]

RIN 0648–BH19

Atlantic Highly Migratory Species; Charter/Headboat Permit Commercial Sale Provision

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would make HMS Charter/Headboat permits a non-commercial category and create a separate regulatory provision for the commercial sale of Atlantic highly migratory species (HMS) by HMS Charter/Headboat permit holders. Currently, all vessels issued an HMS Charter/Headboat permit could be categorized as a commercial fishing vessel and subject to United States Coast Guard (USCG) commercial fishing vessel safety requirements if they also possess a state commercial sale permit, regardless of whether the permit holder engages or intends to engage in commercial fishing. Under the proposed rule, HMS Charter/Headboat permit holders would be prohibited from selling Atlantic tunas or swordfish unless they obtain a ''commercial sale'' endorsement for their permit. This proposed rule would clarify which HMS Charter/Headboat permitted vessels are properly categorized as commercial fishing vessels. This action would be administrative in nature and would not affect fishing practices or result in any significant environmental or economic impacts.

This proposed rule has a 15-day comment period. The abbreviated comment period is necessary to implement any management changes before January 1, 2018 to ensure all HMS charter/headboat vessels are appropriately categorized as commercial or non-commercial upon initial application or renewal of 2018 HMS Charter/Headboat permits. We do not anticipate the proposal to be controversial or to generate significant public comment and believe that a 15-day comment period will be sufficient to attract any substantive public input.

DATES: Written comments must be received by November 13, 2017. An operator-assisted, public conference call and webinar will be held on November 1, 2017, from 2:00 p.m. to 4:00 p.m., EST.

ADDRESSES: The conference call information is phone number 1 (888) 664–9965; participant passcode 5355311. Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by an opportunity for public comment. To join the webinar go to: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=efb2b4e48c0c4b75f50900b90743b7a18,* event password: noaa. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA–NMFS–2017–0124, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0124,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will

be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the HMS Management Division by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Presentation materials and copies of the supporting documents—including the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments and associated documents—are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Dianne Stephan by phone at 978–281–9260.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan or Tobey Curtis by phone at 978–281–9260, or Steve Durkee by phone at 202–670–6637.

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS regulations at 50 CFR 635.4(b) require that charter/headboat vessels (*i.e.,* vessels taking fee-paying passengers) used to fish for, take, retain, or possess Atlantic HMS, must obtain an HMS Charter/Headboat permit. In addition to carrying paying passengers, the permit also allows charter/headboat fishermen to diversify their operations by fishing commercially for Atlantic tunas and swordfish. They may also sell sharks if they have a commercial shark permit in addition to the Charter/Headboat permit. Relatively few permit holders use the commercial sale provision. From 2012–2016, an annual average of only seven percent of HMS Charter/Headboat permit holders sold any tuna or swordfish.

Legislation and United States Coast Guard (USCG) commercial fishing vessel safety policies and regulatory interpretation may result in an increased compliance burden for HMS Charter/Headboat permitted vessels. Commercial fishing vessel safety provisions contained in the Coast Guard Authorization Act of 2010 (CGAA) and the Coast Guard and Maritime Transportation Act of 2012 were the subject of a Marine Safety Information Bulletin (MSIB 12–15) issued by the USCG on October 20, 2015. MSIB 12–15 clarified that the law would require mandatory dockside safety exams to a broader population of commercial fishing vessels. As clarified in the notice, that broader community included HMS Charter/Headboat vessels that were authorized by the permit to sell fish commercially (*e.g.,* all Charter/Headboat vessels) who also possessed a state commercial sale permit. The mandatory safety exam includes a check for required commercial fishing vessel safety equipment such as life rafts, emergency beacons, and survival suits, and other requirements found in 46 CFR part 28. Outfitting a vessel with these items comes at a substantial cost. Mandatory dockside safety exams for vessels operating beyond three nautical miles from the baseline under this program began October 15, 2015.

The mandatory safety requirements have been difficult to enforce pending a more effective way to identify which HMS Charter/Headboat permit holders engage in commercial fishing and are therefore subject to the requirements. After receiving questions about applicability from NMFS and the regulated community, on July 10, 2017, the USCG issued Marine Safety Information Bulletin (MSIB 008–17) in an attempt to clarify the applicability of commercial fishing vessel safety requirements for vessels with HMS permits, including HMS Charter/Headboat permits. USCG regulations at 46 CFR 28.50 define a commercial fishing vessel as a vessel that commercially engages in the catching, taking, or harvesting of fish, or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish. According to the MSIB 008–17, if an individual has an HMS Charter/Headboat permit (which allows commercial sale) and a state permit to sell catch, the vessel is considered subject to commercial fishing vessel safety regulations.

Many HMS Charter/Headboat operators that neither sell, nor intend to sell, their catch but hold a permit to sell have thus found that the USCG policy identifies their operations as a ''commercial fishing vessel,'' and requires them to adhere to USCG commercial fishing vessel safety requirements. For example, even small charter vessels (*i.e.,* less than 20 feet in length) operating in the warm waters of the Gulf of Mexico and with no intent to sell HMS, may be required under the USCG regulations to carry an inflatable life raft that can cost approximately $1,750. In addition to the cost burden, a vessel of this size has minimal space to store such gear. These smaller HMS Charter/Headboat permitted vessels were previously subject to the USCG safety regulations for uninspected passenger vessels of less than 100 gross tons and carrying six or less passengers, which are less extensive and less costly.

In late 2016 and early 2017, NMFS and the USCG staff informally discussed how to more effectively categorize HMS charter/headboat vessels under USCG regulations. On October 6, 2017, the USCG formally reviewed this proposed rule and concurred with the approach to provide clarity on the applicability on their requirements. The HMS Advisory Panel discussed this issue at length at its May and September 2017 meetings. Many HMS Advisory Panel members, including commercial, recreational, and council/state representatives, supported creating a separate regulatory provision for charter/headboat vessels that intend to sell HMS and to thus specify that other such vessels were not engaged in commercial sale and not subject to expensive USCG commercial vessel compliance obligations. Panel members stated that creating a separate sale provision would support more appropriate application and enforcement of USCG commercial fishing vessel safety requirements in the Atlantic HMS Charter/Headboat fishery, and would better clarify for permit holders which USCG regulations apply to their vessels and fishing operations.

Proposed Action

This rule proposes to create a ''commercial sale'' endorsement on the existing HMS Charter/Headboat permit. Under the proposed rule, HMS Charter/Headboat permit holders would be prohibited from selling any catch of HMS unless they first obtain a ''commercial sale'' endorsement on their permit. Only those HMS Charter/Headboat permit holders with the endorsement would be permitted to sell Atlantic tunas or swordfish or sharks if they also have the additionally required commercial shark permit.

This proposed rule clarifies that any HMS Charter/Headboat vessel that selects this commercial sale endorsement would be categorized as a commercial fishing vessel under USCG criteria, and therefore subject to USCG commercial fishing vessel safety requirements. Those vessels issued an HMS Charter/Headboat permit without a ''commercial sale'' endorsement would not be categorized as a commercial fishing vessel and would not be subject to the USCG commercial fishing vessel safety requirements. HMS Charter/Headboat permit holders with the commercial sale endorsement selling a tuna or swordfish must adhere to the applicable Atlantic Tunas General Category or General Commercial Swordfish permit possession limits and restrictions, and the landings would be applied against the appropriate commercial quota. HMS Charter/Headboat permit holders that sell or intend to sell sharks must also obtain

the commercial sale endorsement on their permit as well as a commercial shark permit. This proposed rule would only change the permit category under which certain vessels are fishing. It would not affect quotas, gear types, or time/area restrictions, and neither increase or decrease fishing effort or affect fishing timing nor implement other measures that would potentially have any environmental impacts or effects.

Request for Comments

NMFS is requesting comments on the alternatives and analyses described in this proposed rule, Initial Regulatory Flexibility Act Analysis (IRFA) and Regulatory Impact Review (RIR). Comments may be submitted via *http://www.regulations.gov,* mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by November 13, 2017 (see **DATES** and **ADDRESSES**).

Public Hearings

Comments on this proposed rule may be submitted via *http://www.regulations.gov,* mail, or fax and comments may also be submitted at a public hearing. During the comment period, NMFS will hold one webinar conference call for this proposed rule (see **ADDRESSES**).

Classification

Pursuant to the Magnuson-Stevens Fishery Management and Conservation (Magnuson-Stevens) Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, Atlantic Tunas Convention Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act (PRA)

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been submitted to OMB under control number (0648–0327). Public reporting burden for HMS Charter/Headboat permit applications initial response is estimated to average 30 minutes and renewal by telephone or web is estimated to average 6 minutes 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. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,*or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

For the reasons described in the preamble, this proposed rule is expected to be deregulatory under Executive Order 13771.

Administrative Procedure Act (APA)

This proposed rule has a 15-day comment period. The abbreviated comment period is necessary to implement any management changes before January 1, 2018 to ensure all HMS charter/headboat vessels are appropriately categorized as commercial or non-commercial upon initial application or renewal of 2018 HMS Charter/Headboat permits. This will avoid additional administrative burden on the agency and the regulated community that would result from a later implementation date, which would require those vessel owners needing the commercial endorsement to engage in an additional process. We do not anticipate the proposal to be controversial or to generate significant public comment and believe that a 15-day comment period will be sufficient to attract any substantive public input.

Regulatory Flexibility Act

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). The following is a summary of the IRFA.

Description of the Reasons Why Action Is Being Considered

A description of the action, why it is being considered, and the legal basis for this action are contained in the Background section of the preamble and in the **SUMMARY** of this proposed rule.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including for-hire charter/headboat businesses. For-hire charter/headboat business fit into the ''Scenic and Sightseeing Transportation, Water'' industry under NAICS code 487210. SBA has established that the small entity size standard for that industry is $7.5 million in average annual receipts.

Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register** (FR), which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015). In this final rule effective on July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes.

NMFS considers all HMS Charter/Headboat permit holders (3,594 as of October 2016) to be small entities because these vessels have reported annual gross receipts of less than $11 million for commercial fishing or earn less than $7.5 million from for-hire fishing trips.

NMFS has determined that this proposed rule would apply to the small businesses associated with the approximately seven percent of HMS Charter/Headboat permit holders that also commercially fish for swordfish and tuna. Based on the most recent number of permit holders, NMFS estimates that this proposed rule would apply to approximately 252 HMS Charter/Headboat vessel owners. NMFS has determined that this action would not likely directly affect any small organizations or small government jurisdictions defined under the RFA.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirements of the Report or Record

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. This proposed rule would create a ''commercial sale'' endorsement for the HMS Charter/Headboat permit. Under the proposed rule, HMS Charter/Headboat permit holders would be prohibited from selling any catch of HMS unless they obtain a commercial sale endorsement on their permit. The commercial sale endorsement could be added to the Charter/Headboat permit at the time of the permit application or renewal, or anytime thereafter. Only Charter/Headboat permit holders with the endorsement would be allowed to sell HMS although they would not be obligated to sell any HMS. There would be no additional charge for the commercial sale endorsement above the cost of the HMS Charter/Headboat permit; the endorsement would add less than a minute more of labor effort to the normal HMS Charter/Headboat permit process. Those vessels issued an HMS Charter/Headboat permit with a ''commercial sale'' endorsement would be categorized as a commercial vessel for the purposes of USCG commercial fishing vessel safety requirement.

Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Proposed Rule

This proposed rule has been determined not to duplicate, overlap, or conflict with any Federal rules. This rule is being proposed to address changes in USCG commercial fishing vessel safety policies and regulatory interpretation that would result in an increased compliance burden for HMS Charter/Headboat permit holders due to the Coast Guard's broader definition of commercial fishing vessels. This proposed rule would clarify which HMS charter/headboat vessels are truly operating as commercial fishing vessels versus those that neither sell, nor intend to sell, their catch, which includes the majority of charter/headboat vessels.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of the Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

NMFS considered four different alternatives to separate the commercial sale provision from the HMS Charter/Headboat permit, and thus relieve some HMS Charter/Headboat permit holders from the changes in USCG commercial fishing vessel safety requirements. Alternative 1, the status quo/no action alternative, would make no changes to current HMS regulations. Alternative 2, the preferred alternative, would create an endorsement for the HMS Charter/Headboat permit that allows commercial sale of Atlantic tunas and swordfish. Alternative 3 would remove the commercial sale provision of the HMS Charter/Headboat permit. Alternative 4 would create two separate HMS Charter/Headboat permits; one that allows commercial sale of Atlantic tunas and swordfish, and one that does not.

Under the ''no action'' Alternative 1, NMFS would maintain the current regulations regarding the Atlantic HMS Charter/Headboat permit. Under current regulations at 635.4(b), permit holders taking fee-paying passengers to fish for HMS (*i.e.* charter boats or headboats) must obtain the HMS Charter/Headboat permit. Since HMS Charter/Headboat permits allow the commercial sale of Atlantic tunas and swordfish, the vessels would now be subject to USCG commercial fishing vessel safety requirements, regardless of whether the permit holder intends to sell HMS. However, without a change to the HMS Charter/Headboat permit regulations, USCG will consider all HMS charter/headboat vessels as commercial fishing vessels that must adhere to the to USCG commercial fishing vessel safety requirements. HMS Charter/Headboat permitted vessels were previously subject to the USCG safety regulations for uninspected passenger vessels of less than 100 gross tons and carrying six or less passengers, which are less extensive and less costly.

Under the USCG commercial fishing vessel safety requirements, many Atlantic HMS charter/headboats would have to comply with four rule requirements for survival craft, record keeping, examinations and certificates of compliance, and classing of vessels.

The survival craft requirement establishes that all fishing industry vessels operating beyond 3 nautical miles must carry survival craft that will meet a new performance standard for primary lifesaving equipment. The use of ''lifeboats or liferafts'' are required for commercial vessels, whereas strictly for-hire vessels are only required to a have ''a survival craft that ensures that no part of an individual is immersed in water.'' This means that lifefloats and buoyant apparatus will no longer be accepted as survival craft on any commercial fishing vessel operating beyond 3 nautical miles once the most recent USCG guidance in fully enforced. Some HMS Charter/Headboat permitted vessels would incorrectly be identified as commercial vessels, subject to the more stringent lifeboat/liferaft requirements. USCG estimates that the maximum initial cost of this requirement per vessel will be $1,740 and have a recurring annual cost of $300. The records provision requires the individual in charge of a vessel operating beyond 3 nautical miles to maintain a record of lifesaving and fire equipment maintenance. It will be incumbent upon the master/individual in charge of the vessel to maintain these records onboard. The USCG estimates this record keeping requirement will cost $18 annually per vessel.

The examinations and certificates of compliance provision requires a dockside safety examination at least once every 5 years for vessels, such as HMS charter/headboats that engage in commercial fishing, operating beyond 3 nautical miles with the first exam statutorily required by October 15, 2015. A ''certificate of compliance'' will be issued to a vessel successfully completing the exam. Voluntary exams will continue to be promoted for vessels operating inside 3 nautical miles. USCG estimates that the maximum initial cost of this requirement per vessel will be $600 and have a recurring cost of $600.

The classing of vessels provision requires the survey and classification of a fishing vessel that is at least 50 feet overall in length, was built after July 1, 2013, and operates beyond 3 nautical miles. It is unlikely that this requirement will impact many Atlantic HMS charter/headboat vessels because the vessels are typically less than 50 feet overall in length.

In sum, all 3,594 Atlantic HMS Charter/Headboat permit holders would face an initial per vessel cost of $2,358. The annual cost savings per vessel in subsequent years would be approximately $300 for the survival craft, $18 for record keeping, and $120 ($600/5 yrs) for examinations and certificates of completion. The total annual recurring cost saving per vessel would be $438 for these three requirements. These costs could be higher for some individual vessels that are too small or have too little storage space for the survival craft requirement because those vessels might require extensive modifications to accommodate the storage space for the gear.

Under Alternative 2, the preferred alternative, NMFS would modify the regulations so that the HMS Charter/Headboat permit alone does not allow

commercial sale and would also create an endorsement for the HMS Charter/Headboat permit that allows commercial sale of Atlantic tunas and swordfish. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas with an HMS Charter/Headboat permit. Consequently, vessels that hold an HMS Charter/Headboat permit are categorized as commercial fishing vessels subject to USCG commercial vessel fishing safety requirements if they also possess a state commercial sale permit, regardless of whether the permit holder engages or intends to sell HMS. Under Alternative 2, NMFS would create a ''commercial sale'' endorsement for the HMS Charter/Headboat permit. Under the proposed action, HMS Charter/Headboat permit holders would be prohibited from selling any catch of HMS unless they apply for a commercial sale endorsement to be added to their permit. The commercial sale endorsement could be added to the Charter/Headboat permit at the time of the permit application or renewal. Only charter/headboat vessels with the endorsement would be permitted to sell HMS although they would not be obligated to sell any HMS. Those vessels holding an HMS Charter/Headboat permit without a commercial sale endorsement would not be categorized as a commercial fishing vessel and would not be subject to the USCG commercial safety gear requirements. Those vessels that hold an HMS Charter/Headboat permit with a ''commercial sale'' endorsement would be categorized as a commercial vessel for the purposes of USCG commercial fishing safety requirements.

The cost savings associated with implementing a commercial endorsement option for Atlantic HMS Charter/Headboat permits would be that approximately 93 percent of the permit holders would not have to comply with the costs associated with the USCG commercial fishing vessel safety requirements, since Atlantic HMS Charter/Headboat permit holders would not be considered commercial fishing vessels unless they were issued the commercial endorsement. The reduced costs per vessel initially would be approximately $1,740 for the survival craft, $18 for record keeping, and $600 for examinations and certificates of completion. The total initial costs saved per vessel would be $2,358. The annual cost savings per vessel in subsequent years would be approximately $300 for the survival craft, $18 for record keeping, and $120 ($600/5 yrs) for examinations and certificates of completion. The total annual recurring cost saving per vessel would be $438 for these three requirements. In addition to the reduced costs associated with complying with the USCG commercial fishing vessel safety requirements for those HMS Charter/Headboat permit holders that do not intend to obtain the endorsement to fish commercially, most Atlantic HMS Charter/Headboat permit holders would have to do nothing different when obtaining their permit unless they want to commercially sell tunas or swordfish.

For the approximately 7 percent of Atlantic Charter/Headboat permit holders that want to obtain a commercial endorsement to continue selling tunas and swordfish in addition to complying with the USCG commercial fishing vessel safety requirements, they would need to obtain an endorsement for the commercial sale of Atlantic tunas and swordfish. HMS charter/headboat permit holders issued the commercial sale endorsement selling sharks must obtain a commercial shark permit in addition to an HMS Charter/Headboat permit. This would likely only add a minute or so to the time it takes to obtain the Atlantic HMS Charter/Headboat permit and it would not add to the cost of obtaining the permit. NMFS would incur some costs associated with altering the online permit application to accommodate the endorsement, along with some customer service changes.

Under Alternative 3, NMFS would remove the commercial sale provision of the HMS Charter/Headboat permit. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas as a condition of the HMS Charter/Headboat permit and may sell sharks if they also have a commercial shark permit. Consequently, vessels that hold an HMS Charter/Headboat permit currently are being categorized by USCG as commercial fishing vessels and subject to USCG commercial fishing vessel safety requirements if they also hold a state commercial sale permit, regardless of whether the permit holder engages or intends to sell HMS. Under Alternative 3, NMFS would remove the provision that allows commercial sales under the HMS Charter/Headboat permit. Thus, holding an HMS Charter/Headboat permit would no longer categorize a vessel as a commercial fishing vessel. charter/headboat vessel owners or operators that wish to engage in commercial sale of tunas and swordfish would instead need to obtain an Atlantic tunas General category and/or Swordfish General Commercial permit. The Atlantic Tunas General category and Swordfish General Commercial permits could be held in conjunction with the HMS Charter/Headboat permit. Those vessels with an HMS Charter/Headboat permit that do not intend to sell HMS and do not obtain an Atlantic Tunas General category, Swordfish General Commercial, or commercial shark permit would not be subject to USCG commercial fishing vessel safety requirements.

The benefits of Alternative 3 versus the No Action alternative would be identical to Alternative 2. Approximately 93 percent of the permit holders would not have to face the costs associated with the USCG commercial fishing safety requirements, since Atlantic HMS Charter/Headboat permit holders would not be considered commercial fishing. The reduced costs for the fleet would be approximately $7,880,436 initially, and then $3,067,956 annually thereafter. The 7 percent that wish to engage in commercial sale of tunas and swordfish would instead need to obtain an Atlantic tunas General category and/or Swordfish General Commercial permit. This would cost them $20 to obtain either the Atlantic Tunas General category permit or the Swordfish General Commercial permit. For the approximately 252 vessel owners that might obtain these $20 permits, the total cost would be $5,040 to $10,080 annually depending on whether they obtain one or both permits. In addition, vessel owners may need to expend a bit more time to complete the application for these additional permits. NMFS would incur costs associated with the substantial permits site and customer service changes that would be required for this change. NMFS prefers Alternative 2 over Alternative 3 because a commercial sale endorsement requirement more closely matches current fishing practices and would minimize disruptions. Currently, HMS Charter/Headboat permit holders can sell some HMS and Alternative 2 would allow them to continue by simply obtaining an endorsement on their Charter/Headboat permit. Alternative 3 would be more disruptive since it would require fishermen to obtain additional permits.

Under Alternative 4, NMFS would create two separate Atlantic HMS Charter/Headboat permits; one that allows commercial sale of Atlantic tunas and swordfish, and one that does not. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas as a condition of the HMS Charter/Headboat permit. Consequently, vessels that hold an HMS Charter/Headboat permit could be

categorized as commercial fishing vessels and subject to USCG commercial fishing vessel safety requirements, regardless of whether the permit holder engages or intends to sell HMS. Under Alternative 4, NMFS would create two separate HMS Charter/Headboat permits; one that would allow commercial sale of HMS, and one that would not. Those vessels holding an HMS Charter/Headboat permit that does not allow commercial sale would not be categorized as a commercial fishing vessel and would not be subject to the USCG commercial fishing vessel safety requirements. Those vessels that hold an HMS Charter/Headboat permit that allows commercial sale would be categorized as commercial vessels for the purposes of USCG commercial fishing vessel safety requirements.

The benefits of Alternative 4 versus the No Action alternative would be identical to those provided by Alternative 2. Approximately 93 percent of the permit holders would not have to face the costs associated with the USCG commercial fishing safety requirements, since Atlantic HMS Charter/Headboat permit holders would not be considered commercial fishing. The reduced costs for the fleet would be approximately $7,880,436 initially, and then $3,067,956 annually thereafter. Under this alternative, each of the 3,594 Atlantic HMS Charter/Headboat permit holders would have to determine which type of Charter/Headboat permit they wish to obtain for the year, and all of charter/headboat vessel owners would have to learn the new permit process. Unlike Alternative 3, there would be no additional costs associated with obtaining a commercial permit, because under this alternative each would pick either the no-sale HMS Charter/Headboat permit or the commercial sale Charter/Headboat permit. NMFS would incur costs associated with the substantial permits site and customer service changes that would be required for this change. NMFS would need to develop new regulatory text to describe these two new permits and fishery participants would have to learn and adapt to these changes.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: October 20, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.2, add a new definition for ''Charter/headboat commercial sale endorsement'' in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Charter/headboat commercial sale endorsement means an authorization added to an HMS Charter/Headboat permit that is required for vessels that sell or intend to sell Atlantic tunas, sharks, and swordfish, provided that all other requirements in this part are also met.

* * * * *

■ 3. In § 635.4,

■ (a) Revise paragraphs (a)(5), (d)(1), (d)(2), introductory text for paragraph (f), and paragraphs (f)(1), (f)(2), and (m)(2); and

■ (b) Add paragraph (b)(3).

The additions and revisions read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(5) *Display upon offloading.* Upon offloading of Atlantic HMS for sale, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit with a commercial sale endorsement; Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; HMS Commercial Caribbean Small Boat permit; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

* * * * *

(b) * * *

(3) The owner of a charter boat or headboat that intends to sell Atlantic tunas or swordfish must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit. The owner of a charter boat or headboat that intends to sell Atlantic sharks must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit and must also obtain any applicable Atlantic commercial shark permits. A vessel owner that has obtained an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

* * * * *

(d) * * *

(1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit, a valid HMS Charter/Headboat permit with a commercial sale endorsement, or an HMS Commercial Caribbean Small Boat permit.

* * * * *

(f) *Swordfish vessel permits.*

(1) Except as specified in paragraphs (n) and (o) of this section, the owner of a vessel of the United States used to fish for or take swordfish commercially from the management unit, or on which swordfish from the management unit are retained or possessed with an intention to sell, or sold must obtain, an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, or one of the following swordfish permits: A swordfish directed limited access permit, swordfish incidental limited access permit, swordfish handgear limited access permit, or a Swordfish General Commercial permit. These permits cannot be held in combination with each other on the same vessel, except that an HMS Charter/Headboat permit with a commercial sale endorsement may be held in combination with a swordfish handgear

limited access permit on the same vessel. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are the HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section (and only when on a non for-hire trip), the Swordfish General Commercial permit issued under paragraph (f) of this section, a swordfish limited access permit issued consistent with paragraphs (l) and (m) of this section, or permits issued under paragraphs (n) and (o) of this section.

* * * * *

(m) * * *

(2) *Shark and swordfish permits.* A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if: The vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at § 635.24(b)(4) if: The vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/Headboat permit with a commercial sale endorsement is permissible only when the vessel is on a non for-hire trip. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

* * * * *

■ 4. In § 635.19, paragraph (d)(4) was revised at 82 FR 16506, April 4, 2017, effective January 1, 2018, and is further revised to read as follows:

§ 635.19 Authorized gears.

* * * * *

(d) * * *

(4) Persons on a vessel issued a permit with a shark endorsement under § 635.4 may possess a shark only if the shark was taken by rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit with a commercial sale endorsement (with or without a shark endorsement) and a Federal Atlantic commercial shark permit may possess sharks taken by rod and reel, handline, bandit gear, longline, or gillnet if the vessel is engaged in a non for-hire fishing trip and the commercial shark fishery is open pursuant to § 635.28(b).

* * * * *

■ 5. In § 635.22, revise the introductory text in paragraph (f), and paragraphs (f)(1) and (f)(2) to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(f) *North Atlantic swordfish.* The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement under § 635.4(b) and only when on a non for-hire trip, a directed, incidental or handgear limited access swordfish permit under § 635.4(e) and (f), a Swordfish General Commercial permit under § 635.4(f), an Incidental HMS Squid Trawl permit under § 635.4(n), or an HMS Commercial Caribbean Small boat permit under § 635.4(o).

(1) When on a for-hire trip as defined at § 635.2, vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are charter boats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to six North Atlantic swordfish per vessel per trip. When such vessels have been issued a commercial sale endorsement and are on a non for-hire trip, they must comply with the commercial retention limits for swordfish specified at § 635.24(b)(4).

(2) When on a for-hire trip as defined at § 635.2, vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are headboats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to 15 North Atlantic swordfish per vessel per trip. When such vessels have been issued a commercial sale endorsement and are on a non for-hire trip, they may land no more than the commercial retention limits for swordfish specified at § 635.24(b)(4).

* * * * *

■ 6. In § 635.23, revise paragraph (c)(3) to read as follows:

§ 635.23 Retention limits for bluefin tuna.

* * * * *

(c) * * *

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day. A person aboard a vessel that has been issued an HMS Charter/Headboat without a commercial sale endorsement permit may fish only under the retention limits applicable to the Angling category.

* * * * *

■ 7. In § 635.24, revise the introductory text of paragraph (b)(4), and paragraph (b)(4)(ii) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(b) * * *

(4) Persons aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) are subject to the regional swordfish retention limits specified at paragraph (b)(4)(iii), which may be adjusted during the fishing year based upon the inseason regional retention limit adjustment criteria identified in paragraph (b)(4)(iv) below.

* * * * *

(ii) *Possession, retention, and landing restrictions.* Vessels that have been issued a Swordfish General Commercial

permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip), as a condition of these permits, may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

* * * * *

■ 8. In § 635.27, revise paragraphs (a)(1)(i), (c)(1)(i)(A), and (c)(1)(i)(B) to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit with a commercial sale endorsement has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 466.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed swordfish limited access permit, a swordfish handgear limited access permit, a HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) has been issued or is required to have been issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or under harvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semi-annual periods: One for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental swordfish limited access permit, an incidental HMS Squid Trawl permit, an HMS Angling permit, or an HMS Charter/Headboat permit (and only when on a for-hire trip) has been issued, or a swordfish from the North Atlantic stock caught after the effective date of a closure of the directed fishery from a vessel for which a swordfish directed limited access permit, a swordfish handgear limited access permit, a HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (when on a non for-hire trip) has been issued, is counted against the incidental category quota. The annual incidental category quota is 300 mt dw for each fishing year.

* * * * *

■ 9. In § 635.31, revise paragraphs (a)(1) and (c)(6) to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit with a commercial sale endorsement; a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas; or a valid HMS Commercial Caribbean Small Boat permit issued under this part and the appropriate category has not been closed, as specified at § 635.28(a). However, no person may sell a bluefin tuna smaller than the large medium size class. Also, no large medium or giant bluefin tuna taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic bluefin tuna only to a dealer that has a valid permit for purchasing Atlantic bluefin tuna issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

* * * * *

(c) * * *

* * * * *

(6) A dealer issued a permit under this part may not first receive silky sharks, oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit with a commercial sale endorsement and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

* * * * *

■ 10. In § 635.71, revise paragraph (a) and add paragraph (a)(62) to read as follows:

§ 635.71 Prohibitions.

(a) * * *

(2) Fish for, catch, possess, retain, land, or sell Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, scientific research permit, display permit, chartering permit, or shark research permit on board the vessel, as specified in §§ 635.4 and 635.32.

* * * * *

(62) A vessel owner that has obtained an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

* * * * *

[FR Doc. 2017–23277 Filed 10–26–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 207
Friday, October 27, 2017

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

Submission for OMB Review; Comment Request

October 24, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 27, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program Case and Procedural Case Action Review Schedule.

OMB Control Number: 0584–0034.

Summary of Collection: State agencies must complete and maintain the FNS–245 for each negative case in their SNAP Quality Control (QC) sample. The legal authority for SNAP QC can be found in Section 16(c) of the Food and Nutrition Act of 2008, as amended; the legislative requirement for the recordkeeping requirements is Section 11(a) of the Act.

Need and Use of the Information: The FNS–245, Negative Case Action Review Schedule, is designed to collect QC data and serve as the data entry form for negative case action QC reviews in the Supplemental Nutrition Assistance Program (SNAP).

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

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

Total Burden Hours: 115,514.87.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program (SNAP) Connection Resource Sharing Form.

OMB Control Number: 0584–0625.

Summary of Collection: The SNAP-Ed Library is an online database of SNAP-Ed-related materials. The SNAP-Ed Connection Resource Sharing Form gives SNAP-Ed instructors, as well as those who develop nutrition education materials, the opportunity to voluntarily share information about resources that can be used to administer, develop, implement, evaluate or showcase SNAP-Ed programs. SNAP-Ed is authorized under Section 28 of the Food and Nutrition Act (FNA) of 2008, as amended through P.L. 113–79.

Need and Use of the Information: Information collected via this form enables the SNAP-Ed Connection staff to review materials for possible inclusion in the SNAP-Ed Library. By using this database, SNAP-Ed-funded programs can share resources with each other, reduce duplication of efforts, and improve program quality.

Description of Respondents: Business-for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 25.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–23383 Filed 10–26–17; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

AGENCY: National Agricultural Statistics Service.

ACTION: Correction notice: replacement notice request for comments.

SUMMARY: The Department of Agriculture published a document in the **Federal Register** on October 18, 2017, page number 48476 concerning a request for comments on information collection 0535—New ''Fast Track Generic Clearance for Qualitative Feedback on Customer Satisfaction Surveys.'' That notice was missing the comment and contact information. The following replacement notice contains this information.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and

Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by November 27, 2017. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

National Agricultural Statistics Service

Title: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Customer Satisfaction Surveys.

OMB Control Number: 0535—New.

Summary of Collection: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Improving National Agricultural Statistics Service (NASS) programs requires ongoing assessment of service delivery, by which we mean systematic review of the operation of a program, the quality, usability, and ease of accessing our surveys and public information compared to a set of explicit or implicit standards, as a means of contributing to the continuous improvement of the program.

Need and Use of the Information: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between NASS and its customers and stakeholders. It will allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Description of Respondents: Farms; Business or other for-profit; Not-for-profit Institutions and State, Local or Tribal Government.

Number of Respondents: 120,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,375.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–23364 Filed 10–26–17; 8:45 am]

BILLING CODE 3410–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0073]

Bayer CropScience LP; Availability of Petition for Determination of Nonregulated Status of Cotton Genetically Engineered for Resistance to Glyphosate and Isoxaflutole

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Bayer CropScience LP seeking a determination of nonregulated status of cotton designated as event GHB811, which has been genetically engineered for dual resistance to the herbicides glyphosate and isoxaflutole. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Bayer CropScience LP petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that the Animal and Plant Health Inspection Service may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before December 26, 2017.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0073.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0073* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

The petition is also available on the APHIS Web site at: *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml* under APHIS petition 17–138–01p.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 17–138–01p) from Bayer CropScience LP of Research Triangle Park, NC (Bayer), seeking a determination of nonregulated status of cotton (*Gossypium* spp.) designated as event GHB811, which has been genetically engineered for dual resistance to the herbicides glyphosate and isoxaflutole. The Bayer petition states that information collected during field trials and laboratory analyses indicates that GHB811 cotton is not likely to be a plant pest and therefore should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, GHB811 cotton was developed through agrobacterium-mediated transformation using the vector pTSIH09 containing hppdPfW336–1Pa and 2mepsps expression cassettes. The regulatory sequences used in this construct are derived from common plants or plant pathogens that are routinely used in plant biotechnology and have a history of safe use. GHB811 cotton is currently regulated under 7 CFR part 340. Interstate movements and field tests of GHB811 cotton have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the tests. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review and comment, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. Any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents. As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an environmental impact statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment.

Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 23rd day of October 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–23401 Filed 10–26–17; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on the following information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by December 26, 2017.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5164, South Building, Washington, DC 20250–1522.Telephone: (202) 690–4492. Fax: (202) 720–8435 or email *Thomas.Dickson@wdc.usda.gov*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub.

L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for revision.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. Telephone: (202) 690–1078, Fax: (202) 720–8435 or email: *Thomas.Dickson@wdc.usda.gov.*

Title: Water and Waste Loan and Grant Program.

OMB Control Number: 0572–0121.

Type of Request: Revision of a currently approved collection.

Abstract: USDA Rural Development, through the Rural Utilities Service, is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian Tribes to fund water and waste disposal projects serving the most financially needy rural communities through the Water and Waste Disposal loan and grant program. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less. The Water and Waste Loan and Grant Program is administered through 7 CFR part 1780. The items covered by this collection include forms and related documentation to support a loan application.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.5 hours per response.

Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 789.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 44,323 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, Fax: (202) 720–8435 or email: *MaryPat.Daskal@wdc.usda.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 18, 2017.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2017–23359 Filed 10–26–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request; Complaint of Employment Discrimination Based on Sexual Orientation Against the Department of Commerce

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: Office of the Secretary, Office of Civil Rights, Commerce.

Title: Complaint of Employment Discrimination Based on Sexual Orientation against the Department of Commerce.

OMB Control Number: 0690–0024.

Form Number(s): CD–545.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 10.

Number of Respondents: 20.

Average Hours per Response: 30 minutes.

Needs and Use: Pursuant to Executive Order 11478 and Department of Commerce Administrative Order (DAO) 215–11, an employee or applicant for employment with the Department of Commerce who alleges that he or she has been subjected to discriminatory treatment based on sexual orientation by the Department of Commerce or one of its sub-agencies, must submit a signed statement that is sufficiently precise to identify the actions or practices that form the basis of the complaint. Through use of this standardized form, the Office of Civil Rights proposes to collect the information required by the Executive Order and DAO in a uniform manner that will increase the efficiency of complaint processing and trend analyses of complaint activity.

The DOC received no comments in response to the 60-day notice published in the **Federal Register** on April 14, 2017 (82 FR 17968).

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.emp.gov* or faxed to (202) 395–5806.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–23442 Filed 10–26–17; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Office of Civil Rights; Submission for OMB Review; Comment Request; Complaint of Employment Discrimination Against the Department of Commerce

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary, Office of Civil Rights, Commerce.

Title: Complaint of Employment Discrimination against the Department of Commerce.

OMB Control Number: 0690–0015.

Form Number(s): CD–498, 498–A.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 700.

Average Hours per Response: 350.

Burden Hours: 30 minutes.

Estimated Total Annual Cost to Public: $0.

Needs and Uses: This request is for an extension of a currently approved

information collection. Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1614.106 require that a person alleging discriminatory treatment by a federal agency must submit a signed statement that is sufficiently precise to identify the general actions or practices that form the bases of the complaint. Although complainants are not required to use the proposed form to file their complaints, the Office of Civil Rights (OCR) strongly encourages its use to ensure complete and accurate case processing and data collection.

The DOC received no comments in response to the 60-day notice published in the **Federal Register** on April 14, 2017 (82 FR 17968).

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–23435 Filed 10–26–17; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

[Docket Number: 160429380–6380–02]

RIN 0660–XC025

Notice of Availability of a Final Programmatic Environmental Impact Statement for the East Region of the Nationwide Public Safety Broadband Network

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of availability of a final programmatic environmental impact statement.

SUMMARY: The First Responder Network Authority (''FirstNet'') announces the availability of the Final Programmatic Environmental Impact Statement for the East Region (''Final PEIS''). The Final PEIS evaluates the potential environmental impacts of the proposed nationwide public safety broadband network in the East Region (Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia).

ADDRESSES: The Final PEIS is available for download from *www.regulations.gov* FIRSTNET–2017–0007. See Chapter 22 of the Final PEIS for the complete distribution list.

FOR FURTHER INFORMATION CONTACT: For more information on the Final PEIS, contact Amanda Goebel Pereira, NEPA Coordinator, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192, (571) 665–6072.

SUPPLEMENTARY INFORMATION: The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the ''Act'') created and authorized FirstNet to take all actions necessary to ensure the building, deployment, and operation of an interoperable, nationwide public safety broadband network (''NPSBN'') based on a single, national network architecture. The Act meets a longstanding and critical national infrastructure need, to create a single, nationwide network that will, for the first time, allow police officers, fire fighters, emergency medical service professionals, and other public safety entities to effectively communicate with each other across agencies and jurisdictions. The NPSBN is intended to enhance the ability of the public safety community to perform more reliably, effectively, and safely; increase situational awareness during an emergency; and improve the ability of the public safety community to effectively engage in those critical activities.

The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) (''NEPA'') requires federal agencies to undertake an assessment of environmental effects of their proposed actions prior to making a final decision and implementing the action. NEPA requirements apply to any federal project, decision, or action that may have a significant impact on the quality of the human environment. NEPA also establishes the Council on Environmental Quality (''CEQ''), which issued regulations implementing the procedural provisions of NEPA (see 40 CFR parts 1500–1508). Among other considerations, CEQ regulations at 40 CFR 1508.28 recommend the use of *tiering* from a ''broader environmental impact statement (such as a national program or policy statements) with subsequent narrower statements or environmental analysis (such as regional or basin wide statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.''

Due to the geographic scope of FirstNet (all 50 states, the District of Columbia, and five territories) and the diversity of ecosystems potentially traversed by the project, FirstNet elected to prepare five regional PEISs. The five PEISs are divided into the East, Central, West, South, and Non-Contiguous Regions. The East Region consists of Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. The Final PEIS analyzes potential impacts of the deployment and operation of the NPSBN on the natural and human environment in the East Region, in accordance with FirstNet's responsibilities under NEPA. Now that this PEIS has been completed and once a Record of Decision (ROD) has been signed, the proposed FirstNet projects can begin to submit the site-specific environmental documentation to determine if the proposed project has been adequately evaluated in the PEIS or whether it instead warrants a Categorical Exclusion, an Environmental Assessment, or an Environmental Impact Statement.

Dated: October 24, 2017.

Amanda Goebel Pereira,

NEPA Coordinator, First Responder Network Authority.

[FR Doc. 2017–23423 Filed 10–26–17; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–878, C–570–065]

Stainless Steel Flanges From India and the People's Republic of China: Postponement of Preliminary Determinations of Countervailing Duty Investigations

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

DATES: Applicable October 27, 2017.

FOR FURTHER INFORMATION CONTACT: Ryan Mullen at 202–482–5260 (India); Justin Neuman and Jerry Huang at 202–482–0486 and 202–482–4047 (China), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 2017, the Department of Commerce (Department) initiated countervailing duty investigations (CVD) on stainless steel flanges from India and the People's Republic of China (PRC).[1] Currently, the preliminary determinations of these investigations are due no later than November 9, 2017.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a CVD investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for a postponement, section 703(c)(1)(A) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

On October 4, 2017, the Coalition of American Flange Producers (the petitioners), petitioners in the underlying investigation, submitted timely requests pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations.[2] For the reasons stated above and because there are no compelling reasons to deny the requests, the Department, in accordance with section 703(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations to no later than 130 days after the day on which the investigations were initiated. Accordingly, the Department will issue the preliminary determinations no later than January 16, 2018.[3] In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: October 19, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–23400 Filed 10–26–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Stainless Steel Flanges from India and the People's Republic of China: Initiation of Countervailing Duty Investigations,* 82 FR 42654 (September 11, 2017) (*Initiation Notice*).

[2] *See* the petitioners' letter re: Stainless Steel Flanges from India: Request to Postpone Determination, dated October 4, 2017; *see also* petitioners' letter re: Stainless Steel Flanges from the People's Republic of China: Request to Postpone Determination, dated October 4, 2017.

[3] *See* 19 CFR 351.303(b)(1) and (2). January 13, 2018, 130 days after the scheduled preliminary determination, is a Saturday; in addition, January 15, 2018, Monday, is a federal holiday.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF791

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an exempted fishing permit application contains all of the required information and warrants further consideration. This permit would allow Coonamessett Farm Foundation to test the selectivity of alternate gillnet configurations for targeting haddock on Georges Bank while reducing catch of other groundfish species. Up to five commercial fishing vessels would target haddock using alternate gillnet gears on Georges Bank, including Closed Area I, and temporarily retain undersized catch for measurement and data collection.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before November 13, 2017.

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

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on Testing Selectivity and Raised Webbing Gillnets on Target and Non-Target Species in the Northeast Haddock Fishery.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Testing Selectivity of Alternative Gillnet Configurations in the Northeast Haddock Fishery.''

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, 978–281–9236, *Kyle.Molton@noaa.gov.*

SUPPLEMENTARY INFORMATION: Coonamessett Farm Foundation (CFF) submitted a complete application for an exempted fishing permit (EFP) on August 16, 2017, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would authorize five vessels to use test alternate gillnet configurations in Closed Area I and to temporarily retain undersized catch for measurement and data collection. The exemptions are necessary because vessels on commercial groundfish trips are prohibited from fishing in Closed Area I, using gillnets with mesh size less than 6.5 inches (16.51 cm), and from retaining undersized groundfish. The applicant is requesting access to Closed Area I in order to access high densities of haddock, which would result in a greater likelihood of achieving statistically significant results.

The project, titled ''Testing Selectivity and Raised Webbing Gillnets on Target and Non-Target Species in the Northeast Haddock Fishery'' would be conducted by CFF in cooperation with five commercial fishing vessels. The study would take place on Georges Bank, including in Closed Area I, from December 2017 through January 2019, with five vessels planning to fish no more than 24 trips total. Vessels would

fish a maximum of thirty-two 50-fathom (91.44-m) gillnets in strings made up of 4 nets each. Two of the nets in each four-net string would be standard 6.5-inch (16.51-cm) mesh and two would be 6.0-inch (15.24-cm) mesh. One net of each mesh size (6.5-inch [16.51-cm] and 6.0-inch [15.24-cm]) in each string would be rigged with a 30-inch (76.2-cm) raised webbing section along the bottom. Two to three hauls of the nets are expected during each day at sea with an average soak time of 6 hours for each set.

A CFF researcher or technician would accompany all trips that occur under this EFP to identify all fish caught, as well as measure and weigh catch. Undersized fish would be discarded as quickly as possible after sampling. All Northeast multispecies of legal size would be landed, and all catch and estimated discards would be attributed to the vessel's sector annual catch entitlement, consistent with standard catch accounting procedures.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

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

Dated: October 24, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–23441 Filed 10–26–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF780

Pacific Island Fisheries; Western Pacific Stock Assessment Review; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: NMFS and the Western Pacific Fishery Management Council (Council) will convene a Western Pacific Stock Assessment Review (WPSAR) of a 2017 Benchmark Stock Assessment for the Main Hawaiian Islands (MHI) Deep 7 Bottomfish Complex.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates and times and daily agenda.

ADDRESSES: The meeting will be held at the NMFS Honolulu Service Center at Pier 38, 1129 N. Nimitz Hwy., Suite 220, Honolulu, HI 96817.

FOR FURTHER INFORMATION CONTACT: Michael Seki, Director—Pacific Islands Fisheries Science Center, telephone: (808) 725–5360, or *michael.seki@noaa.gov*.

SUPPLEMENTARY INFORMATION: Scientists from the NMFS Pacific Islands Fisheries Science Center (PIFSC) conducted a benchmark stock assessment of the MHI Deep 7 bottomfish complex. This benchmark assessment incorporated new data in the form of fishery-independent biomass estimates, and also followed data filtering recommendations from a series of five community workshops that involved fishermen, managers, and scientists on best practices for filtering bottomfish commercial catch and effort data from State of Hawaii commercial catch reports. Because of these workshops, PIFSC scientists are now able to better link individual fishermen's catch reports further back in time, and this linking is newly applied in this benchmark stock assessment.

This assessment used commercial data for the years 1948–2015, and assessed Deep 7 bottomfish by building on the modeling framework from the previous three assessments, but with improved data and data filtering as previously described, along with improvements to catch-per-unit-effort (CPUE) standardization, and other modeling approaches. The assessment also estimates unreported catches using catch and effort data following methods similar to those applied in previous assessments. After applying best practices from the workshop recommendations for filtering for CPUE calculation, PIFSC scientists applied model selection techniques to select the best structural form to standardize CPUE. CPUE in the model was split into two time series, fishing years 1948–2003, and fishing years 2003–2015 to accommodate new effort reporting from a change in reporting form by the State in October 2002.

Meeting Agenda for WPSAR Review

The meeting schedule and agenda are as follows (8:30 a.m.–5 p.m. every day):

Monday, November 13, 2017

1. Welcome and Introductions
2. Background information—Objectives and Terms of Reference
3. Fishery
   a. Operation
   b. Management
4. History of stock assessments and reviews
5. Data
   a. State of Hawaii Fisher and Dealer Reporting Systems
   b. Life history information
   c. Fishery-independent survey

Tuesday, November 14, 2017

6. Presentation and review of stock assessment

Wednesday, November 15, 2017

7. Continue review of stock assessment

Thursday, November 16, 2017

8. Continue review of stock assessment
9. Public comment period
10. Panel discussions (Closed to the public)

Friday, November 17, 2017

11. Continue panel discussions (Closed; morning)
12. Present results (afternoon)
13. Adjourn

The agenda order may change. The meeting will run as late as necessary to complete scheduled business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to Michael Seki, Director—Pacific Islands Fisheries Science Center, (808) 725–5360 (phone) (808) 725–5360 (fax), at least 5 days prior to the meeting date.

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

Dated: October 24, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–23422 Filed 10–26–17; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and service from the Procurement List previously furnished by such agencies.

DATES: Date deleted from the Procurement List: 11/26/2017.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Deletions

On 9/22/2017 (F.R. Vol. 82, No. 183), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

NSNs—Product Names:
5340–00–477–3700—Strap, Webbing
5340–00–992–9254—Cover, Protective
Mandatory Source of Supply: Huntsville Rehabilitation Foundation, Huntsville, AL
Contracting Activity: DLA Troop Support, Philadelphia, PA
7520–00–285–3143—Wood Filing Box—3″ x 5″ Cards, 3″ Capacity, Light Oak
7520–00–285–3144—Wood Filing Box—3″ x 5″ Cards, 3″ Capacity, Walnut
7520–00–285–3145—Wood Filing Box—3″ x 5″ Cards, 9″ Capacity, Walnut
7520–00–285–3146—Wood Filing Box—5″ x 8″ Cards, 9″ Capacity, Walnut
7520–00–285–3147—Wood Filing Box—3″ x 5″ Cards, 9″ Capacity, Light Oak
7520–00–285–3148—Wood Filing Box—5″ x 8″ Cards, 9″ Capacity, Light Oak
Mandatory Source of Supply: Napa Valley PSI, Inc., Napa, CA
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY
7045–01–470–3011—Data Cartridge, Travan
Mandatory Source of Supply: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: DLA Troop Support, Philadelphia, PA
6532–00–149–0327—Trousers, Operating, Surgical
6532–00–149–0328—Trousers, Operating, Surgical
6532–00–149–0329—Trousers, Operating, Surgical
6532–00–149–0330—Trousers, Operating, Surgical
Mandatory Source of Supply: Human Technologies Corporation, Utica, NY
Contracting Activity: DLA Troop Support, Philadelphia, PA

Service

Service Type/Location: GSA, Southwest Supply Center: 819 Taylor Street, Fort Worth, TX
Mandatory Source of Supply: Expanco, Inc., Fort Worth, TX
Contracting Activity: Federal Acquisition Service, GSA/FSS Greater Southwest Acquisition Ctr (7FCO), Fort Worth, TX

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2017–23405 Filed 10–26–17; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add product and service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product previously furnished by such agencies.

DATES: Comments must be received on or before 11/26/2017.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN—Product Name: 2540–00–678–3469—Chock, Wheel-Track, Wood, 9.5″ x 8″
Mandatory Source of Supply: NewView Oklahoma, Inc., Oklahoma City, OK
Contracting Activity: Defense Logistics Agency, DLA Land and Maritime
Mandatory for 100% of the requirement of the Department of Defense

Service

Service Type/Location: Janitorial Service, Federal Aviation Administration, Albany System Service Center, Albany ATCT & Base Building, Albany, GA
NPA: Power Works Industries, Inc., Columbus, GA
Contracting Activity: Federal Aviation Administration, Albany, GA

Deletions

The following product is proposed for deletion from the Procurement List:

Products

NSN—Product Name: 5340–01–259–4151—Clamp, Loop AQL Inspection
Mandatory Source of Supply: Provail, Seattle, WA
Contracting Activity: DLA Troop Support, Philadelphia, PA

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2017–23406 Filed 10–26–17; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2017–0009; OMB Control Number 0704–0245]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 27, 2017.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation, and related clauses at DFARS 252.247; OMB Control Number 0704–0245.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Reporting Frequency: On occasion.

Number of Respondents: 33,372.

Responses per Respondent: 12.57, approximately.

Annual Responses: 419,537.

Average Hours per Response: .4, approximately.

Annual Burden Hours: 168,496.

Needs and Uses: DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631); and to provide appropriate and timely shipping documentation and instructions.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: WHS/ESD Directives Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2017–23396 Filed 10–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2017–0008; OMB Control Number 0704–0497]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 27, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 571–372–6099.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 15 Negotiation; OMB Control Number 0704–0497.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Reporting Frequency: On Occasion.

Number of Respondents: 277.

Responses per Respondent: 1.

Annual Responses: 277.

Average Burden per Response: 4 hours.

Annual Burden Hours: 1,108.

Needs and Uses: Defense Federal Acquisition Regulation Supplement (DFARS) 215.403–5 provides contractors with guidance for the submittal of forward pricing rate proposals, and includes a checklist for contractors to use in preparing their proposals. The checklist is submitted to DoD with the forward pricing rate proposal.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: WHS/ESD Directives Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2017–23397 Filed 10–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–26]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young, (703) 697–9107, *pamela.a.young14.civ@mail.mil* or Kathy Valadez, (703) 697–9217, *kathy.a.valadez.civ@mail.mil;* DSCA/DSA–RAN.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–26 with attached Policy Justification and Sensitivity of Technology.

Dated: October 24, 2017.

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

OCT 12 2017

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 herewith Transmittal No. 17-26, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost $342.6 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,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 17–26

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:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0.0 million
Other	$342.6 million
Total	$342.6 million

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

Major Defense Equipment (MDE): None

Non-MDE:

Non-MDE items and services for three-years (with option for two additional years) of follow-on support of two (2) C–17 aircraft includes participation in the Globemaster III Integrated Sustainment Program (GISP), contract logistic support, Class I modifications and kits support, in-country contractor support, alternate mission equipment, major modification

and retrofit, software support, aircraft maintenance and technical support, support equipment, personnel training and training equipment, additional spare and repair parts, technical orders and publications, airworthiness certification support, engine spares, engine maintenance and logistics support, inspections support, on-site COMSEC support, Quality Assurance and other U.S. Government and contractor engineering, logistics and program support. Required upgrades will include fixed installation satellite antenna, Mode 5, plus installation and sustainment, Automatic Dependent Surveillance-Broadcast Out, and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (X7–D–QAH)

(v) *Prior Related Cases, if any:* KU–D–SAA

(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:* October 12, 2017

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—Continuation of C–17 Logistics Support Services and Equipment

The Government of Kuwait has requested three years (with option for two additional years) of follow-on support of two (2) C–17 aircraft, which includes participation in the Globemaster III Integrated Sustainment Program (GISP), contract logistic support, Class I modifications and kits support, in-country contractor support, alternate mission equipment, major modification and retrofit, software support, aircraft maintenance and technical support, support equipment, personnel training and training equipment, additional spare and repair parts, technical orders and publications, airworthiness certification support, engine spares, engine maintenance and logistics support, inspections support, on-site COMSEC support, Quality Assurance and other U.S. Government and contractor engineering, logistics, and program support. Required upgrades will include fixed installation satellite antenna, Mode 5, plus installation and sustainment, Automatic Dependent Surveillance-Broadcast Out, and other related elements of logistics and program support. The estimated cost is $342.6 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. Kuwait plays a large role in U.S. efforts to advance stability in the Middle East, providing basing, access, and transit for U.S. forces in the region.

This proposed sale is required to maintain the operational readiness of the Kuwaiti Air Force C–17 aircraft. Kuwait's current FMS contract supporting its C–17's will expire in September of 2017. Kuwait will have no difficulty absorbing this support.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be the Boeing Company, Chicago, IL. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

There is an on-going Foreign Military Sale (FMS) case providing C–17 sustainment services. There are currently nine (9) contractors from Boeing Company (aircraft) in-country providing Contractor Engineering Technical Services (CETS) on a continuing basis.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17–26

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. This sale will involve the release of sensitive technology to the Government of Kuwait in the performance of services to sustain two (2) Kuwaiti C–17 aircraft. While much of the below equipment supporting the C–17 is not new to the country, there will be replenishment spares of these following sensitive technologies purchased to support the fleet.

2. The Force 524D is a 24-channel Selective Availability Anti-Spoofing Module (SAASM) based Global Positioning System (GPS) receiver with Precise Positioning Service (PPS) capability built upon Trimble's next generation GPS technology. The Force 524D retains backward compatibility with the proven Force 5GS while adding new functionality to interface with digital antenna electronics to significantly improve Anti-Jam (AJ) performance. The host platform can select the radio frequency (RF) or Digital Antenna Electronics (DAE) interface. In the digital mode, the Force 524D is capable of controlling up to 16 independent beams. The hardware and software associated with the 542D receiver card is UNCLASSIFIED.

3. The C–17 aircraft will be equipped with the GPS Anti-Jam System (GAS–1) antenna which consists of a multi-element Controlled Reception Pattern Antennas (CRPA) and separate antenna electronics which is able to recognize multiple sources of deliberate jamming and other electrical interference allowing the navigation equipment to function safely, accurately, and efficiently in the presence of multiple jammers. The hardware is UNCLASSIFIED.

4. The GPS Inertial Reference Unit (IRU) is a type of inertial sensor which uses only gyroscopes to determine a moving aircraft's change in angular direction over a period of time. Unlike the inertial measurement unit, IRUs are generally not equipped with accelerometers, which measure acceleration forces.

IRUs are used for altitude control and navigation of vehicles with relatively constant acceleration rates, such as larger aircraft as well as geosynchronous satellites and deep space probes. The GPS IRU is UNCLASSIFIED.

5. Crypto appliqué for Mode 5 Identification Friend or Foe (IFF), which includes hardware that is UNCLASSIFIED.

6. Software, hardware, and other data/information, which is sensitive, is reviewed prior to release to protect system vulnerabilities, design data, and performance parameters. Potential compromise of these systems is controlled through management of the basic software programs of highly sensitive systems and software-controlled weapon systems on a case-by-case basis.

7. Kuwait is both willing and able to protect United States Classified Military Information (CMI). Kuwaiti physical and document security standards are equivalent to U.S. standards. Kuwait has demonstrated its willingness and capability to protect sensitive military technology and information released to its military in the past. Kuwait is firmly committed to its relationship with the U.S. and to its promise to protect CMI and prevent its transfer to a third party. The Government of Kuwait signed a Technical Security Arrangement (TSA) with the USG on 01 January 1989 that commits them to the protection of CMI.

8. If a technologically advance adversary were to obtain knowledge of the specific hardware or software source code in this proposed sale, the information could be used to develop

countermeasures which might reduce weapon system effectiveness or be used in the development of systems with similar or advanced capabilities. The benefits to be derived from this sale in the furtherance of the U.S. foreign policy and national security objectives, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

9. All defense articles and services listed on this transmittal are authorized for release and export to the Government of Kuwait.

[FR Doc. 2017–23402 Filed 10–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2017–OS–0034]

Submission for OMB Review; Comment Request

AGENCY: Defense Threat Reduction Agency (DTRA), DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 27, 2017.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Nuclear Test Personnel Review Forms; DTRA Form 150, DTRA Form 150A, DTRA Form 150B, and DTRA Form 150C; OMB Control Number 0704–0447.

Type of Request: Reinstatement.

Number of Respondents: 86.

Responses per Respondent: 1.

Annual Responses: 86.

Average Burden per Response: 50 minutes.

Annual Burden Hours: 71.7.

Needs and Uses: The information collection requirement is necessary to collect irradiation scenario information from nuclear test participants to perform their radiation dose assessment. The DTRA radiation dose assessments are provided to the Department of Veterans Affairs in support of veteran radiogenic disease compensation claims. This information may also be used in approved veteran epidemiology studies that study the health impact of nuclear tests on U.S. veterans.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: October 24, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–23387 Filed 10–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–16]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young, (703) 697–9107, *pamela.a.young14.civ@mail.mil* or Kathy Valadez, (703) 697–9217, *kathy.a.valadez.civ@mail.mil*; DSCA/DSA–RAN.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–16 with attached Policy Justification and Sensitivity of Technology.

Dated: October 24, 2017.

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

OCT 16 2017

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. 17-16, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost $29 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,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 17–16

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:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$27 million
Other	$ 2 million
Total	$29 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Two hundred eighteen (218) M1A1 Abrams Tank Hulls with 120mm cannons

Two hundred eighteen (218) AGT–1500 (M1 Tank Series) Engines

Non-MDE:

Also includes transportation and other logistics support.

(iv) *Military Department:* Army (UXA)

(v) *Prior Related Cases, if any:* KU–B–JAT, KU–B–UKO, KU–B–UKN, KU–B–ULB, KU–B–ULX, KU–B–UMK

(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:* October 16, 2017

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—M1A1 Abrams Tanks

The Government of Kuwait has requested a possible sale of two hundred eighteen (218) M1A1 Abrams tank hulls with 120mm cannons and two hundred eighteen (218) AGT–1500 (M1 Tank Series) engines in support of its M1A2 tank recapitalization. Also included are transportation and other logistics support. The estimated cost is $29 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. Kuwait plays a large role in U.S. efforts to advance stability in the Middle East, providing basing, access, and transit for U.S. forces in the region.

This potential sale is associated with Congressional Notification 16–66 which was notified to Congress on December 12, 2016, regarding recapitalization of 218 Kuwait M1A2 tanks. Subsequent to the notification, Kuwait requested 218 M1A1 tank hulls from U.S. inventory be provided and upgraded vice using Kuwait's current fleet of tanks due to its interest in maintaining operational readiness. Kuwait will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The M1A1 tank hulls will come from U.S. inventory. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17–16

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. 120mm Gun. The gun is composed of a 120mm smoothbore gun (cannon) manufactured at Watervliet Arsenal; ''long rod'' Armor-piercing fin-stabilized discarding-sabot (APFSDS) warheads; and combustible cartridge case ammunition. There may be a need to procure/produce new gun cannon tubes from Watervliet Arsenal. New cannons inducted at Anniston Army Depot would be inspected according to established criteria and shipped to Lima Army Tank Plant for the tank upgrade process. The highest level of information that could be disclosed through the sale of this end-item is UNCLASSIFIED.

2. AGT–1500 Gas Turbine Propulsion System. The use of a gas turbine propulsion system in the M1A2 is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT–1500 engine and transmission and is not classified. Manufacturing processes associated with the production of turbine blades, recuperator, bearings and shafts, and hydrostatic pump and motor are proprietary and therefore commercially competition sensitive. The highest level of information that could be disclosed through the sale of this end-item is UNCLASSIFIED.

3. All defense articles and services listed on this transmittal are authorized for release and export to the Government of Kuwait.

[FR Doc. 2017–23411 Filed 10–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2017–OS–0041]

Submission for OMB Review; Comment Request

AGENCY: Washington Headquarters Service (WHS), Facilities Services Directorate (FSD), Enterprise Performance and IT Management Directorate (EPITMD), DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 27, 2017.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery—the Interactive Customer Evaluation (ICE) System; 0704–0420.

Current Actions: Processing Revision as Generic.

Type of Request: Revision.

Number of Respondents: 152,622.

Average Expected Annual Number of Activities: 16,970.

Below we provide projected average estimates for the next three years:

Average Number of Respondents per Activitiy: 9.

Responses per Respondent: 1.

Annual Responses: 152,622.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 7,631.

Needs and Uses: The proposed information collection activity provides a means to garner qualitative customer

and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: October 24, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–23432 Filed 10–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2017–ICCD–0132]

Agency Information Collection Activities; Comment Request; DC School Choice Incentive Program

AGENCY: Department of Education (ED), Office of Innovation and Improvement (OII).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 26, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0132. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216–44, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Justis Tuia, 202–453–6654.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general

public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: DC School Choice Incentive Program.

OMB Control Number: 1855–0015.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 3,000.

Total Estimated Number of Annual Burden Hours: 1,000.

Abstract: The DC School Choice Incentive Program, authorized by the Consolidated Appropriations Act of 2004, awarded a grant to the DC Children and Youth Investment Trust Corporation that will administer scholarships to students who reside in the District of Columbia and come from households whose incomes do not exceed 185% of the poverty line. Priority is given to students who are currently attending schools in need of improvement, as defined by Title I. To assist in the student selection and assignment process, the information collected is used to determine the eligibility of those students who are interested in the available scholarships. Also, since the authorizing statute requires an evaluation we are proposing to collect certain family demographic information because they are important predictors of school success. Finally, we are asking to collect information about parental participation and satisfaction because these are key topics that the statute requires the evaluation to address.

Dated: October 23, 2017.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–23352 Filed 10–26–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During August 2017

	FE docket Nos.
DOMINION ENERGY COVE POINT LNG, LP (formerly DOMINION COVE POINT LNG, LP).	11–115–LNG; 11–128–LNG; 16–191–LNG; 16–205–LNG
WISCONSIN PUBLIC SERVICE CORPORATION	17–100–NG
AVISTA CORPORATION	17–85–LNG
PIONEER LNG LLC	17–99–NG
RICE ENERGY MARKETING LLC	17–102–NG
ENTERPRISE PRODUCTS OPERATING LLC	17–103–NG
SOUTHERN CALIFORNIA GAS COMPANY	17–90–NG
PUBLIC UTILITY DISTRICT NO. 1 OF CLARK COUNTY	17–98–NG
UNIPER GLOBAL COMMODITIES NORTH AMERICA LLC	15–180–NG
TIDAL ENERGY MARKETIN (U.S.) L.L.C.	17–104–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during August 2017, it issued orders under section 3 of the Natural Gas Act, 15 U.S.C. 717b, as summarized in the attached appendix. These orders may be found on the FE Web site at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2017.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 24, 2017.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3019–A; 3331–C; 3971–A; 4046–A.	08/04/17	11–115–LNG; 11–128–LNG; 16–191–LNG; 16–205–LNG	Dominion Energy Cove Point LNG, LP (formerly Dominion Cove Point LNG, LP).	Orders 3019–A, 3331–C, 3971–A and 4046–A granting request to amend authorizations to export LNG to reflect Corporate Name Change.
4077	08/09/17	17–100–NG	Wisconsin Public Service Corporation	Order 4077 granting authority to import/export natural gas from/to Canada.
Errata 4066	08/04/17	17–85–NG	Avista Corporation	Errata DOE/FE Order 4066.
4079	08/14/17	17–99–LNG	Pioneer LNG LLC	Order 4079 granting blanket authority to import/export natural gas from/to Canada/Mexico.

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

4080	08/14/17	17–102–NG	Rice Energy Marketing LLC	Order 4080 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4081	08/14/17	17–103–NG	Enterprise Products Operating LLC	Order 4081 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4082	08/14/17	17–90–NG	Southern California Gas Company	Order 4082 granting blanket authority to import/export natural gas from/to Mexico.
4083	08/14/17	17–98–NG	Public Utility District No. 1 of Clark County.	Order 4083 granting blanket authority to import/export natural gas from/to Canada.
3764–A	08/31/17	15–180–NG	Uniper Global Commodities North America LLC.	Order 3764–A vacating blanket authority to import/export natural gas from/to Canada.
4085	08/31/17	17–104–NG	Tidal Energy Marketing (U.S.) L.L.C.	Order 4085 granting blanket authority to import/export natural gas from/to Canada.

[FR Doc. 2017–23418 Filed 10–26–17; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA has submitted an information collection request to OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension with changes of its Natural Gas Data Collection Program, under OMB Control No. 1905–0175. The proposed collection will provide information on the supply and disposition of natural gas within the United States.

DATES: Comments regarding this information collection must be received on or before November 27, 2017. 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, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to Chad S. Whiteman, DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, *Chad S Whiteman@omb.eop.gov.* and to Mr. Michael Kopalek, U.S. Department of Energy, U.S. Energy Information Administration EI–25, 1000 Independence Ave. SW., Washington, DC 20585, *Michael.Kopalek@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Kopalek, 202–586–4001, *Michael.kopalek@eia.gov, https://www.eia.gov/survey/notice/ngdownstreamforms2018.php.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) OMB Control Number 1905–0175;

(2) Information Collection Request Title: Natural Gas Data Collection Program;

The surveys covered by this information collection request include:

- Form EIA–176, *Annual Report of Natural and Supplemental Gas Supply and Disposition*
- Form EIA–191, *Monthly Underground Gas Storage Report*
- Form EIA–757, *Natural Gas Processing Plant Survey*
- Form EIA–857, *Monthly Report of Natural Gas Purchases and Deliveries to Consumers*
- Form EIA–910, *Monthly Natural Gas Marketer Survey*
- Form EIA–912, *Weekly Underground Natural Gas Storage Report*

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The surveys included in the Natural Gas Data Collection Program Package collect information on natural gas underground storage, supply, processing, transmission, distribution, consumption by sector, and consumer prices. This information is used to support public policy analyses of the natural gas industry and estimates generated from data collected on these surveys. The statistics generated from these surveys are posted to the EIA Web site (*http://www.eia.gov*) and in various EIA products, including the *Weekly Natural Gas Storage Report* (WNGSR), *Natural Gas Monthly* (NGM), *Natural Gas Annual* (NGA), *Monthly Energy Review* (MER), *Short-Term Energy Outlook* (STEO), *Annual Energy Outlook* (AEO), and *Annual Energy Review* (AER). EIA requests a three-year extension of collection authority for each of the above-referenced surveys with changes to Forms EIA–176, EIA–191, EIA–757, EIA–910, and EIA–912.

(4a) *Proposed Changes to Information Collection:*

Form EIA–176, Annual Report of Natural and Supplemental Gas Supply and Disposition

Form EIA–176 collects data on natural, synthetic, and other supplemental gas supplies, their disposition, and certain revenues by state. The changes include:

a. Add a question in Part 3(B) to ask respondents if they have an alternative-fueled vehicle fleet and how many and what kind of vehicles make up the fleet. This information improves survey frame coverage and data accuracy reported on Form EIA–886, *Annual Survey of Alternative Fueled Vehicles;*

b. A new section Part 3(E) asking local distribution companies to provide all the counties where they deliver natural gas for end-use consumption. This information enables EIA to estimate the approximate service territory for a local distribution company. EIA has received public inquiries about service territories associated with natural gas distributors and this information will be useful to EIA and the public for understanding this retail market sector.

c. Addition of a question in Part 3(F) asking respondents for the names and zip codes of any aboveground liquefied (LNG) natural gas storage facilities that

are owned, operated, or provide services to a survey respondent. This enables EIA to facilitate collection of LNG data by operators and their locations;

d. Discontinue collecting the costs associated with purchase gas received within the service area. EIA has the capability to estimate values for this activity using monthly data. Deleting this data element reduces respondent reporting burden and relieves EIA resources used to validate the information;

e. Discontinue the collection of year-end natural gas pump price in Part 3 Item B4. EIA determined that this question had large variation in data quality and inconsistent reporting methodologies.

f. Move Part 6 Line 12.4 (from the drop down menu selection) sub-item 9096, ''Other Natural gas consumed in your operations: Vaporization/LNG Fuel,'' to make it a standalone line item as new Line 12.4, called ''Vaporization/ Liquefaction/LNG Fuel.'' The collection of ''Other Natural Gas'' consumed in operations that was previously listed on Line 12.4 will be shown as a new Line 12.6 in Part 6 with the three other drop down choices (Utilities Use, Other, and Other Expenses) available to the user. In the past, many respondents have missed reporting this data element. The change is designed to improve the coverage and accuracy of respondents reporting this information and will assist EIA in its modeling and analysis; and

g. Add a question in Part 6 Line 12.5, ''Vehicle fuel used in company fleet'' to collect information on fuel consumption by company vehicles. Based on cognitive testing of Form EIA–176 form, respondents were reporting natural gas vehicle fuel for their own company fleet as company use. This affects the accuracy of the vehicle fuel volumes and prices reported in Part 6 Items 10.5 and 11.5. Company consumption volumes do not have associated revenue and should not be included in 10.5 and 11.5. Adding this question gives respondents a place on Form EIA–176 to report company-owned vehicle fuel volumes and improve the accuracy of vehicle fuel prices based on Part 6 Items 10.5 and 11.5.

Form EIA–191, Monthly Underground Gas Storage Report

Form EIA–191 collects data on the operations of all active underground storage facilities. EIA is making the following changes to Form EIA–191:

a. Remove ''Other'' as a response option under ''type of facility'' question in Part 3 of the survey form. Respondents have not utilized this category for classifying their facilities. This open ended facility category did not provide its intended utility and as a result EIA is deleting it.

Form EIA–757, Natural Gas Processing Plant Survey

Form EIA–757 collects information on the capacity, status, and operations of natural gas processing plants, and monitors their constraints to natural gas supplies during catastrophic events, such as hurricanes. Schedule A of Form EIA–757 is used to collect data every three years. Schedule A collects baseline operating and capacity information from all respondents. Schedule A was used to collect information in 2015 and the next planned collection for Schedule A is 2018. Schedule B is activated as needed and collects data from a sample of respondents in affected areas as needed. Schedule B was last activated in 2012 when Hurricane Isaac damaged energy supply infrastructure along the Gulf Coast. A sample of approximately 20 plants reported in 2012 during that supply disruption. EIA is continuing the collection of the same data elements on Form EIA–757 Schedules A and B in their present form with two protocol changes:

a. Collect Schedule A data for new natural gas processing plants that opened and began operations during the current three-year data collection cycles. This minor protocol change allows EIA to maintain a current frame at all times rather than updating the survey frame every three years when a new data collection cycle begins;

b. Collect ''processing throughput capacity'' information in Schedule A on an annual basis. This allows EIA to track recent changes in natural gas processing plant capacities, a key piece of information needed for using Form EIA–757 Schedule B Emergency Activation portion of the survey during a natural disaster or similar crisis situation.

Form EIA–912 Weekly Underground Natural Gas Storage Report

Form EIA–912 collects information on weekly inventories of natural gas in underground storage facilities. This is one change to Form EIA–912 to include an additional geographic data element for Inventory of Working Gas in Storage as described below:

a. Divide the ''South Central'' reporting region into ''South Central Salt'' and ''South Central Nonsalt.'' Currently EIA categorizes storage operators as either Salt facilities or Nonsalt facilities and allocates their volumes entirely to that region. This change would require respondents to allocate volumes in their reported data between Salt facilities and Nonsalt facilities in order to improve the accuracy of EIA's published estimates on underground storage. For example, under the current methodology, volumes reported by a respondent with majority salt storage would be allocated entirely to the ''South Central Salt'' region, even if nearly half of their volumes were stored in nonsalt facilities. Currently, operators with more than 15 billion cubic feet of storage capacity in the South Central region report volumes separately between Salt facilities or Nonsalt facilities. This change will require all operators in the reporting sample to report the same way.

(5) *Annual Estimated Number of Survey Respondents:* 3,340.

EIA–176 consists of 2,050 respondents.

EIA–191 consists of 145 respondents.

EIA–757 Schedule A consists of 600 respondents.

EIA–757 Schedule B consists of 20 respondents.

EIA–857 consists of 330 respondents.

EIA–910 consists of 100 respondents.

EIA–912 consists of 95 respondents.

(6) *Annual Estimated Number of Total Responses:* 14,227.

(7) *Annual Estimated Number of Burden Hours:* 50,724.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The information is maintained in the normal course of business. The cost of the burden hours is estimated to be $3,736, 330 (50,724 burden hours times $73.66 per hour). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Pub. L. 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC on October 17, 2017.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2017–23398 Filed 10–26–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2512–075; Project No. 14439–001]

Notice of Availability of Final Environmental Assessment; Hawks Nest Hydro, LLC

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for new licenses for the Hawks Nest Hydroelectric Project (FERC Project No. 2512–075) and the Glen Ferris Hydroelectric Project (FERC Project No. 14439–001) located in Fayette County, West Virginia, and has prepared a final Environmental Assessment (final EA) for the projects.

In the final EA, Commission staff analyzes the potential environmental effects of the projects, and concludes that relicensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is on file with the Commission and is available for public inspection. The final EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Monir Chowdhury at (202) 502–6736.

Dated: October 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–23412 Filed 10–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–11–000]

Cooperative Energy; Notice of Petition for Partial Waiver

Take notice that on October 19, 2017, pursuant to section 292.402 of the Federal Energy Regulatory Commission's (Commission) Rules of Practices and Procedures 18 CFR 292.402 (2017), Cooperative Energy on behalf of itself and its eleven electric distribution cooperative members-owners (collectively, the Members),[1] submitted a request that the Commission waive certain obligations imposed on Cooperative Energy and the Members under sections 292.303(a) and 292.303(b) of the Commission's Regulations [2] implementing section 210 of the Public Utility Regulatory Policies Act of 1978 [3] as amended, as more fully explained in its petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 9, 2017.

Dated: October 23, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–23414 Filed 10–26–17; 8:45 am]

BILLING CODE 6717–01–P

[1] Cooperative Energy's eleven Member-owners are: Coahoma EPA (Lyon, MS); Delta EPA (Greenwood, MS); Twin County EPA (Hollandale, MS); Yazoo Valley EPA (Yazoo City, MS); Southwest MS EPA (Lorman, MS); Southern Pine Electric Cooperative (Taylorsville, MS); Magnolia EPA (McComb, MS); Dixie EPA (Laurel, MS); Pearl River Valley EPA (Columbia, MS); Coast EPA (Kiln, MS); and Singing River Electric Cooperative (Lucedale, MS).

[2] 18 CFR 292.303(a) and (b) (2017).

[3] 16 U.S.C. 824a–3 (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–438]

Notice of Public Information Sessions; Grand River Dam Authority

On November 14 and 15, 2017, Federal Energy Regulatory Commission (Commission) staff will host a series of public information sessions regarding the procedure for relicensing Grand River Dam Authority's (GRDA) Pensacola Hydroelectric Project No. 1494 (Pensacola Project). The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

a. Date, Time, and Location of Meetings:

Tuesday, November 14, 2017, 6 p.m. to 8 p.m., GRDA Ecosystems and Education Center, 420 OK–28, Langley, OK 74350, (918) 256–5545.

Wednesday, November 15, 2017, 10 a.m. to 12 p.m., GRDA Ecosystems and Education Center, 420 OK–28, Langley, OK 74350, (918) 256–5545.

Wednesday, November 15, 2017, 6 p.m. to 8 p.m., Grove City Hall, 104 West Third Street, Grove, OK 74344, (918) 786–6107.

b. *FERC Contact:* Rachel McNamara, 202–502–8340 or *rachel.mcnamara@ferc.gov.*

c. *Purpose of Meeting:* In January 2018, the Commission will commence relicensing of the project under the Integrated Licensing Process (ILP). To assist local, state, and federal agencies, Indian tribes, and other interested entities and individuals in participating during the relicensing process, Commission staff invite the public to attend information sessions about the ILP and how stakeholders can best participate in the process.

d. *Proposed Agenda:* Each meeting will include an overview of the ILP and discussion of the specific process plan (schedule) for the Pensacola Project, opportunities for public comment, and how the Commission assesses information needs during the study planning process. There will also be time for stakeholders to ask any additional questions related to the relicensing process.

Dated: October 23, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–23415 Filed 10–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–8–000]

Notice of Availability of the Environmental Assessment for the Proposed East-West Project; Florida Gas Transmission, LLC

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the East-West Project, proposed by Florida Gas Transmission, LLC (FGT) in the above-referenced docket. FGT requests authorization to construct and operate about 13.3 miles of 12-inch-diameter lateral pipeline, about 11.4 miles of 16-inch-diameter lateral and connection pipeline, and four new meter and regulation (M&R) stations and auxiliary and appurtenant facilities in Wharton, Matagorda, Jefferson, and Orange Counties, Texas, and Calcasieu and Acadia Parishes, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the East-West Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed East-West Project includes the following facilities:

- About 13.3 miles of 12-inch-diameter delivery lateral pipe and M&R facilities (milepost 13.3) in Matagorda and Wharton counties, Texas;
- about 11.4 miles of 16-inch-diameter delivery lateral pipe and M&R facilities (milepost 11) in Jefferson County, Texas;
- about 0.5 mile of 16-inch-diameter connection piping and M&R facilities in Acadia Parish, Louisiana and 0.02 mile of 12-inch-diameter connection piping and M&R facilities in Calcasieu Parish, Louisiana; and
- modifications to station piping and installation of automated valves at Compressor Station (CS 6) in Orange County, Texas, so that CS 6 will be able to flow gas bi-directionally on the mainline.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before November 20, 2017.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP17–8–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on eRegister. You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search, and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP17–8). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp*.

[1] See the previous discussion on the methods for filing comments.

Dated: October 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–23413 Filed 10–26–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0008; FRL–9968–47]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before November 27, 2017.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as show in the body of this document, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. 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/comments.html.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

III. Notice of Receipt—New Uses

1. *EPA Registration Number:* 352–839, 352–840, and 352–883. *Docket ID number:* EPA–HQ–OPP–2017–0429. *Applicant:* E. I. Du Pont De Nemours and Company, Chestnut Run Plaza, 974 Centre Road, Wilmington, DE 19805. *Product names:* Picoxystrobin Technical, DuPont Aproach Fungicide, and DuPont Aproach Prima Fungicide. *Active ingredient:* Picoxystrobin. *Proposed Uses:* Alfalfa, forage; alfalfa, hay; alfalfa, seed; almond hulls; cotton, gin by-products; cottonseed (Crop Subgroup 20C); grass grown for seed; head lettuce; onion, bulb (Crop Subgroup 3–07A); onion, green (Crop Subgroup 3–07B); pea and bean, succulent shelled (Crop Subgroup 6B); peanut; peanut, hay; sunflower (Crop Subgroup 20B); tree nut except hulls (Crop Group 14–12); vegetable, brassica head and stem (Crop Group 5–16); vegetable, cucurbit (Crop Group 9); vegetable, fruiting (Crop Group 8–10); vegetable, leaf petiole (Crop Subgroup 22B); vegetable, leafy except head lettuce (Crop Group 4–16); vegetable, leaves of root and tuber (Crop Group 2); vegetable, legume, edible podded (Crop Subgroup 6A); vegetable, root (Crop Subgroup 1A); and vegetable, tuberous and corm (Crop Subgroup 1C). *Contact:* RD.

2. *EPA Registration Number:* 53883–307. *Docket ID Number:* EPA–HQ–OPP–2017–0455. *Applicant:* Control Solutions, Inc., 5903 Genoa-Red Bluff, Pasadena, TX 77507. *Active Ingredient:* Metsulfuron. *Product Type:* Herbicide. *Proposed use:* Residential lawns. *Contact:* RD.

3. *EPA Registration Number:* 53883–URT. *Docket ID number:* EPA–HQ–OPP–2017–0491. *Applicant:* Control Solutions, Inc., 5903 Genoa-Red Bluff, Pasadena, TX 77507. *Active ingredient:* Novaluron. *Product type:* Insecticide. *Proposed Uses:* Lawns, recreational areas, golf courses, and other non-crop/non-grazed areas. *Contact:* RD.

4. *EPA Registration Number:* 53883–URL. *Docket ID number:* EPA–HQ–OPP–2017–0493. *Applicant:* Control Solutions, Inc., 5903 Genoa-Red Bluff, Pasadena, TX 77507. *Active ingredient:* Novaluron. *Product type:* Insecticide. *Proposed Use:* Use on mattresses to control bed bugs. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 2, 2017.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2017–23440 Filed 10–26–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9035–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements (EISs)
Filed 10/16/2017 Through 10/20/2017
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20170208, Draft, FHWA, UT, State Route 30, S.R. 23 to 1000 West, Comment Period Ends: 12/15/2017, Contact: Rod Terry 801–620–1686

EIS No. 20170209, Final, NOAA, MA, New England Fishery Management Council Omnibus Essential Fish Habitat Amendment 2, Review Period Ends: 11/27/2017, Contact: Moira Kelly 978–281–9218

EIS No. 20170210, Final, USFWS, WY, Upper Green River Area Rangeland Project, Review Period Ends: 12/11/2017, Contact: Dave Booth (307) 367–4326

EIS No. 20170211, Final, DOC, CT, Programmatic—Nationwide Public Safety Broadband Network for the Eastern United States, Review Period Ends: 11/27/2017, Contact: Amanda Pereira (571) 665–6072

EIS No. 20170212, Draft Supplement, BLM, CA, Palen Solar Project (formerly Palen Solar Power Project), Comment Period Ends: 12/11/2017, Contact: Mark DeMaio 760–833–7124

Amended Notices

EIS No. 20170164, Draft, USFS, CA, Exchequer Restoration Project, Comment Period Ends: 10/09/2017, Contact: Elaine Locke 559–855–5355

Revision to FR Notice Published 08/25/2017; U.S. Forest Service is reopening the comment period to end 11/27/2017.

EIS No. 20170187, Draft, USACE, CA, Aliso Creek Mainstem Ecosystem Restoration Study, Environmental Impact Statement, Comment Period Ends: 11/13/2017, Contact: Deborah Lamb (213) 452–3798

Revision to FR Notice Published on 09/29/2017; Extending Comment Period from 11/13/2017 to 11/28/2017.

EIS No. 20170190, Draft, USACE, CA, Ballona Wetlands Restoration Project, Comment Period Ends: 11/24/2017, Contact: Daniel Swenson 213–452–3414

Revision to FR Notice Published on 10/06/2017; Extending Comment Period from 11/24/2017 to 02/05/2018.

Dated: October 24, 2017.

Kelly Knight,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017–23452 Filed 10–26–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL LABOR RELATIONS AUTHORITY

Privacy Act of 1974; Publication of Proposed Amendments to Six Existing Systems of Records; Introduction of a New System of Records; Rescindment of Eleven Systems of Records; Request for Comments

AGENCY: Federal Labor Relations Authority (FLRA).

ACTION: Notice of amendments to six existing systems of records; introduction of a new system of records; and rescindment of eleven systems of records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all the systems of records that it maintains. This document proposes the amendment of six of the FLRA's existing systems of records, the introduction of a new system of records, and the rescindment of eleven systems of records that are no longer in use or that are covered by government-wide system of records notices. With the proposed addition and rescindment of systems, the FLRA will maintain seven systems of records. Additional details are provided under Supplementary Information, below.

DATES: This action will be effective without further notice on November 27, 2017 unless comments are received that would result in contrary determinations.

ADDRESSES: Mail or deliver comments to Gina K. Grippando, Counsel for Regulatory and Public Affairs, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424; or email *EngagetheFLRA@flra.gov.*

FOR FURTHER INFORMATION CONTACT: Fred B. Jacob, Solicitor and Senior Agency Official for Privacy, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424; (202) 218–7999; fax: (202) 343–1007; or email *solmail@flra.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the FLRA hereby publishes notice of updates to its systems of records. *See* 5 U.S.C. 552a(e)(4). This document proposes the amendment of six systems of records, the introduction of a new system of records, and the rescindment of eleven systems of records, bringing the FLRA's total number of systems of records to seven. This notice first provides a summary of the six amended systems of records, the new system of records, and the eleven systems of records proposed for rescindment, and then provides the text of each of the amended and new systems of records.

1. In the first proposed amendment to a system of records, the FLRA proposes to amend FLRA/Internal-2-Appeal and Administrative Review Records by updating the system location and the organizational title and address of the system manager. The system is being updated further to reflect that information is maintained on electronic and paper media, and that electronic records are maintained in a password-protected automated system, with access limited to personnel whose duties require access. In addition, the system is being amended to reflect that burning is no longer a method of record disposal.

2. In the second proposed amendment to a system of records, the FLRA proposes to amend FLRA/Internal-3-Complaints and Inquiries Records by updating the system location and the organizational title and address of the system manager. The system is being updated further to reflect that information is maintained on electronic and paper media, and that electronic records are maintained in a password-protected automated system, with access limited to personnel whose duties require access. In addition, the system is being amended to reflect that burning is no longer a method of record disposal.

3. In the third proposed amendment to a system of records, the FLRA proposes to amend FLRA/Internal-6-Grievance Records by updating the system location and the organizational title and address of the system manager. The system is being updated further to reflect that information is maintained on electronic and paper media, and that electronic records are maintained in a password-protected automated system, with access limited to personnel whose duties require access. In addition, the system is being amended to: (1) Reflect that burning no longer is a method of

record disposal; and (2) change the record-retention period from three years after closing of the case to four to seven years after closing of the case, as required by the National Archives and Records Administration (NARA) General Records Schedule 30, item 30a.

4. In the fourth proposed amendment to a system of records, the FLRA proposes to amend FLRA/Internal-10-Employee Locator Card Files by updating the system name to FLRA/Internal-10-Organization Management and Locator System, the system location, and the organizational title and address of the system manager. The system is being updated further to reflect that information is maintained on electronic media.

5. In the fifth amendment to a system of records, the FLRA proposes to amend FLRA/Internal-15-Pay, Leave and Travel Records by amending its name to FLRA/Internal-15-Personnel and Payroll System Records and removing all references to travel records, which FLRA no longer maintains. Rather, the FLRA's travel records are maintained in a system operated by a contractor and, therefore, are covered by a government-wide System of Records Notice: GSA/GOVT–4, Contracted Travel Services Program.

In addition, the FLRA proposes to amend this system of records to reflect updates to FLRA payroll and personnel data processes and services. The FLRA maintains FLRA/Internal-15-Personnel and Payroll System Records to manage payroll and personnel data for FLRA employees, ensure proper payment of salary and benefits to FLRA personnel, and track time worked and leave or other absences for reporting and compliance purposes. The FLRA has entered into an agreement with the Department of the Interior (DOI) Interior Business Center (IBC), a Federal agency shared service provider, to provide payroll and personnel processing services through DOI's Federal Personnel and Payroll System (FPPS). Although DOI will host and process payroll and personnel data on behalf of the FLRA, the FLRA will retain ownership and control over its own data. The FLRA has included a routine use in this notice to permit sharing of records with DOI for hosting and support services. Individuals seeking access to their records owned and maintained by the FLRA must submit their requests to the FLRA as outlined in the Record Access Procedures, Contesting Record Procedures, and Notification Procedures sections in the amended SORN.

6. In the sixth amendment to a system of records, the FLRA proposes to amend FLRA/OIG-1-Office of the Inspector General Investigative Files by updating the system location and the organizational title and address of the system manager. The system is being updated further to reflect that information is maintained on electronic media. In addition, the system is being amended to reflect that the FLRA obtained approval from NARA to modify the system's records-retention period such that only certain types of records must be retained permanently. Also, the contact for notification, record access, and contesting record procedures has been changed from the Office of the Solicitor to the Office of the Inspector General.

7. The new system of records is entitled FLRA/Internal-17-Freedom of Information Act Request and Appeal Files. This system contains records concerning the FLRA's Freedom of Information Act program.

8. The FLRA proposes to rescind eleven systems of records that are no longer in use by the FLRA or that are covered by government-wide system of records notices.

a. The first system of records, FLRA/Internal-1-Employee Occupational Health Program Records, is proposed for rescindment because the FLRA no longer collects or retains data on FLRA employees using health services under the Federal Employees Group Health Program. Instead, the Federal Occupational Health (FOH)/Department of Health and Human Services (HHS) is now the custodian of these records, and those records are covered under OPM/GOVT-10 Employee Medical File System Records.

b. The second system of records proposed for rescindment, FLRA/Internal-4-Applicants for Employment Records, is proposed for rescindment because those records are covered under OPM/GOVT-5 Recruiting, Examining, and Placement Records, and a separate FLRA System of Records would be duplicative.

c. The third system of records proposed for rescindment, FLRA/Internal-5-Preemployment Inquiry Records, is proposed for rescindment because those records are covered under OPM/GOVT-5 Recruiting, Examining, and Placement Records, and a separate FLRA System of Records would be duplicative.

d. The fourth system of records proposed for rescindment, FLRA/Internal-7-Employee Incentive Award and Recognition Files, is proposed for rescindment because those records are covered under OPM/GOVT-2 Employee Performance File System Records, and a separate FLRA System of Records would be duplicative.

e. The fifth system of records, FLRA/Internal-8-Employee Assistance Program Records, is proposed for rescindment because the FLRA no longer collects or retains data on FLRA employees using Employee Assistance Program (EAP) services. Instead, FOH/HHS is the custodian of these records, and it has published HHS System of Records Notice, 09–90–0010, EAP Records, which covers Federal employees and their family members using EAP through contractual agreement between HHS and their organizations.

f. The sixth system of records, FLRA/Internal-9-Federal Executive Development Program Records, is proposed for rescindment because the FLRA no longer runs a Federal Executive Development Program and, if it did run such a program in the future, the FLRA would retain such records under OPM/GOVT-1 General Personnel Records.

g. The seventh system of records proposed for rescindment, FLRA/Internal-11-Training Records, is proposed for rescindment because those records are covered under OPM/GOVT-1 General Personnel Records, and a separate FLRA System of Records would be duplicative.

h. The eighth system of records proposed for rescindment, FLRA/Internal-12-Performance Evaluation/Rating Records, is proposed for rescindment because the FLRA retains such records under OPM/GOVT-2 Employee Performance File System Records, and a separate FLRA System of Records would be duplicative.

i. The ninth system of records proposed for rescindment, FLRA/Internal-13-Intern Program and Upward Mobility Program Records, contains intern recruiting information pertaining to the internship program covered under OPM/GOVT-5 Recruiting, Examining, and Placement Records, and a separate FLRA System of Records would be duplicative. The FLRA no longer runs an Upward Mobility Program or retains records of such a program.

j. The tenth system of records, FLRA/Internal-14-Motor Vehicle Accident Reports, is proposed for rescindment because the FLRA no longer possesses any such records. Records previously maintained under this system have been destroyed.

k. The eleventh system of records, FLRA/Internal-16-Occupational Injury and Illness Records, is proposed for rescindment because the FLRA retains such records under DOL/GOVT-1 Office of Worker's Compensation Programs, Federal Employees' Compensation Act

File, and a separate FLRA System of Records would be duplicative.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on the new system of records, the proposed amendments to the six existing systems of records, and the proposed rescindment of the eleven systems of records. A report on the proposed amendments, additions, and rescindments to the FLRA's systems of records has been provided to OMB and Congress as required by OMB Circular A–108, and 5 U.S.C. 552a(r).

Dated: October 24, 2017.

Michael Jeffries,

Acting Executive Director.

Notice of Changes to Systems of Records

Appeal and Administrative Review Records, FLRA/Internal-2.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Human Resources Division, Federal Labor Relations Authority (FLRA), 1400 K Street NW., Washington, DC 20424.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 4305, 5115, 5335, 7501, 7512; and Executive Order 10577.

PURPOSE OF THE SYSTEM:

These records are used to process miscellaneous appeals and administrative reviews submitted by FLRA employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FLRA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to various internal appeal or administrative reviews submitted by FLRA employees as well as decisions made in individual employee cases pursuant to those procedures. The system also contains records and documentation of the action upon which the appeal or review decision was based.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the records pertain.

b. FLRA officials involved in the appeal or administrative procedure.

c. Other official personnel records of the FLRA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information in these records may be used pursuant to 5 U.S.C. 552a(b)(3):

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the FLRA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from whom additional information is requested in the course of processing an appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the FLRA determines that the records are arguably relevant to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

f. To disclose information to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose information to the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work-force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: The Merit Systems Protection Board, the Office of Special Counsel, or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

j. To appropriate agencies, entities, and persons when (1) the FLRA suspects or has confirmed that there has been a breach of the system of records; (2) the FLRA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FLRA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FLRA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

k. To another Federal agency or Federal entity, when the FLRA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

l. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

m. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the names of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Adverse action appeals processed under the FLRA's internal appeals systems are retained for seven years after the closing of the case and other records in the system are maintained for a maximum of four years after the closing of the case, in accordance with items 10–12, of General Records Schedule 1, as approved by the Archivist of the United States. Disposal is by shredding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These records are maintained in a lockable filing system and/or in a password-protected automated system, with access limited to personnel whose duties require access.

RECORD ACCESS PROCEDURES:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an appeal or administrative review procedure record by contacting the System Manager. Individuals must provide the following information for their records to be located and identified:

a. Full Name.

b. Date of birth.

c. Approximate date of closing of case and kind of action taken.

Individuals requesting access must also follow the FLRA's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records that have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these cases will be restricted to determining whether the record accurately documents the action of the agency or administrative body ruling on the case, and it will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the System Manager. Individuals must furnish the following information for their records to be located and identified;

a. Full Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

Individuals requesting amendment must also follow the FLRA's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

NOTIFICATION PROCEDURES:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. They may, however, contact the System Manager indicated above. They must furnish the following information for their records to be located and identified:

a. Full Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

Individuals making inquiries must comply with the FLRA's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

Complaints and Inquiries Records, FLRA/Internal-3.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Executive Director, Federal Labor Relations Authority (FLRA), 1400 K Street NW., Washington, DC 20424.

SYSTEM MANAGER:

Executive Director, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE OF THE SYSTEM:

These records are used to take an action on or respond to a complaint or inquiry concerning an FLRA employee or to counsel the employee.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current FLRA employees about whom complaints or inquiries have been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information or correspondence concerning an individual's employment status or conduct while employed by the FLRA. Examples of these records include: Correspondence from Federal employees, Members of Congress, or members of the public alleging misconduct by an FLRA employee; miscellaneous debt correspondence received from creditors; and miscellaneous complaints not covered by the FLRA's formal or informal grievance procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal employees, Members of Congress, creditors, or members of the public who submitted the complaint or inquiry.

c. FLRA officials.

d. Other sources from whom information was requested regarding the complaint or inquiry.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information in these records may be used pursuant to 5 U.S.C. 552a(b)(3):

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the FLRA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from whom additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an FLRA decision concerning the hiring or retention of an employee, the issuance of a security clearance, conduct of a security or suitability investigation of an individual or classification of jobs.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the FLRA determines that the records are arguably relevant to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body

when the adjudicator determines the records to be relevant to the proceeding.

e. To disclose information to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

g. To disclose information to officials of: The Merit Systems Protection Board, the Office of Special Counsel, or the Equal Employment Opportunity Commission, when requested in performances of their authorized duties.

h. To appropriate agencies, entities, and persons when (1) the FLRA suspects or has confirmed that there has been a breach of the system of records; (2) the FLRA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FLRA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FLRA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when the FLRA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

j. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

k. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in file folders that are separate from the employee's Official Personnel Folder and also in electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name of the individual on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are disposed of upon the transfer or separation of the employee or after one year, whichever is earlier, in accordance with item 010 of General Records Schedule 6.5, as approved by the Archivist of the United States. Disposal is by shredding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These records are located in a lockable filing system and/or a password-protected automated system, with access limited to personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

FLRA employees wishing to request access to their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full Name.

b. Date of birth.

Individuals requesting access must also comply with the FLRA's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

FLRA employees wishing to request amendment of their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full Name.

b. Date of birth.

Individuals must also comply with the FLRA's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

NOTIFICATION PROCEDURES:

FLRA employees wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full Name.

b. Date of birth.

Individuals making inquiries must comply with the FLRA's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980)

Grievance Records, FLRA/Internal-6.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Office of the Executive Director, Federal Labor Relations Authority (FLRA), 1400 K Street NW., Washington, DC 20424.

SYSTEM MANAGER:

Executive Director, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302.

PURPOSE OF THE SYSTEM:

These records are used to store and document grievances based on employee dissatisfaction relative to actions taken within the discretion of the FLRA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with the FLRA pursuant to Office of Personnel Management regulations regarding Agency Administrative Grievance Systems (5 CFR part 771).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under 5 CFR part 771 and the FLRA's internal regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits. This system includes files and records of internal grievances, and of arbitration systems that may be established through negotiations with the union representing agency employees.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Testimony of witnesses.

c. Agency officials.

d. Organizations or persons providing related correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information in these records may be used pursuant to 5 U.S.C. 552a(b)(3):

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FLRA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from whom additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the FLRA determines that the records are arguably relevant to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

f. To disclose information to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose information to officials of: The Merit Systems Protection Board, the Office of Special Counsel, or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations recognized under the Civil Service Reform Act, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

j. To appropriate agencies, entities, and persons when (1) the FLRA suspects or has confirmed that there has been a breach of the system of records; (2) the FLRA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FLRA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FLRA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

k. To another Federal agency or Federal entity, when the FLRA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

l. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

m. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained on paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the names of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are disposed of four-to-seven years after closing of the case, in accordance with item 60 of General Records Schedule 2.3, as approved by the Archivist of the United States. Disposal is by shredding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These records are maintained in a lockable filing system and in a password-protected automated system, with access limited to personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

Individuals submitting grievances must be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the System Manager. Individuals must provide the following information for their records to be located and identified:

a. Full Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the FLRA's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records that have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining whether the record accurately documents the action of the agency ruling on the case, and it will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment to their records of correct factual errors should contact the System Manager. They must provide the following information for their records to be located and identified:

a. Full Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must follow the FLRA's Privacy Act regulations regarding amendment to records (5 CFR 2412.10).

NOTIFICATION PROCEDURES:

Individuals submitting grievances must be provided a copy of the record under the grievance process. They may, however, contact the System Manager. They must furnish the following information for their records to be located and identified:

a. Full Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals making inquiries must comply with the FLRA's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980)

Organization Management and Locator System, FLRA/Internal-10.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Administrative Services Division, Federal Labor Relations Authority (FLRA), 1400 K Street NW. Washington, DC 20424.

SYSTEM MANAGER:

Director, Administrative Services Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101 and 3301.

PURPOSE OF THE SYSTEM:

Information is collected for this system for use in preparing telephone directories of the office telephone extensions of FLRA employees. The records also serve to identify contact information for an employee for continuity of operations purposes, or if an emergency of a medical or other nature involving the employee occurs while the employee is on the job. These records may also be used to locate individuals for personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the FLRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location, telephone extension, and office email address of individual FLRA employees. The system also contains the home address, email, and telephone numbers of the employee.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information in these records may be used pursuant to 5 U.S.C. 552a(b)(3):

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the FLRA determines that the records are arguably relevant to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

c. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

d. To appropriate agencies, entities, and persons when (1) the FLRA suspects or has confirmed that there has been a breach of the system of records; (2) the FLRA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FLRA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FLRA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

e. To another Federal agency or Federal entity, when the FLRA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

f. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

g. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name of the individual on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are maintained as long as the individual is an employee of the FLRA, in accordance with item 20 of General Records Schedule 5.3, as approved by the Archivist of the United States. Expired records are destroyed by deletion of all electronic records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Home addresses, emails, and contact information for employees are maintained in a password-protected system, with access limited to personnel whose duties require access.

RECORD ACCESS PROCEDURES:

FLRA employees wishing to request access to records about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

Individuals requesting access must comply with the FLRA's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

FLRA employees may amend information in these records at any time by resubmitting updated information to the System Manager. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the System Manger. Individuals must supply their full name for their records to be located and identified.

Individuals requesting amendment must follow the FLRA's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

NOTIFICATION PROCEDURES:

FLRA employees wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

Individuals making inquiries must comply with the FLRA's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980)

Personnel and Payroll System Records, FLRA/Internal-15.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATIONS:

FLRA/Internal-15-Personnel and Payroll System Records is centrally managed by the Human Resources Division, Federal Labor Relations Authority (FLRA), 1400 K Street NW., Washington, DC 20424. The FLRA has entered into an agreement with the Department of the Interior (DOI) Interior Business Center (IBC), a Federal agency shared service provider, to provide payroll and personnel processing services through DOI's Federal Personnel and Payroll System (FPPS). Electronic payroll and personnel records processed through FPPS are located at the U.S. Department of the Interior, Interior Business Center, Human Resources and Payroll Services, 7301 W. Mansfield Ave., MS D–2000, Denver, CO 80235.

SYSTEM MANAGER:

The FLRA's Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street, NW., Washington, DC 20424, manages the FLRA's FPPS account.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

36 U.S.C. 2102; 5 U.S.C. Chapter 55; 5 CFR part 293; and Executive Order 9397 as amended by Executive Order 13478, relating to Federal agency use of Social Security numbers.

PURPOSE OF THE SYSTEM:

The purpose of the system is to allow the FLRA to collect and maintain records on current and former employees to ensure proper payment for salary and benefits, and to track time worked, leave, or other absences for reporting and compliance purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system maintains records concerning current and former FLRA employees, including volunteers and emergency employees, and limited information regarding employee spouses, dependents, emergency contacts, or in the case of an estate, a trustee who meets the definition of ''individual'' as that term is defined in the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records including:

- Employee biographical and employment information: Employee name, other names used, citizenship, gender, date of birth, group affiliation, marital status, Social Security number (SSN), truncated SSN, legal status, place of birth, records related to position, occupation, duty location, security clearance, financial information, medical information, disability information, education information, driver's license, race/ethnicity, personal telephone number, personal email address, military status/service, mailing/home address, Taxpayer Identification Number, bank account information, professional licensing and credentials, family relationships, age, involuntary debt (garnishments or child support payments), employee common identifier (ECI), user identification and any other employment information.
- Third-party information: Spouse information, emergency contact, beneficiary information, savings bond co-owner name(s) and information, family members and dependents information.
- Salary and benefits information: Salary data, retirement data, tax data, deductions, health benefits, allowances, union dues, insurance data, Flexible Spending Account, Thrift Savings Plan contributions, pay plan, payroll records, awards, court order information, back pay information, debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee or emergency worker.
- Timekeeping information: Time and attendance records, leave records, the system may also maintain records including other information required to administer payroll, leave, and related functions.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, supervisors, timekeepers, previous employers, the Internal Revenue Service and state tax agencies, the Department of the Treasury, other Federal agencies, courts, state child support agencies, employing agency accounting offices, and third-party benefit providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information maintained in this system may be disclosed to authorized entities outside FLRA for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agencies conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) The FLRA;

(2) Any employee or former employee of FLRA in his or her official capacity;

(3) Any employee or former employee of FLRA in his or her individual capacity when DOJ or the FLRA has agreed to represent the employee; or

(4) The U.S. Government or any agency thereof.

b. To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

c. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

d. To other Federal agencies that provide payroll and personnel processing services under a cross-servicing agreement for purposes relating to FLRA employee payroll and personnel processing.

e. To another Federal agency as required for payroll purposes, including to the Department of the Treasury for preparation of payroll and to issue checks and electronic funds transfer.

f. To the Office of Personnel Management, the Merit Systems Protection Board, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

g. To appropriate Federal and state agencies to provide reports including data on unemployment insurance.

h. To State offices of unemployment compensation to assist in processing an individual's unemployment, survivor annuity, or health benefit claim, or for records reconciliation purposes.

i. To Federal employees' Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

j. To the Internal Revenue Service and State and local tax authorities for which

an employee is or was subject to tax regardless of whether tax is or was withheld in accordance with Treasury Fiscal Requirements, as required.

k. To the Internal Revenue Service or to another Federal agency or its contractor to disclose debtor information solely to aggregate information for the Internal Revenue Service to collect debts owed to the Federal government through the offset of tax refunds.

l. To any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States Government from an individual.

m. To any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on the employee's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

n. To the Internal Revenue Service, and state and local authorities for the purposes of locating a debtor to collect a claim against the debtor.

o. To any source from which additional information is requested by the FLRA relevant to an FLRA determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

p. To the Social Security Administration and the Department of the Treasury to disclose pay data on an annual basis.

q. To the Social Security Administration to credit the employee or emergency worker account for Old-Age, Survivors, and Disability Insurance (OASDI) and Medicare deductions.

r. To the Federal Retirement Thrift Investment Board's record keeper, which administers the Thrift Savings Plan, to report deductions, contributions, and loan payments.

s. To a Federal agency or in response to a congressional inquiry when additional or statistical information is requested relevant to the FLRA Transit Fare Subsidy Program.

t. To the Department of Health and Human Services for the purpose of providing information on new hires and quarterly wages as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

u. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purposes of locating individuals to establish paternity; establishing and modifying orders of child support; identifying sources of income; and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

v. To the Office of Personnel Management or its contractors in connection with programs administered by that office, including, but not limited to, the Federal Long Term Care Insurance Program, the Federal Dental and Vision Insurance Program, the Flexible Spending Accounts for Federal Employees Program, and the electronic Human Resources Information Program.

w. To charitable institutions, when an employee designates an institution to receive contributions through salary deduction.

x. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature.

y. To the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

z. To an expert, consultant, grantee, or contractor (including employees of the contractor) of the FLRA that performs services requiring access to these records on the FLRA's behalf to carry out the purposes of the system, including employment verifications, unemployment claims, and W–2 services.

aa. To the Department of Labor for processing claims for employees, emergency workers, or volunteers injured on the job or claiming occupational illness.

bb. To appropriate agencies, entities, and persons when:

(1) The FLRA suspects or has confirmed that there has been a breach of the system of records;

(2) The FLRA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FLRA (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FLRA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

cc. To another Federal agency or Federal entity, when the FLRA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) Responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

dd. To another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

ee. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or to the issuance of a security clearance, license, contract, grant or other benefit.

ff. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

gg. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the FLRA determines that the records are arguably relevant to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

hh. To the news media and the public, with the approval of the Agency Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of the FLRA or is necessary to demonstrate the accountability of the FLRA's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are maintained in file folders stored within locking filing cabinets or locked rooms in secured facilities with controlled access. Electronic records are stored in computers, removable drives, storage devices, electronic databases, and other electronic media under the control of the FLRA, and in other Federal agency systems pursuant to interagency sharing agreements.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name, SSN, ECI, birth date, organizational code, or other assigned person.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with General Records Schedule (GRS) 1.0 ''Finance'', and GRS 2.0 ''Human Resources,'' which are approved by the National Archives and Records Administration. The system generally maintains temporary records, and retention periods vary based on the type of record under each item and the needs of the agency. Paper records are disposed of by shredding, and records maintained on electronic media are degaussed or erased in accordance with the applicable records retention schedule and NARA guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records maintained in this system are safeguarded in accordance with FLRA security and privacy rules and policies. During normal hours of operations, paper records are maintained in locked files cabinets under the control of authorized personnel. Information technology systems follow the National Institute of Standards and Technology privacy and security standards developed to comply with the Privacy Act of 1974 as amended, 5 U.S.C. 552a; the Paperwork Reduction Act of 1995, Public Law 104–13; the Federal Information Security Modernization Act of 2014, Public Law 113–283, as codified at 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standard 199, Standards for Security Categorization of Federal Information and Information Systems. Computer servers on which electronic records are stored are located in secured FLRA and DOI facilities with physical, technical and administrative levels of security to prevent unauthorized access to FLRA and DOI network and information assets. Security controls include encryption, firewalls, audit logs, and network system security monitoring. Electronic data is protected through user identification, passwords, database permissions and software controls. Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each person's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users for both the FLRA and DOI are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training, and sign Rules of Behavior for each agency.

RECORD ACCESS PROCEDURES:

Individuals wishing access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the FLRA's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment must follow the FLRA's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the FLRA's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980); 63 FR 1110 (Jan. 8, 1998).

Office of Inspector General Investigative Files, FLRA/OIG–1.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General (OIG), Federal Labor Relations Authority, 1400 K Street, NW., Washington, DC 20424.

SYSTEM MANAGER:

Inspector General, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3.

PURPOSE OF THE SYSTEM:

These records are maintained to fulfill the purposes of the Inspector General Act of 1978, as amended and to fulfill responsibilities assigned by that Act concerning investigative activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to the programs and operations of the FLRA. Subject individuals include, but are not limited to, current and former employees; contractors, subcontractors, their agents or employees; and others whose actions affect the FLRA, its programs, and operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits; documents, records, or copies obtained during the investigation; interview notes, investigative notes, staff working papers, draft materials, and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

RECORD SOURCE CATEGORIES:

Employees or other individuals on whom the record is maintained, non-target witnesses, FLRA and non-FLRA records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information in these records may be used pursuant to 5 U.S.C. 552a(b)(3):

a. To other agencies, offices, establishments, and authorities, whether Federal, State, local, foreign, or self-regulatory (including, but not limited to, organizations such as professional associations or licensing boards), authorized or with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information,

(1) Indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or;

(2) Indicates a violation or potential violation of a professional, licensing, or similar regulation, rule or order, or otherwise reflects on the qualifications or fitness of an individual licensed or seeking to be licensed.

b. To any source, private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of a legitimate investigation or audit of the OIG.

c. To agencies, offices, or establishments of the executive, legislative, or judicial branches of Federal, State, Tribal, or local government where disclosure is requested in connection with the award of a contract or other determination relating to a government procurement, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decisions on the matter, including, but not limited to, disclosure to any Federal agency responsible for considering suspension or debarment actions where such record would be germane to a determination of the propriety or necessity of such action, or any Federal contract board of appeals in cases relating to an agency procurement.

d. To the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of Special Counsel, or the Equal Employment Opportunity Commission, of records or portions thereof relevant and necessary to carrying out their authorized functions, such as, but not limited to, rendering advice requested by the OIG, investigations of alleged or prohibited personnel practices (including discriminatory practices), appeals before official agencies, offices, panels, boards, or courts, and authorized studies or reviews of civil service or merit systems or affirmative action programs.

e. To independent auditors or other private firms with which the OIG has contracted to carry out an independent audit or investigation, or to analyze, collate, aggregate or otherwise refine data collected in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records.

f. To the Department of Justice and for disclosure by the Department of Justice or the FLRA,

(1) To the extent relevant and necessary in connection with litigation in proceedings before a court or other adjudicative body, where the government is a party to or has an interest in the litigation, and the litigation is likely to affect the agency or any component thereof, including where the agency, or an agency component, or an agency official or employee in his or her official capacity, or an individual agency official or employee whom the Department of Justice has agreed to represent, is a defendant; or

(2) For purposes of obtaining advice concerning the accessibility of a record or information under the Privacy Act or the Freedom of Information Act.

g. To a congressional office from the record of a subject individual in response to an inquiry from the congressional office made at the request of that individual, but only to the extent that the record would be legally accessible to that individual.

h. To any direct recipient of Federal funds, such as a contractor, where such record reflects serious inadequacies with a recipient's personnel and disclosure of the record is for purposes of permitting a recipient to take corrective action beneficial to the government.

i. To debt-collection contractors for the purpose of collecting debts owed to the government as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

j. To appropriate agencies, entities, and persons when (1) the FLRA suspects or has confirmed that there has been a breach of the system of records; (2) the FLRA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FLRA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FLRA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

k. To another Federal agency or Federal entity, when the FLRA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

l. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

m. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records may be in either paper or electronic form, consisting of files, audio or video recordings, disks, flash drives, or other electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Under approved FLRA records schedule N1–480–01–1:

OIG investigative files meeting one or more of the following criteria are kept indefinitely: (1) Cases involving senior agency personnel such as the Chairman; the Members; the Chief Counsels; the General Counsel; the Chief Administrative Law Judge; the Solicitor; the Executive Director; the Executive Director of the Federal Service Impasses Panel; or other senior officials who are either appointed officers or career employees; (2) cases resulting in extensive media coverage, either nationally or regionally; (3) cases resulting in further investigation by Congress; (4) cases involving substantial amounts of money (over $5,000); or (5) cases resulting in substantive changes in FLRA policies and procedures.

All other OIG investigative files are destroyed 10 years after the end of the fiscal year in which the case closes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in lockable metal file cabinets in lockable rooms and in password-protected automated systems. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are locked during non-duty hours.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager. Individuals must furnish their full name in order for their records to be located and identified. Individuals wishing to request access to records must comply with the FLRA's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment to their records should contact the System Manager. Individuals must furnish their full name in order for their records to be located and identified. Individuals requesting amendment must also follow the FLRA's Privacy Act regulations regarding amendments to records (5 CFR 2412.10).

NOTIFICATION PROCEDURES:

Individuals inquiring whether this system contains information about them should contact the System Manager. Individuals must furnish their full name in order for their records to be located and identified. Individuals making inquiries must comply with the FLRA's Privacy Act regulations regarding existence of records (5 CFR 2412.4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), to the extent the system of records relates in any way to the enforcement of criminal laws.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

These exemptions are set forth in the Authority's Privacy Act regulations, 5 CFR part 2412, as amended; *see* 5 CFR 2412.16.

HISTORY:

This system of records was last published at 56 FR 33291 (July 19, 1991).

Notice of New System of Records Freedom of Information Act Request and Appeal Files, FLRA/Internal-17.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

FLRA Headquarters and Regional Offices and the Environmental Protection Agency's National Computer Center located at 109 T.W. Alexander Drive, Durham, NC 27709.

SYSTEM MANAGER:

Chief FOIA Officer, Office of the Solicitor, Federal Labor Relations Authority, 1400 K St. NW., Washington, DC 20424.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, 5 U.S.C. 552.

PURPOSE OF THE SYSTEM:

To provide the public with a single location to submit and track FOIA requests and appeals filed with the FLRA, to manage internal FOIA administration activities, and to collect data for annual reporting requirements to the Department of Justice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons requesting information or filing appeals under the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

A copy of each Freedom of Information Act (FOIA) request received by the FLRA and a copy of all correspondence related to the request, including the requestors' names, mailing addresses, email addresses, phone numbers, Social Security Numbers, dates of birth, any aliases used by the requesters, alien numbers assigned to travelers crossing national borders, requesters' parents' names, user names and passwords for registered users, FOIA tracking numbers, dates requests are submitted and received, related appeals, and agency responses. Records also include communications with requesters, internal FOIA administrative documents (*e.g.,* billing invoices) and responsive records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by FLRA employees and FOIA requestors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information in these records may be used pursuant to 5 U.S.C. 552a(b)(3):

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the FLRA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the FLRA determines that the records are arguably relevant to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

d. To a Federal, State, local, or foreign agency or entity for the purpose of consulting with that agency or entity to enable the FLRA to make a determination as to the propriety of access to or correction of information, or for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

e. To a Federal agency or entity that furnished the record or information for the purpose of permitting that agency or entity to make a decision as to access to or correction of the record or information, or to a federal agency or entity for purposes of providing guidance or advice regarding the handling of particular requests.

f. To a submitter or subject of a record or information in order to obtain assistance to the FLRA in making a determination as to access or amendment.

g. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

h. To disclose information to the National Archives and Records Administration, the Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies,

procedures and compliance with FOIA, and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

i. To appropriate agencies, entities, and persons when (1) the FLRA suspects or has confirmed that there has been a breach of the system of records; (2) the FLRA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FLRA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FLRA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

j. To another Federal agency or Federal entity, when the FLRA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

k. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

l. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in a secure, password-protected electronic system maintained by the Environmental Protection Agency called FOIAOnline, which utilizes security hardware and software, including multiple firewalls, active intruder detection and role-based accessed controls. Any paper records are stored in secure FLRA offices and/or lockable file cabinets.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Requests are retrieved from the FOIAOnline system by numerous data elements and key word searches, including name, agency, dates, subject, FOIA tracking number, and other information retrievable with full-text searching capability.

POLICIES AND PRACTICS FOR RETENTION AND DISPOSAL OF RECORDS:

FOIA records are maintained for three years or longer, in accordance with item 001 of General Records Schedule 4.2, as approved by the Archivist of the United States. Disposal is by shredding and/or by deletion of the electronic record.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Computer records are maintained in a secure, password-protected computer system. Paper records are maintained in secure offices or lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RECORD ACCESS PROCEDURES:

Individuals wishing access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Approximate date of FOIA request or appeal.

Individuals requesting access must comply with the FLRA's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Approximate date of FOIA request or appeal.

Individuals requesting amendment must follow the FLRA's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Approximate date of FOIA request or appeal.

Individuals making inquiries must comply with the FLRA's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–1–Employee Occupational Health Program Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–4–Applicants for Employment Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–5–Preemployment Inquiry Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–7–Employee Incentive Award and Recognition Files.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–8–Employee Assistance Program Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–9–Federal Executive Development Program Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–11–Training Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–12–Performance Evaluation/Rating Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–13–Intern Program and Upward Mobility Program Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–14–Motor Vehicle Accident Reports.

SYSTEM MANAGER:

Director, Administrative Services Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was originally published at 45 FR 85316 (Dec. 24, 1980) and was last published, as amended at 60 FR 50202 (Sep. 28, 1995).

RESCINDMENT OF A SYSTEM OF RECORDS NOTICE

SYSTEM NAME AND NUMBER

FLRA/INTERNAL–16–Occupational Injury and Illness Records.

SYSTEM MANAGER:

Director, Human Resources Division, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424.

HISTORY:

This system of records was last published at 45 FR 85316 (Dec. 24, 1980).

[FR Doc. 2017–23420 Filed 10–26–17; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 2017.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *The Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York;* to acquire additional voting shares of 473 Broadway Holding Corporation and additional shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *First Financial Bankshares, Inc., Abilene, Texas;* to merge with Commercial Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Commercial State Bank, El Campo, Texas.

Board of Governors of the Federal Reserve System, October 24, 2017.

Ann Misback,

Secretary of the Board.

[FR Doc. 2017–23428 Filed 10–26–17; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than November 13, 2017.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Lawrence Andrew Proffitt, Gatlinburg, Tennessee;* to act as trustee and thereby vote the shares of Tennessee State Bancshares, Inc., and thereby indirectly vote the shares of Tennessee State Bank, both of Pigeon Forge, Tennessee.

Board of Governors of the Federal Reserve System, October 23, 2017.

Ann Misback,

Secretary of the Board.

[FR Doc. 2017–23357 Filed 10–26–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 15, 2017.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Martin Grandchildren's Trust dated 5.24.17, with William C. Martin and Sally A. Martin as co-trustees; the William C. Martin 2016 Grantor Retained Annuity Trust dated 1.27.16, with William C. Martin as trustee; the William C. Martin 2017 Grantor Retained Annuity Trust dated 5.31.17, with William C. Martin as trustee; the William C. Martin GRAT Remainder Trust fbo William S. Martin dated 1.27.16, with William C. Martin as trustee; the William C. Martin GRAT Remainder Trust fbo Michael C. Martin dated 1.27.16, with William C. Martin as trustee; Keweenaw, L.L.C., with William C. Martin as manager; Sally A. Martin, individually; William S. Martin, individually; and Michael C. Martin, individually, all of Ann Arbor, Michigan;* to join William C. Martin as members of the Martin Family Control Group and retain voting shares of Arbor Bancorp, Inc., and thereby indirectly retain voting shares of Bank of Ann Arbor, both of Ann Arbor, Michigan.

Board of Governors of the Federal Reserve System, October 24, 2017.

Ann Misback,

Secretary of the Board.

[FR Doc. 2017–23429 Filed 10–26–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10518 and CMS–10549]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 26, 2017.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10518 Application for Participation in the Intravenous Immune Globulin (IVIG) Demonstration

CMS–10549 Generic Clearance for Questionnaire Testing and Methodological Research for the Medicare Current Beneficiary Survey (MCBS)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register**

concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Participation in the Intravenous Immune Globulin (IVIG) Demonstration; *Use:* Traditional fee-for-service (FFS) Medicare covers some or all components of home infusion services depending on the circumstances. By special statutory provision, Medicare Part B covers intravenous immune globulin (IVIG) for persons with primary immune deficiency disease (PIDD) who wish to receive the drug at home. However, Medicare does not separately pay for any services or supplies to administer it if the person is not homebound and otherwise receiving services under a Medicare Home Health episode of care. As a result, many beneficiaries have chosen to receive the drug at their doctor's office or in an outpatient hospital setting.

On September 29, 2017, the ''Disaster Tax Relief and Airport and Airway Extension Act of 2017'' was enacted into law. Section 302 of this legislation extends the Medicare IVIG Demonstration through December 31, 2020. While existing beneficiaries enrolled in the demonstration as of September 30, 2017 will be automatically re-enrolled, in order to continue to enroll new beneficiaries into the demonstration, an application is required. The original enrollment and financial limits remain and CMS will continue to monitor both to assure that statutory limitations are not exceeded.

This collection of information is for the application to participate in the demonstration. Participation is voluntary and may be terminated by the beneficiary at any time. Beneficiaries who do not participate will continue to be eligible to receive all of the regular Medicare Part B benefits that they are would be eligible for in the absence of the demonstration. *Form Number:* CMS–10518 (OMB control number: 0938–1246); *Frequency:* Annually; *Affected Public:* Individuals and households; *Number of Respondents:* 1,220; *Total Annual Responses:* 1,220 *Total Annual Hours:* 305. (For policy questions regarding this collection contact Jody Blatt at 410–786–6921.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Generic Clearance for Questionnaire Testing and Methodological Research for the Medicare Current Beneficiary Survey (MCBS); *Use:* The purpose of this OMB clearance package is to extend the approval of the generic clearance to support an effort to evaluate the operations and content of the Medicare Current Beneficiary Survey (MCBS). The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged, disabled, and institutionalized Medicare beneficiaries. The MCBS, which is sponsored by the Centers for Medicare & Medicaid Services (CMS), is the only comprehensive source of information on the health status, health care use and expenditures, health insurance coverage, and socioeconomic and demographic characteristics of the entire spectrum of Medicare beneficiaries. The core of the MCBS is a series of interviews with a stratified random sample of the Medicare population, including aged and disabled enrollees, residing in the community or in institutions. Questions are asked about enrollees' patterns of health care use, charges, insurance coverage, and payments over time. Respondents are asked about their sources of health care coverage and payment, their demographic characteristics, their health and work history, and their family living circumstances. In addition to collecting information through the core questionnaire, the MCBS collects information on special topics. *Form Number:* CMS–10549 (OMB control number 0938–1275); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,500; Total Annual Responses: 1,500; Total Annual Hours: 1,117. (For policy questions regarding this collection contact William Long at 410–786–7927.)

Dated: October 24, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–23451 Filed 10–26–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3336–FN]

Medicare and Medicaid Programs: Approval of an Application From the Joint Commission (TJC) for Continued CMS Approval of Its Critical Access Hospital (CAH) Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Joint Commission (TJC) for continued recognition as a national accrediting organization for critical access hospitals (CAHs) that wish to participate in the Medicare or Medicaid programs.

DATES: This final notice is effective November 21, 2017 through November 21, 2023.

FOR FURTHER INFORMATION CONTACT: Monda Shaver, (410) 786–3410, Karena Meushaw, (410) 786–6609 or Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program eligible beneficiaries may receive covered services in a critical access hospital (CAH), provided certain requirements are met. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. The minimum requirements that a CAH must meet to participate in the Medicare Program are at 42 CFR part 485, subpart F. Conditions for Medicare payment for CAHs are at 42 CFR 413.70. Applicable regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to facility survey and certification are at 42 CFR part 488, subparts A and B.

For a CAH to enter into a provider agreement with the Medicare program, a CAH must first be certified by a State survey agency as complying with the conditions or requirements set forth in section 1820 of the Act and our regulations at part 485. Subsequently, the CAH is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. However, there is an alternative to State compliance surveys. Certification by a nationally recognized accreditation program can substitute for ongoing State review.

Section 1865(a)(1) of the Act provides that if the Secretary of the Department

of Health and Human Services (the Secretary) finds that accreditation of a provider entity by an approved national accrediting organization meets or exceeds all applicable Medicare conditions, we may treat the provider entity as having met those conditions; that is, we may ''deem'' the provider entity to be in compliance. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

Part 488, subpart A implements the provisions of section 1865 of the Act and requires that a national accrediting organization applying for approval of its Medicare accreditation program must provide the Centers for Medicare & Medicaid Services (CMS) with reasonable assurance that the accrediting organization requires its accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require an accrediting organization to reapply for continued approval of its Medicare accreditation program every 6 years or sooner as determined by CMS. The Joint Commission's (TJC's) term of approval as a recognized Medicare accreditation program for CAHs expires November 21, 2017.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On May 19, 2017, we published a proposed notice in the **Federal Register** (82 FR 23004) announcing TJC's request for continued approval of its Medicare CAH accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of TJC's Medicare CAH accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of TJC's: (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring and evaluation of its hospital surveyors; (4) ability to investigate and respond appropriately to complaints against accredited hospitals; and (5) survey review and decision-making process for accreditation.
- A comparison of TJC's Medicare accreditation program standards to our current Medicare CAH Conditions of Participation (CoPs).
- A documentation review of TJC's survey process to do the following:

++ Determine the composition of the survey team, surveyor qualifications, and TJC's ability to provide continuing surveyor training.

++ Compare TJC's processes to those we require of State survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited CAHs.

++ Evaluate TJC's procedures for monitoring CAHs found to be out of compliance with TJC's program requirements. (This pertains only to monitoring procedures when TJC identifies non-compliance. If non-compliance is identified by a State survey agency through a validation survey, the State survey agency monitors corrections as specified at § 488.9(c).)

++ Assess TJC's ability to report deficiencies to the surveyed hospitals and respond to the hospital's plan of correction in a timely manner.

++ Establish TJC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of TJC's staff and other resources.

++ Confirm TJC's ability to provide adequate funding for performing required surveys.

++ Confirm TJC's policies with respect to surveys being unannounced.

++ Obtain TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the May 19, 2017 proposed notice also solicited public comments regarding whether TJC's requirements met or exceeded the Medicare CoP for CAHs. There were two comments submitted, neither of which related to the content of the proposed notice.

IV. Provisions of the Final Notice

A. Differences Between TJC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared TJC's CAH accreditation requirements and survey process with the Medicare CoPs at part 485, and the survey and certification process requirements of parts 488 and 489. TJC's standards and crosswalk were also examined to ensure that the appropriate CMS regulations would be included in citations as appropriate. We reviewed and evaluated TJC's CAH application, which was conducted as described in section III of this final notice. As a result TJC has revised the following standards and certification processes:

- Section 482.21(d)(2): Updated its standards and crosswalk to include a comparable standard to allow facilities to develop and implement an information technology system explicitly designed to improve patient safety and quality of care as part of its quality improvement program.
- Section 482.21(d)(4): Updated its standards and crosswalk to include a comparable standard that requires facilities that do not participate in a cooperative project to implement projects that are of comparable effort.
- Sections 482. 22(b)(4)(iii) through (b)(4)(iv): Updated its standards and crosswalk to ensure that CAHs are not permitted to have a ''unified and integrated medical staff.''
- Section 482.28(b)(2): Updated its standards and crosswalk to include a comparable standard to require that all patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian or qualified nutrition professional as authorized by the medical staff and in accordance with State law governing dietitians and nutritional professionals.
- Section 482.53(b): Updated its standards and crosswalk to include the ''preparation'' of radioactive materials.
- Section 485.618(d)(4): Updated its standards and crosswalk to address the withdrawal of a request for using Registered Nurses on a temporary basis as part of their State Rural Healthcare Plan with the State Boards of Medicine and Nursing.
- Sections 485.627(b)(1) through (b)(3): Updated its standards and

crosswalk to include comparable standards to require disclosure of the names and addresses of the facility's owners, or those with a controlling interest in the CAH or in any subcontractor in which the CAH directly or indirectly has a 5 percent or more ownership interest.

- Section 485.645(a)(2): Updated its crosswalk to include the correct regulatory language to require that the facility limits inpatient beds to no more than 25 and is verified on all surveys.
- Section 488.5(a)(4)(vii): Updated its policies and review process to ensure that approved plans of correction fully address all non-compliant practices identified during the survey; that appropriate policy changes have been made to ensure compliance; and that plans of correction identify the responsible party for ensuring corrective actions are implemented within the CAH and contain a description of how the CAH will monitor and evaluate the effectiveness of the corrective actions, analyze the data, and report findings to the senior leadership and governing body to ensure continued regulatory compliance.
- Section 488.5(a)(12): Provided CMS with assurance that its procedures for responding to, and investigating complaints against accredited facilities are fully implemented and followed.
- Section 488.26(b): Revised surveyor documentation to include appropriately detailed deficiency statements that clearly support the determination of noncompliance and appropriate level of deficiency.

TJC revised its survey policy and procedure to clearly delineate that a survey will not occur until after the applicable Regional Office has made a determination of the CAH's compliance with location and distance requirements.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we have determined that TJC's CAH program requirements meet or exceed our requirements, and its survey processes are comparable to ours. Therefore, we approve TJC as a national accreditation organization for critical access hospitals that request participation in the Medicare program, effective November 21, 2017 through November 21, 2023.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: *October 16, 2017.*

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2017–23449 Filed 10–26–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9105–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2017

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from July through September 2017, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

BILLING CODE 4120–01–P

Addenda	Contact	Phone Number
I CMS Manual Instructions	Ismael Torres	(410) 786-1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786-4481
III CMS Rulings	Tiffany Lafferty	(410)786-7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786-7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786-6877
VI Collections of Information	William Parham	(410) 786-4669
VII Medicare –Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786-2749
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786-2749
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786-7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786-7205
XI National Oncologic Positron Emission Tomography Registry Sites	Stuart Caplan, RN, MAS	(410) 786-8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	Linda Gousis, JD	(410) 786-8616
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	Stuart Caplan, RN, MAS	(410) 786-8564
All Other Information	Annette Brewer	(410) 786-6580

BILLING CODE 4120–01–C

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other

stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS Web site or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the Web site list provides more timely access for beneficiaries, providers, and suppliers. We also believe the Web site offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the Web sites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the Web site. These listservs avoid the need to check the Web site, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a Web site proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

Dated: October 20, 2017.

Kathleen Cantwell,

Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: November 2016 (81 FR 79489, February 23, 2017 (82 FR 11456), May 5, 2017 (82 FR 21241) and August 4, 2017 (82 FR 36404). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (July through September 2017)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure to Procedure (PTP) Edits, Version 23.3, Effective October 1, 2017 use (CMS-Pub. 100-04) Transmittal No. 3807.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
	Medicare General Information (CMS-Pub. 100-01)
106	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
107	Affordable Care Act Bundled Payments for Care Improvement Initiative – Recurring File Updates Models 2 and 4 January 2018 Updates
	Medicare Benefit Policy (CMS-Pub. 100-02)
	None
	Medicare National Coverage Determination (CMS-Pub. 100-03)
199	Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS) Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS)(Various Effective Dates Below) (Rev.)
200	Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS) Spinal Stenosis (LSS)(Various Effective Dates Below)
201	National Coverage Determination (NCD20.8.4): Leadless Pacemakers Leadless Pacemakers

202	Updates to Pub. 100-04, Chapter 18 Preventive and Screening Services and Chapter 32 Billing Requirements for Special Services and Publication 100-03, Chapter 1 Coverage Determinations Part 4
Medicare Claims Processing (CMS-Pub. 100-04)	
3805	Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS) Claims Processing Requirements for Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS) on Professional Claims
3806	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3807	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure to Procedure (PTP) Edits, Version 23.3, Effective October 1, 2017
3808	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3809	October 2017 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
3810	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3811	Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS)
3812	New Waived Tests
3813	Accepting Hospice Notices of Election via Electronic Data Interchange Procedures for Hospice Election and Related Transactions Notice of Election (NOE) Notice of Termination/Revocation (NOTR) Change of Provider/Transfer Notice Cancellation of an Election Change of Ownership Notice Data Required on the Institutional Claim to A/B MAC (HHH) Independent Attending Physician Services
3814	Updated Editing of Always Therapy Services – MCS Claims Processing Requirements for Financial Limitations
3815	National Coverage Determination (NCD20.8.4): Leadless Pacemakers Leadless Pacemaker Leadless Pacemaker Coding and Billing Requirements for Professional Claims Leadless Pacemaker Place of Service Restrictions Leadless Pacemaker Modifier Leadless Pacemaker Additional Claim of Billing Information Leadless Pacemaker Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Medicare Summary Notice (MSN) Messages
3816	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3817	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
3818	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3819	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3820	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
3821	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3822	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3823	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3824	July Quarterly Update for 2017 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule
3825	October Quarterly Update to 2017 Annual Update of HCPCS Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement
3826	Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) Fiscal Year (FY) Annual Update
3827	Quarterly Influenza Virus Vaccine Code Update - January 2018 Table of Preventive and Screening Services Healthcare Common Procedure Coding System (HCPCS) and Diagnosis Codes CWF Edits on A/B MAC (A) Claims CWF Edits on A/B MAC (B) Claims CWF Crossover Edits for A/B MAC (B) Claims
3828	Update to Hospice Payment Rates, Hospice Cap, Hospice Wage Index and Hospice Pricer for FY 2017
3829	Revisions to the Home Health Pricer to Support Value-Based Purchasing and Payment Standardization
3830	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3831	Screening for Hepatitis B Virus (HBV) Institutional Billing Requirements Professional Billing Requirements Diagnosis Code Reporting Requirements Claim Adjustment Reason Codes (CARCs), Remittance Advice Remark Codes (RARCs), Group Codes, and Medicare Summary Notice (MSN) Messages
3832	Fiscal Year (FY) 2017 Inpatient Prospective Payment System (IPPS) and Long Term Care Hospital (LTCH) PPS Changes
3833	Quarterly Update to the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)
3834	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3835	Screening for the Human Immunodeficiency Virus (HIV) Infection Healthcare Common Procedure Coding System (HCPCS) for HIV Screening Tests Billing Requirements Payment Method Types of Bill (TOBs) and Revenue Codes Diagnosis Code Reporting

	Medicare Summary Notice (MSN) and Claim Adjustment Reason Codes (CARCs)
3836	Home Health Value-Based Purchasing Implementation
3837	Influenza Vaccine Payment Allowances - Annual Update for 2017-2018 Season
3838	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - October 2017 Update
3839	Claim Status Category and Claim Status Codes Update
3840	Common Edits and Enhancements Modules (CEM) Code Set Update
3841	Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): CORE 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule - Update from Council for Affordable Quality Healthcare (CAQH) Committee on Operating Rules for Information Exchange (CORE)
3842	Healthcare Provider Taxonomy Codes (HPTCs) October 2017 Code Set Update
3843	2018 Healthcare Common Procedure Coding System (HCPCS) Annual Update Reminder
3844	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
3845	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3846	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
3847	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3848	Updates to Pub. 100-04, Chapter 18 Preventive and Screening Services and Chapter 32 Billing Requirements for Special Services and Publication 100-03, Chapter 1 Coverage Determinations Part 4
3849	Inpatient Rehabilitation Facility (IRF) Annual Update: Prospective Payment System (PPS) Pricer Changes for FY 2018
3850	Quarterly Healthcare Common Procedure Coding System (HCPCS) Drug/Biological Code Changes - October 2017 Update
3851	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
3852	October 2017 Integrated Outpatient Code Editor (I/OCE) Specifications Version 18.3
3853	October 2017 Update of the Hospital Outpatient Prospective Payment System (OPPS)
3854	October 2017 Update of the Ambulatory Surgical Center (ASC) Payment System
3855	Internet Only Manual (IOM) Update to Pub. 100-04, Chapter 15 – Ambulance, to Restore Multiple Patients on One Trip Instructions
3856	Clarification of the Billing of Immunosuppressive Drugs Billing for Immunosuppressive Drugs
3857	2018 Annual Update of Healthcare Common Procedure Coding System (HCPCS) Codes for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Update
3858	Fiscal Year (FY) 2018 Inpatient Prospective Payment System (IPPS) and Long Term Care Hospital (LTCH) PPS Changes
3859	October Quarterly Update for 2017 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule
3860	Instructions for Downloading the Medicare ZIP Code File for January 2018
3861	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) – January 2018
3862	Annual Clotting Factor Furnishing Fee Update 2018 Clotting Factor Furnishing Fee (Chapter 17 - Drugs and Biologicals 80.4.1)
3863	Updated Editing of Always Therapy Services – MCS Claims Processing Requirements for Financial Limitations
3864	October 2017 Update of the Hospital Outpatient Prospective Payment System (OPPS)
3865	Instructions for Retrieving the 2018 Pricing and HCPCS Data Files through CMS' Mainframe Telecommunications Systems
3866	Accepting Hospice Notices of Election via Electronic Data Interchange Procedures for Hospice Election and Related Transactions Notice of Election (NOE) Notice of Termination/Revocation (NOTR) Change of Provider/Transfer Notice Cancellation of an Election Change of Ownership Notice Data Required on the Institutional Claim to A/B MAC (HHH Independent Attending Physician Services
3867	New Waived Tests
3868	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3869	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 24.0, Effective January 1, 2018
3870	Annual Update for the Health Professional Shortage Area (HPSA) Bonus Payments
3871	Revisions to Medicare Claims Processing Manual for Foreign, Emergency and Shipboard Claims
Medicare Secondary Payer (CMS-Pub. 100-05)	
120	Electronic Correspondence Referral System (ECRS) User Guide Medicare Beneficiary Identifier (MBI) Modifications including Updated Enterprise Identity Management (EIDM) Multi-Factor Authentication (MFA)/Remote Identity Proofing (RIDP) Screen Shots ECRS Web User Guide ECRS Quick Reference Card
Medicare Financial Management (CMS-Pub. 100-06)	
288	Pub. 100-6, Chapter 3 and 4 Revisions Determining Liability and Waiver of Recovery for Overpayments Determination – Limitation of Liability Determination Determination – Waiver of Recovery of an Overpayment Overpayments Discovered Subsequent to the Third Year How to Determine the Third Calendar Year After the Payment was

	Approved Recovery of Overpayment Due to Cost Report Termination of Collection Action Termination of Collection Action – Provider Overpayments Termination of Collection Action- Beneficiary Overpayments Requirements for Collecting Part A and B Provider Non-MSP Overpayments Debt Ineligible for Referral Intent to Refer Letter Response to Intent to Refer Letter Intermediary Claims Accounts Receivable (Debts RTA by Treasury as Dispute Response not Received Timely (RX) Debts RTA by Treasury as a Miscellaneous Dispute, a Manual RTA, Complaint or as Recall Approved (RD Intent to Refer Letter
289	Notice of New Interest Rate for Medicare Overpayments and Underpayments -4th Qtr Notification for FY 2017
290	New Specialty Code for Pharmacy Non-Physician Practitioner/Supplier Specialty Codes
291	Notice of New Interest Rate for Medicare Overpayments and Underpayments -4th Qtr Notification for FY 2017
292	Revision to Publication 100-06, Chapter 3, Medicare Overpayment Manual, Section 200, Limitation on Recoupment Section 935 of the Medicare Modernization Act (MMA) - Limitation on Recoupment Overpayments Limitation on Recoupment Section 935(f)(2) Eligibility Overpayments Subject to Limitation on Recoupment Overpayments Not Subject to Limitation on Recoupment Adjustment of the Fee-For-Service Claims The Rebuttal Process and the Limitation on Recoupment Extrapolated 935 Overpayments Medicare Secondary Payer (MSP) Provider Duplicate Primary Payment (DPP) Immediate Recoupment Requirements for 935 Overpayments Requirements for All Initial Demand Letters (Manual or Electronic) Initial Demand
293	Revision to Publication 100-06, Chapter 3, Medicare Overpayment Manual, Section 200, Limitation on Recoupment
Medicare State Operations Manual (CMS-Pub. 100-07)	
170	Revisions to the State Operations Manual (SOM) Appendix A – Survey Protocol, Regulations and Interpretive Guidelines for Hospitals
Medicare Program Integrity (CMS-Pub. 100-08)	
733	Clarification of Certificate of Medical Necessity (CMN) and Durable Medical Equipment Information Forms (DIFs)
734	Update to Reporting Requirements Reconsideration Requests – Non-certified Providers/Suppliers External Reporting Requirements
735	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
736	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
737	Credentials of Reviewers Complex Medical Review
738	Provider Error Rate Formula Provider Error Rate
739	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
740	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
741	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
742	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
743	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
744	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
745	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
746	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
37	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
38	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
39	Updates to Pub. 100-09, Chapter 6 Beneficiary and Provider Communications Manual, Chapter 6, Provider Customer Service Program Provider Claims Payment Alerts
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None

Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
13	IOM 100-17 Update Additional Requirements for MACs CMS Contracting Officer's Representative (COR) Principal Systems Security Officer (SSO CMS Business Owners CMS System Maintainers/Developers Personnel Security/Suitability Control Components Reporting Requirements System Security Plan (SSP) Risk Assessment (RA) Contingency Planning Compliance Annual FISMA Assessment (FA) Plan of Action and Milestones (POA&M) Background POA&M Package Components/Submission Format Security Incident Reporting and Response Authorization To Operate Patch Management Security Configuration Management Security Technical Implementation Guides (STIG End of Life Technology Components Cloud Computing Minimum System Security Requirements—HIGH Encryption Requirements for Data Leaving Data Centers Internet Security
Demonstrations (CMS-Pub. 100-19)	
176	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
177	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
178	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
179	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
One Time Notification (CMS-Pub. 100-20)	
1864	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1865	Health Insurance Portability and Accountability Act (HIPAA) Electronic Data Interchange (EDI) Front End Updates for January 2018
1866	National Provider Identification Crosswalk System (NPICS) Retirement Analysis Only - Engage Shared Systems Maintainers (SSMs) and Medicare Administrative Contractors (MACs) in Meetings and Correspondence Related to the NPICS Retirement with the Integrated Data Repository (IDR) Team
1867	Renovate MCS Correspondence Entry Driver Program H99P1C00
1868	Fee For Service (FFS) Applications Upgrade Customer Information Control System (CICS) to Transaction Server (TS) v5.2
1869	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1870	Correcting Payment of Inpatient Prospective Payment System (IPPS) Transfer Claims Assigned to Medicare Severity-Diagnosis Related Group (MS DRG) 385 and Allowing Part A Deductible on Medicare Secondary Payer (MSP) Same Day Transfer Inpatient Claims
1871	FISS Process Enhancements – Analysis Only
1872	Common Working File (CWF) to Add User Identification (ID) Information to CWF Provider Queries Audit File(s)
1873	Line Level versus Claim Level Reporting – Analysis Only
1874	Implementation CR: Integrating NLR into the HQR system
1875	ICD-10 Coding Revisions to National Coverage Determinations (NCDs)
1876	Modifications to the National Coordination of Benefits Agreement (COBA) Crossover Process
1877	Common Working File (CWF) to Modify CWF Provider Queries to Only Accept National Provider Identifier (NPI) as valid Provider Number
1878	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity Instruction
1879	Common Working File (CWF) to Increase the Next Eligible Date Occurrences for Preventive Services to 99 Occurrences – Analysis
1880	Shared Savings Program (SSP) Demonstration Code 77 Modification
1881	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1882	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1883	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1884	Analysis Only- Medicare Reporting on the Return of Self-Identified Overpayments
1885	Shared System Maintainers (SSMs) Standardized Release Identification (ID) Format Analysis and Design
1886	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1887	Shared System Enhancement 2015: Identify Inactive Medicare Demonstration Projects Within the Common Working File (CWF)
1888	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1889	Implementation of the Transitional Drug Add-On Payment Adjustment
1890	CICS Region Merge(s) for A/B MACs - Analysis Only
1891	Automating the HCPCS Load Process
1892	Shared System Enhancement 2015: Identify Inactive Medicare Demonstration Projects within the Fiscal Intermediary Shared System
1893	Combined Common Edits/Enhancements Module (CCEM) Updates to Business and Holiday Tables
1894	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1895	System Changes to Implement Section 15010 of the 21st Century Cures Act, Temporary Exception for Certain Severe Wound Discharges from Certain Long-Term Care Hospitals (LTCHs)

1896	Shared System Enhancement 2015: Identify Inactive Medicare Demonstration Projects within the Fiscal Intermediary Shared System - (Removing/Archiving demonstration codes 03, 04 and 15)
1897	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1898	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1899	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1900	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1901	Automating the HCPCS Load Process
1902	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1903	Implement Changes to Effect the Functionality of Combination Force Codes in the ViPS Medicare System (VMS)
1904	Multi-Carrier System (MCS), Fiscal Intermediary Shared System (FISS) and VIPS Medicare Shared System (VMS) Automation of Prior Authorization (PA) Requests/Pre-Claim Reviews (PCR) and their Responses with Multiple Services (for programs like Home Health (HH)) via the Electronic Submission of Medical Documentation (esMD) System
1905	Modify VMS Accreditation Logic to Accept Additional Modifiers
1906	Out-of-Jurisdiction Providers (OJP) and Qualified Chain Providers (QCP) Move to Correct A/B MAC Jurisdiction - Analysis CR Only
1907	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1908	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1909	Implementation of Section 1557 for Medicare Redetermination Notices (MRNs) by Adding a Notice and Tagline Sheet
1910	Guidance on Implementing System Edits for Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)
1911	Part B Detail Line Expansion - Common Working File (CWF)
1912	HIGLAS Enhancement Required for Implementation of Overpayment based Denials
1913	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1914	Shared System Enhancement 2014 – Identification of Fiscal Intermediary Shared System (FISS) Obsolete On-Request Jobs - Analysis Only
1915	Medicare Administrative Contractor (MAC) and Pricing, Data Analysis and Coding (PDAC) Contractor Implementation of the New Medicare Card Project
1916	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1917	Shared System Enhancement 2014 – Identification of Fiscal Intermediary Standard System (FISS) Obsolete Reports - Analysis Only
1918	Correcting Payment of Inpatient Prospective Payment System (IPPS) Transfer Claims Assigned to Medicare Severity-Diagnosis Related Group (MS DRG) 385 and Allowing Part A Deductible on Medicare Secondary Payer (MSP) Same Day Transfer Inpatient Claims
1919	Targeted Probe and Educate
1920	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1921	Implementation of Section 1557 for Medicare Redetermination Notices (MRNs) by Adding a Notice and Tagline Sheet
1922	Shared System Enhancement 2014: Implementation of Fiscal Intermediary Shared System (FISS) Obsolete Financial and Expert Claims Processing System (ECPS) Reports
1923	Calculating Interim Rates for Graduate Medical Education (GME) Payments to New Teaching Hospitals
1924	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1925	Guidance on Implementing System Edits for Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)
1926	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
1927	Shared System Enhancement 2014: Implementation of Fiscal Intermediary Shared System (FISS) Obsolete Core Reports
Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)	
367	Fiscal Year 2018 and After Payments to Skilled Nursing Facilities (SNFs) That Do Not Submit Required Quality Data
368	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
369	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
3	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction

Addendum II: Regulation Documents Published in the Federal Register (July through September 2017)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The

following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-3Q17QPU.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (July through September 2017)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (July through September 2017)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
National Coverage Determination (NCD20.8.4): Leadless Pacemakers	20.8.4	201	07/28/2017	01/18/2017

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (July through September 2017)

Addendum V includes listings of the FDA-approved investigational device exemption (IDE) numbers that the FDA assigns. The listings are organized according to the categories to which the devices are assigned (that is, Category A or Category B), and identified by the IDE number. For the purposes of this quarterly notice, we list only the specific updates to the Category B IDEs as of the ending date of the period covered by this notice and a contact person for questions or additional information. For questions or additional information, contact John Manlove (410-786-6877).

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved investigational device exemption (IDE). Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

IDE	Device	Start Date
BB17544	Magnetic-Activated Cell Sorter (CliniMACS, Miltenyi) TCR alpha/beta and CD19 T-cell depletion PBSC; conditioning	07/03/2017
BB17595	CliniMACS® TCRaß/CD19 Combined Depletion System	08/09/2017
BB17601	Hemanext Red Blood Cell Processing System	08/16/2017
BB17615	The Tissue Genesis Icellator Cell Isolation System (Icellator)	08/17/2017
G140210	LABS ADHESION BARRIER	09/01/2017
G170039	Vas Q Device	08/01/2017
G170063	Vercise PC Deep Brain Stimulation System	07/21/2017
G170080	ZOLL Proteus Intravascular Temperature Management (IVTM) System	07/20/2017
G170086	AGNES	07/21/2017
G170104	Eximo Medical B-Laser Hybrid Atherectomy System	07/11/2017
G170106	EndoRotor	08/25/2017
G170113	Coherex WaveCrest Left Atrial Appendage Occlusion System	09/08/2017

IDE	Device	Start Date
G170122	DCB Drug Coated Balloon Catheter	08/24/2017
G170123	Medrobotics Flex System	07/28/2017
G170136	The Sprinter Over-the-Wire Semicompliant Balloon Dilatation Catheter	08/22/2017
G170145	novottf-200A	08/11/2017
G170149	SPRINT PNS System	07/03/2017
G170151	Bovie Ultimate Electrosurgical Generator; Bovie Ultimate Electrosurgical Generator; Bovie J-Plasma Precise Open handpieces; Bovie J-Plasma Precise Open handpieces	07/13/2017
G170153	JUVEDERM VOLUMA XC with cannula	07/12/2017
G170154	Randomized Trial of Hybrid Coronary Revascularization versus Percutaneous Coronary Intervention	07/14/2017
G170157	Theranova 400 Dialyzer	07/14/2017
G170160	Exablate Model 4000 Type-2 for Blood-Brain Barrier Disruption (BBBD)	09/29/2017
G170161	Chronic Venous Thrombosis: Relief with Adjunctive Catheter-Directed Therapy (C-TRACT) Trial	07/21/2017
G170162	Clotbust ER (Sonolysis Headframe System) Model 3.0C	09/17/2017
G170164	BOND MSLN (5B2) assay	07/20/2017
G170166	PASCAL Transcatheter Mitral Valve Repair System	07/25/2017
G170169	DISCSS Spinal Cord SCS System	07/28/2017
G170172	AcrySof IQ PanOptix Intraocular Lens	07/28/2017
G170173	LUM Imaging System	07/28/2017
G170174	Cartiva Synthetic Cartilage Implant for CMC	08/03/2017
G170175	AcrySof IQ Extended Depth of Focus (EDF) Intraocular Lens (IOL)	08/02/2017
G170184	Orion Visual Cortical Prothesis System	08/16/2017
G170185	NeuroStar TMS System	08/24/2017
G170191	LFP Beta aDBS System	08/24/2017
G170192	BabyGentleStick	08/30/2017
G170193	TULA System	08/30/2017
G170194	Model 1000C Generator; Model 3000C Programmer	09/01/2017
G170195	Oxiplex	08/31/2017
G170196	Valiant PS-IDE Stent Graft System with Captiva Delivery System	08/31/2017
G170197	LC Bead LUMI (BTG-004387)	08/31/2017
G170198	Exatherm TBH	08/23/2017
G170200	The Bidirectional Neural Bypass System	08/31/2017
G170202	ProSpace System	09/07/2017
G170208	ExAblate Model 4000 Type-1 ("ExAblate Neuro") System	09/15/2017
G170211	Belotero Balance Dermal Filler	09/15/2017
G170212	NeuroStar Transcranial Magnetic Stimulation (TMS) Therapy System	09/16/2017
G170221	FLExAbility Sensor Enabled Substrate Targeted Ablation for Reduction of VT (LESS-VT) Study	09/29/2017
G170222	Therasphere	09/27/2017
G170224	VENTANA HER2neu (4B5) IUO Assay; INFORM HER2	09/29/2017
	Dual ISH DNA Probe Cocktail IUO Assay	

Addendum VI: Approval Numbers for Collections of Information (July through September 2017)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (July through September 2017)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
Good Samaritan Hospital MultiCare Health System 401 15th Ave SE Puyallup, WA 98372	1841231461	07/13/2017	WA
UPMC Altoona 620 Howard Avenue Altoona, PA 16601-4899	1649278730	07/18/2017	PA
Chippenham and Johnston Willis Medical Center 7101 Jahnke Road Richmond, VA 23225	490112	08/15/2017	VA
St. Helena Hospital – Napa Valley 10 Woodland Road St. Helena, CA 94574	050013	08/15/2017	CA
Glens Falls Hospital	1871606764	08/15/2017	NY

Facility	Provider Number	Effective Date	State
100 Park Street Glens Falls, NY 12801			
Memorial Hospital West 703 North Flamingo Road Pembroke Pines, FL 33028	100281	08/15/2017	FL
The following facilities have editorial changes (in bold).			
FROM: Shands Hospital at the University of Florida **TO: UF Health Shands Hospital** 1600 SW Archer Road Gainesville, FL 32610	100113	06/29/2005	FL
Poplar Bluff Regional Medical Center **3100 Oak Grove Road** Poplar Bluff, MO 63901	260119	08/23/2005	MO
Mercy Hospital Joplin **100 Mercy Way** **Joplin, MO 64804-4524**	260001	04/19/2005	MO

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (July through September 2017)

Addendum VIII includes a list of the American College of Cardiology's National Cardiovascular Data Registry Sites. We cover implantable cardioverter defibrillators (ICDs) for certain clinical indications, as long as information about the procedures is reported to a central registry. Detailed descriptions of the covered indications are available in the NCD. In January 2005, CMS established the ICD Abstraction Tool through the Quality Network Exchange (QNet) as a temporary data collection mechanism. On October 27, 2005, CMS announced that the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD Registry satisfies the data reporting requirements in the NCD. Hospitals needed to transition to the ACC-NCDR ICD Registry by April 2006.

Effective January 27, 2005, to obtain reimbursement, Medicare NCD policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare NCD Manual, which is on the CMS website at http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the ACC-NCDR ICD registry. Therefore, for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry. The entire list of facilities that participate in the ACC-NCDR ICD registry can be found at www.ncdr.com/webncdr/common

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available by accessing our website and clicking on the link for the

American College of Cardiology's National Cardiovascular Data Registry at: www.ncdr.com/webncdr/common. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	City	State
The following facilities are terminations for this quarter.		
Gulf Pointe Surgery Center Termination date: 9/22/17. See case 00368616. They no longer perform these procedures.	Port Charlotte	FL
Lake Area Medical Center Termination date: 9/28/17. Please see case 00363080. They would like to terminate CathPCI and ICD because cardiology services at their facility were discontinued effective 7/1/17.	Lake Charles	LA
Doctor's Same Day Surgery Center Termination date: 9/20/17. See case 00368426. Providers no longer perform procedures.	Sarasota	FL

Addendum IX: Active CMS Coverage-Related Guidance Documents (July through September 2017)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at

http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X:
List of Special One-Time Notices Regarding National Coverage Provisions (July through September 2017)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (July through September 2017)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (July through September 2017)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact Linda Gousis, JD, (410-786-8616).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Beth Israel Deaconess Medical Center 330 Brookline Avenue Boston, MA 02215	22-0086	6/23/2107	MA
Mission Hospital 509 Biltmore Avenue Asheville, NC 28801-4690	34-0002	06/09/2016	NC
University Health Care System 1350 Walton Way Augusta, GA 30901	110028	08/16/2017	GA
Baystate Medical Center 759 Chestnut Street Springfield, MA 01199	22-0077	08/07/2017	MA

Facility	Provider Number	Date Approved	State
The following facilities have editorial changes (in bold).			
Fresno Community Hospital and Medical Center 2823 Fresno Street Fresno, CA 93721	**50060**	**12/14/2016**	CA
Maine Medical Center 22 Bramhall Street Portland, ME 04102	200009	**09/28/2016**	TX
Hackensack University Medical Center 30 Prospect Avenue Hackensack, NJ 07601	310001	**09/20/2017**	NJ
FROM : Banner Good Samaritan Medical Center **TO: Banner – University Medical Center Phoenix** 1111 East McDowell Road Phoenix, AZ 85006	030002	**07/26/2017**	AZ

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (July through September 2017)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no updates to the listing of facilities for lung volume reduction surgery published in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (July through September 2017)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS's minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (July through September 2017)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

[FR Doc. 2017–23447 Filed 10–26–17; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1076]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection in the guidance on ''Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice.''

DATES: Submit either electronic or written comments on the collection of information by December 26, 2017.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 26, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of December 26, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–N–1076 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites

comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

OMB Control Number 0910–0563—Extension

This information collection supports the guidance for industry on ''Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice.'' The guidance is available at: *https://www.fda.gov/downloads/drugs/guidances/ucm070279.pdf.* The guidance informs manufacturers of veterinary and human drugs, including human biological drug products, on how to resolve disputes about scientific and technical issues relating to current good manufacturing practice (CGMP). Disputes related to scientific and technical issues may arise during FDA inspections of pharmaceutical manufacturers to determine compliance with CGMP requirements or during FDA's assessment of corrective actions undertaken as a result of such inspections. The guidance provides procedures that encourage open and prompt discussion of disputes and lead to their resolution. The guidance describes procedures for raising such disputes to the Office of Regulatory Affairs (ORA) and center levels and for requesting review by the dispute resolution (DR) panel.

When a scientific or technical issue arises during an FDA inspection, the manufacturer should initially attempt to reach agreement on the issue informally with the investigator. Certain scientific or technical issues may be too complex or time consuming to resolve during the inspection. If resolution of a scientific or technical issue is not accomplished through informal mechanisms before the issuance of Form FDA 483, the manufacturer can formally request DR and use the two-tiered DR process described in the guidance.

Tier one of the formal DR process involves a manufacturer raising scientific or technical issues to the ORA and center levels. If a manufacturer disagrees with the tier-one decision, tier two of the formal DR process would then be available for appealing that decision to the DR panel. The written request for formal DR to the appropriate ORA unit should be made within 30 days of the completion of an inspection and should include all supporting documentation and arguments for review, as described in this document. The written request for formal DR to the DR panel should be made within 60 days of receipt of the tier-one decision and should include all supporting documentation and arguments, as described in this document.

All requests for formal DR should be submitted in writing and include adequate information to explain the nature of the dispute and to allow FDA to act quickly and efficiently. Each request should be sent to the appropriate address listed in the guidance and include the following elements:

- Cover sheet that clearly identifies the submission as either a tier-one or tier-two DR request.
- Name and address of manufacturer inspected (as listed on Form FDA 483).
- Date of inspection (as listed on Form FDA 483).
- Date Form FDA 483 was issued (as listed on Form FDA 483).
- Facility Establishment Identifier number, if available (as listed on Form FDA 483).
- Names and titles of FDA employees who conducted inspection (as listed on Form FDA 483).
- Office responsible for the inspection (*e.g.,* district office, as listed on Form FDA 483).
- Application number if the inspection was a preapproval inspection.
- Comprehensive statement of each issue to be resolved:
  - Identify the observation in dispute.
  - Clearly present the manufacturer's scientific position or rationale concerning the issue under dispute with any supporting data.
  - State the steps that have been taken to resolve the dispute, including any informal DR that may have occurred before the issuance of Form FDA 483.
  - Identify possible solutions.
  - State expected outcome.
- Name, title, telephone and fax numbers, and email address (as available) of manufacturer contact.

The guidance responds to industry's request for a formal DR process to resolve differences related to scientific and technical issues that arise between investigators and pharmaceutical manufacturers during FDA inspections of foreign and domestic manufacturers. In addition to encouraging manufacturers to use currently available DR processes, the guidance describes the formal two-tiered DR process explained previously. The guidance also covers the following topics:

- Suitability of certain issues for the formal DR process, including examples, with a discussion of their appropriateness for the DR process.
- Instructions on how to submit requests for formal DR, and a list of the supporting information that should accompany these requests.
- Public availability of decisions reached during the DR process to promote consistent application and interpretation of regulations related to drug quality.

We estimate the burden for the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Annual frequency per response	Total annual responses	Average burden per response	Total hours
Requests for tier-one DR	2	1	2	30	60
Requests for tier-two DR	1	1	1	8	8
Total					68

[1] There are no capital costs or operating and maintenance costs associated with this collection.

As reflected in table 1, we estimate two manufacturers will submit two requests annually for tier-one DR, and that there will be one appeal of these requests to the DR panel (tier-two DR). We estimate also that it will take manufacturers approximately 30 hours to prepare and submit each request for a tier-one DR, and approximately 8 hours to prepare and submit each request for a tier-two DR. Based on our experience with this collection we have not changed our estimate since our last request for OMB approval.

Dated: October 24, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23444 Filed 10–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3710]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Evaluation of the Food and Drug Administration's Education at the Point of Sale Campaign

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 27, 2017.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910—NEW and title ''Evaluation of FDA's Education at the Point of Sale Campaign.'' Also, include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Evaluation of FDA's Education at the Point of Sale Campaign OMB Control Number 0910—NEW

The 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health and to reduce tobacco use by minors. Section 1003(d)(2)(D) of the FD&C Act (21 U.S.C. 393(d)(2)(D)) supports the development and implementation of FDA public education campaigns related to tobacco use. Accordingly, FDA is currently developing and implementing a tobacco education intervention at the point of sale to reduce the public health burden of tobacco use. The campaign features advertisements intended to encourage future quit attempts among current smokers in stores that sell tobacco products.

In support of the provisions of the Tobacco Control Act that require FDA to protect the public health, FDA requests OMB approval to collect information to evaluate the effectiveness of the point of sale tobacco education campaign. Data from this outcome evaluation study will be used to examine statistical associations between exposure to the campaign and specific outcomes of interest, which include awareness of the campaign and its messaging, tobacco-related attitudes, beliefs and risk perceptions, and motivation to quit smoking.

Evaluation is an essential organizational practice in public health and a systematic way to account for and improve public health actions. Comprehensive evaluation of FDA's public education campaigns will be used to document whether the intended audience is aware of and understands campaign messages, and whether campaign exposure influences tobacco-related attitudes, beliefs and risk perceptions, intentions to use tobacco, and motivation to quit smoking. Participation in the outcome evaluation study will be voluntary. All of the information collected is integral to that evaluation.

Evaluation of the Point of Sale Campaign. This outcome evaluation study will consist of four longitudinal data collection periods over 24 months (approximately every 7 months), with the first survey (Wave 1) occurring approximately 3 months after campaign launch. A fourth wave of data collection has been added to the three proposed in the 60-day notice because the campaign has been extended from 18 to 24 months. The additional wave of data collection is necessary to continue to assess the impact of the campaign. To reduce the number of participants needed to detect the effects of the campaign on outcomes of interest, the design of the campaign was changed from two treatment groups and one control group to one treatment group and one control group. The respondent numbers and burden hours below have been revised to reflect the four data collection waves and the change in the number of treatment groups.

Information will be collected from adult cigarette smokers, ages 25 to 54, about awareness of and exposure to campaign advertisements, tobacco use, and knowledge, attitudes, and beliefs related to tobacco use. Information will be collected on demographic variables including age, sex, race/ethnicity, and primary language. Participants will also be offered the option to download a smartphone application that will track their exposure to the campaign, and that will ask them to respond to a brief survey about every 6 months over 18 months.

FDA's media contractor identified 37 potential counties for the campaign. From this list, FDA's evaluation contractor has selected 30 counties to be included in the evaluation. Of these, 15 counties will receive the intervention (treatment counties), and 15 counties will not receive it (control counties). The number of counties has changed since the 60-day notice because we changed the experimental design to have one treatment group instead of two, which resulted in needing fewer counties.

Data will be collected from a longitudinal cohort that will consist of an entirely new sample of adult cigarette smokers. Addresses will be randomly selected from postal carrier routes in the 30 selected U.S. counties to identify households that contain one or more adult smokers between the ages of 25 and 54. Pre-paid pre-addressed paper screening surveys will be mailed to approximately 104,541 households. We estimate that 27,651 (9,217 annualized respondents) households will return the 10-minute screener they received by mail, and 26,258 (8,753

annualized respondents) households will complete a 10-minute in-person field screener conducted by trained field interviewers. Field interviewers will attempt to conduct field screeners for all households that return the mail screener and appear to have one or more eligible participants in the household, and a subsample of the households that do not return the screener. At 10 minutes per screening, the potential burden hours for the mail screener are 4,701 hours (1,567 annualized). At 10 minutes per screening, the potential burden hours for the field screener are 4,464 hours (1,488). The process for locating and screening participants has been updated since the 60-day notice to better reflect the study design.

Accounting for nonresponse, we estimate that the mail and field screenings will result in 4,282 (1,427 annualized) adults who meet criteria for participation and complete the full Wave 1 questionnaire. The Wave 1 questionnaire will be completed during an in-person visit to the home, immediately after the field screening is completed, assuming the selected participant is available to complete the questionnaire at that time. If the participant is not available at that time, the interviewer will schedule a time to return to the household and complete the evaluation questionnaire in person. We estimate that the Wave 1 questionnaire will take 40 minutes to complete, resulting in 2,869 (956 annualized) burden hours. Adjusting for loss to follow-up between waves, we anticipate that 3,426 (1,142 annualized) participants will complete the Wave 2 questionnaire, which will take 40 minutes and result in 2,295 (765 annualized) burden hours, that 2,912 (971 annualized) participants will complete the Wave 3 questionnaire, which will take 40 minutes and result in 1,951 (650 annualized) burden hours, and that 2,475 (825 annualized) participants will complete the Wave 4 questionnaire, which will take 40 minutes and result in 1,658 (553 annualized) burden hours. The Waves 2, 3, and 4 questionnaires will be completed online or in person by trained interviewers, depending on participant preference. The total burden hours for Waves 2 to 4 evaluation questionnaires will be 5,904 (1,968 annualized).

We anticipate that approximately 54 percent of the participants (2,308 people (769 annualized)) who complete the Wave 1 questionnaire will download a smartphone application that will deliver brief app-based questionnaires to them in between the four waves of evaluation data collection. These participants will complete three questionnaires lasting 5 minutes each (every 6 months over the course of 18 months), resulting in 554 (185 annualized) burden hours. The app will also use geolocation technology to record participants' visits to convenience stores as a measure of passive campaign exposure.

In addition, over the course of the study, telephone verification questionnaires will be conducted with a small portion of participants. The purpose of these questionnaires is to ensure that information obtained by field interviewers is correct, to evaluate the performance of field interviewers, to avoid fraud, and to ensure that all relevant incentives were delivered. Trained staff will administer a 5-minute verification questionnaire to a random sample of 10 percent of participants who completed the in-person screening but not the Wave 1 questionnaire (2,198 individuals (733 annualized)), and a random sample of 10 percent of participants who completed the Waves 1 to 4 questionnaires (1,308 individuals (436 annualized)). At 5 minutes per verification questionnaire, this results in 177 burden hours (59 annualized) for the field screener telephone verifications and 105 burden hours (35 annualized) for the four evaluation questionnaire telephone verifications. Some telephone verification questionnaires may be administered in person if it is not possible to reach the individual by phone. This verification process has been added to the information collection request since the 60-day notice to prevent fraudulent data entry by interviewers.

In addition to the telephone verification survey, we will also audio record (with participants' consent) interviews with a random sample of approximately 10 percent of respondents to the Wave 1 questionnaire and a random 10 percent of the Waves 2, 3, and 4 respondents who complete the questionnaire in person as an additional quality control measure. These recordings will be used to measure interviewer compliance with study procedures and will be destroyed after they are reviewed. This procedure does not affect participant burden.

The total burden hours for the mail and field screeners, four outcome evaluation questionnaires, three app-based questionnaires, and four telephone verification questionnaires is 18,773 (6,258 annualized).

In the **Federal Register** of November 15, 2016 (81 FR 80075), FDA published a 60-day notice requesting public comment on the proposed collection of information. Two comments were received; however, only one was PRA-related.

Comment: One comment stated that requiring or compelling retailers to display ''anti-smoking or anti-tobacco advocacy'' is prohibited under the First Amendment. If the campaign is deemed unconstitutional, then there is no need for the information collection.

Response: The comment misunderstands how FDA intends to carry out this public education campaign. FDA intends to purchase advertising space from retailers on a voluntary basis and will not require that retailers participate in the campaign. Therefore, the comment raises an issue that is outside the scope of this proposed information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent	Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Households (adults 18 and up)	Mail screener	9,217	1	9,217	0.17 (10 minutes)	1,567
	Field screener	8,753	1	8,753	0.17 (10 minutes)	1,488
	Telephone verification, field screener	733	1	733	0.08 (5 minutes)	59
Adult smokers, ages 25 to 54	Wave 1 questionnaire	1,427	1	1,427	0.67 (40 minutes)	956
	Wave 2–4 questionnaires	2,938	1	2,938	0.67 (40 minutes)	1,968
	Telephone verification, questionnaires 1–4	436	1	436	0.08 (5 minutes)	35
Study participants (opt in)	App-based questionnaire	769	3	2,308	0.08 (5 minutes)	185
Total						6,258

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 24, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23450 Filed 10–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6145]

Agency Information Collection Activities; Proposed Collection; Comment Request; Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the dispute resolution procedures for science-based decisions on products regulated by the Center for Veterinary Medicine (CVM).

DATES: Submit either electronic or written comments on the collection of information by December 26, 2017.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 26, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of December 26, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2017–N–6145 for ''Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether

the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by CVM—21 CFR Section 10.75

OMB Control Number 0910–0566—Extension

CVM's Guidance for Industry (GIF) #79, ''Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine'' (*https://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM052393.pdf*), describes the process by which CVM formally resolves disputes relating to scientific controversies. A scientific controversy involves issues concerning a specific product regulated by CVM related to matters of technical expertise and requires specialized education, training, or experience to be understood and resolved. The guidance details information on how CVM intends to apply provisions of existing regulations regarding internal review of Agency decisions. In addition, the guidance outlines the established procedures for persons who are sponsors, applicants, or manufacturers of animal drugs or other products regulated by CVM that wish to submit a request for review of a scientific dispute. When a sponsor, applicant, or manufacturer has a scientific disagreement with a written decision by CVM, they may submit a request for a review of that decision by following the established procedures discussed in the guidance.

CVM encourages applicants to begin the resolution of science-based disputes with discussions with the review team/group, including the Team Leader or Division Director. The Center prefers that differences of opinion regarding science or science-based policy be resolved between the review team/group and the applicant. If the matter is not resolved by this preferred method then CVM recommends that the applicant follow the procedures in GFI #79.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
10.75, Request for review of a scientific dispute	1	4	4	10	40

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the next 3 years, CVM anticipates receiving one or fewer requests for review of a scientific dispute per year, on average. We base our estimate on CVM's experience over the past 6 years in handling formal appeals for scientific disputes. The burden of this collection has changed. The number of respondents decreased from two to one annually, the number of responses per respondent remained at four annually, the hours per response remained at 10 annually, and the total number of hours decreased from 80 to 40. This decrease in the total hours is the result of a natural fluctuation in the number of respondents taking advantage of this dispute resolution process.

Dated: October 24, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23445 Filed 10–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5912]

Pediatric Gastroesophageal Reflux Disease: Developing Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Pediatric Gastroesophageal Reflux Disease: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in the clinical development of drugs for the treatment of gastroesophageal reflux disease (GERD) in the pediatric patient population, including guidance on clinical presentation by age and disease, study populations, endpoints, and pharmacometric issues affecting dosing.

DATES: Submit either electronic or written comments on the draft guidance by December 26, 2017 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, 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–2017–D–5912 for ''Pediatric Gastroesophageal Reflux Disease: Developing Drugs for Treatment; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Stacy Barley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 2642, Silver Spring, MD 20993–0002, 301–796–2137.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Pediatric Gastroesophageal Reflux Disease: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in the clinical development of drugs for the treatment of GERD in the pediatric patient population, including guidance on clinical presentation by age and disease, study populations, endpoints, and pharmacometric issues affecting dosing.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the development of drugs for the treatment of GERD in the pediatric patient population. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: October 23, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23436 Filed 10–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5896]

Patient-Focused Drug Development: Guidance 1—Collecting Comprehensive and Representative Input; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to convene a discussion on methodological approaches that a person seeking to collect patient experience data for submission to FDA to inform regulatory decision making may use. The methods and approaches would be considered relevant and objective, and ensure that collected data are accurate and representative of the intended population, including methods to collect meaningful patient input throughout the drug development process and methodological considerations for data collection, reporting, management, and analysis. This workshop will inform development of patient-focused drug development

guidance as required by the 21st Century Cures Act (Cures Act), and as part of commitments made by FDA under the sixth reauthorization of the Prescription Drug User Fee Act (PDUFA VI). FDA will publish a discussion document approximately 1 month before the workshop date. FDA is interested in seeking information and comments on the approaches proposed in the discussion document. FDA is also interested in input on examples where the approaches proposed in the discussion document have been successfully applied that could be illustrated in the draft guidance.

DATES: The public workshop will be held on December 18, 2017, from 9 a.m. to 5 p.m. Submit either electronic or written comments on this public workshop by February 16, 2018. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public workshop 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.* Workshop updates, agenda, and discussion document will be made available at: *https://www.fda.gov/Drugs/NewsEvents/ucm574725.htm* prior to the workshop.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 16, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of February 16, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2017–N–5896 for ''Patient-Focused Drug Development: Guidance 1—Collecting Comprehensive and Representative Input; Public Workshop; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Meghana Chalasani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 240–402–6525, Fax: 301–847–8443, *Meghana.Chalasani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This public workshop is intended to support FDA implementation of requirements for guidance development under section 3002 of the Cures Act and to meet a performance goal included in the sixth reauthorization of PDUFA VI. This reauthorization, part of the FDA Reauthorization Act of 2017 (FDARA) signed by the President on August 18, 2017, includes a number of performance goals and procedures that are documented in the PDUFA VI Commitment Letter, which is available at *https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM511438.pdf.*

Section 3002 of Title III, Subtitle A of the Cures Act directs FDA to develop patient-focused drug development guidance to address a number of areas including under section 3002(c)(1): Methodological approaches, which are relevant and objective and ensure that such data are accurate and representative of the intended population, that a person seeking to

collect patient experience data to inform regulatory decision making may use.

In addition, FDA committed to meet certain performance goals under PDUFA VI. These goal commitments were developed in consultation with patient and consumer advocates, health care professionals, and other public stakeholders, as part of negotiations with regulated industry. Section J.1 of the commitment letter, ''Enhancing the Incorporation of the Patient's Voice in Drug Development and Decision-Making,'' (*https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM511438.pdf*) outlines work, including the development of a series of guidance documents and associated public workshops to facilitate the advancement and use of systematic approaches to collect and utilize robust and meaningful patient and caregiver input that can more consistently inform drug development, and, as appropriate, regulatory decision making.

Prior to the issuance of each guidance, as part of the development, FDA will conduct a public workshop to gather input from the wider community of patients, patient advocates, academic researchers, expert practitioners, drug developers, and other stakeholders.

II. Purpose and Scope of Meeting

FDA is announcing a public workshop to convene a discussion on topics related to approaches to collecting comprehensive and representative patient and caregiver input on burden of disease and current therapy. The purpose of this public workshop is to obtain feedback from stakeholders on considerations for: (1) Standardized nomenclature and terminologies for patient-focused drug development, (2) methods to collect meaningful patient input throughout the drug development process, and (3) methodological considerations for data collection, reporting, management, and analysis of patient input. FDA is seeking information and comments from a broad range of stakeholders, including patients, patient advocates, academic and medical researchers, expert practitioners, drug developers, and other interested persons. FDA will publish a discussion document outlining the topic areas that will be addressed in the draft guidance. This document will be published approximately 1 month before the workshop date on the Web site at: *https://www.fda.gov/Drugs/NewsEvents/ucm574725.htm.* FDA is interested in seeking information and comments on the approaches and considerations proposed in the discussion document, as well as the examples provided. FDA is also interested in seeking information and comments on additional examples where the approaches proposed in the discussion document have been successfully applied that could be included in guidance. After this public workshop, FDA will take into consideration the stakeholder input from the workshop and the public docket, and publish a draft guidance by the end of the third quarter of fiscal year 2018.

Registration: Interested parties are encouraged to register early. To register electronically, please visit: *https://pfdd.eventbrite.com.* Persons without access to the internet can call 240–402–6525 to register. If you are unable to attend the meeting in person, you can register to view a live webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the webcast. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability.

If you need special accommodations because of a disability, please contact Meghana Chalasani (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

Request for Oral Presentations: There will be time allotted during the workshop for open public comment. Sign-up for this session will be on a first-come, first-serve basis on the day of the workshop. Individuals and organizations with common interests are urged to consolidate or coordinate, and request time for a joint presentation. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Transcripts: As soon as a transcript is available, FDA will post it at *https://www.fda.gov/Drugs/NewsEvents/ucm574725.htm.*

Dated: October 23, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23437 Filed 10–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–P–2660]

Determination That CARDENE SR (Nicardipine HCl) Extended-Release Capsules, 30 Milligrams, 45 Milligrams, and 60 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that CARDENE SR (nicardipine HCl) extended-release capsules, 30 milligrams (mg), 45 mg, and 60 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for nicardipine HCl extended-release capsules, 30 mg, 45 mg, and 60 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Daniel Gottlieb, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6208, Silver Spring, MD 20993–0002, 301–796–6650.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the listed drug, which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is known generally as the Orange Book. Under FDA regulations, drugs are removed from the list if the Agency

withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

CARDENE SR (nicardipine HCl) extended-release capsules, 30 mg, 45 mg, and 60 mg, are the subject of NDA 020005, initially approved on February 21, 1992. CARDENE SR is indicated for the treatment of hypertension.

In a letter dated September 15, 2014, EKR Therapeutics, Inc., requested withdrawal of NDA 020005 for CARDENE SR (nicardipine HCl) extended-release capsules, 30 mg, 45 mg, and 60 mg. In the **Federal Register** of October 4, 2016 (81 FR 68427), FDA announced that it was withdrawing approval of NDA 020005, effective November 3, 2016.

Jubilant Generics submitted a citizen petition dated April 27, 2017 (Docket No. FDA–2017–P–2660), under 21 CFR 10.30, requesting that the Agency determine whether CARDENE SR (nicardipine HCl) extended-release capsules, 30 mg, 45 mg, and 60 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that CARDENE SR (nicardipine HCl) extended-release capsules, 30 mg, 45 mg, and 60 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that CARDENE SR (nicardipine HCl) extended-release capsules, 30 mg, 45 mg, and 60 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of CARDENE SR (nicardipine HCl) extended-release capsules, 30 mg, 45 mg, and 60 mg from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list CARDENE SR (nicardipine HCl) extended-release capsules, 30 mg, 45 mg, and 60 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to CARDENE SR (nicardipine HCl) extended-release capsules, 30 mg, 45 mg, or 60 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: October 24, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23438 Filed 10–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0487]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 27, 2017.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0697. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

OMB Control Number 0910–0697—Extension

The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This voluntary feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address the following: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate,

methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

In the **Federal Register** of June 15, 2017 (82 FR 27508), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus groups	800	1	800	1.75	1,400
Customer comment cards/forms	1,325	1	1,325	0.25 (15 minutes)	331.25
Small discussion groups	800	1	800	1.75	1,400
Customer satisfaction surveys	12,000	1	12,000	0.33 (20 minutes)	3,960
Usability studies	800	1	800	1.75	1,400
Total					8,491.25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 24, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–23443 Filed 10–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Teleconference

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following Subcommittee meetings of the National Committee on Vital and Health Statistics to be held virtually.

Name: National Committee on Vital and Health Statistics (NCVHS), Virtual Meetings of the Subcommittee.

Dates and Times:

NCVHS Population Health Subcommittee; Tuesday, November 28, 2017: 9:00 a.m.—1:00 p.m. ET

NCVHS Privacy, Confidentiality, and Security Subcommittee; Tuesday, November 28, 2017: 1:30 p.m.—5:30 p.m. ET

NCVHS Standards Subcommittee; Wednesday, November 29, 2017: 1:00 p.m.—5:00 p.m. ET

Place: WebEx/teleconference—To participate in the virtual meeting, please use the following URL *http://www.ncvhs.hhs.gov/* that points to the NCVHS homepage. Further information and meeting agendas will be available on the NCVHS Web site including instructions for accessing the live meeting broadcast.

Status: Open by WebEx/teleconference. There will be an open comment period during the final 10 minutes of each of the three virtual meetings where the public can provide comments via the WebEx on-line meeting interface. Written comments may also be provided to the Executive Secretary at the contact information provided below.

Purpose: The NCVHS virtual meeting of the Population Health Subcommittee will convene to discuss: (1) Follow up work on the NCVHS September 11–12, 2017 Next Generation Vital Statistics Hearing, including the draft hearing report and follow up analyses being conducted on the Committee's behalf, and; (2) topics and projects to be considered for the 2018 workplan.

The NCVHS virtual meeting of the Privacy, Confidentiality and Security Subcommittee will convene to discuss a draft environmental scan report of the health information privacy and security landscape in the U.S. that extends beyond HIPAA. This will include formal presentations from invited experts to further inform the draft environmental scan research being conducted on the Committee's behalf. The agenda also will include discussion of privacy-related topics under consideration for the 2018 workplan.

The NCVHS virtual meeting of the Standards Subcommittee will convene to consider the Subcommittee's workplan and high level milestones for three possible projects in 2018: (1) A Chief Information Officer (CIO) Forum; (2) the challenge of patient identification and matching for healthcare providers and patients; and (3) potential guidance pertaining to the prior authorization transaction. In addition, CMS will provide a briefing to the Subcommittee on the New Medicare Card Project.

For more Information Contact: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the NCVHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Dated: October 23, 2017.

Laina Bush,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2017–23358 Filed 10–26–17; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–1059]

Towing Safety Advisory Committee; December 2017 Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Towing Safety Advisory Committee and its Subcommittees will meet in New Orleans, Louisiana to review and discuss recommendations from its Subcommittees and to receive briefs on items listed in the agenda under **SUPPLEMENTARY INFORMATION**. All meetings will be open to the public.

DATES:

Meetings. The Subcommittees of the Towing Safety Advisory Committee will

meet on Tuesday, December 5, 2017 from 8 a.m. to 5 p.m. to conduct working group sessions. The full Committee will meet on Wednesday, December 6, 2017, from 8 a.m. to 5 p.m. These meetings may end early if the Committee has completed its business, or the meetings may be extended based on the number of public comments.

Comments and supporting documentation. Submit your comments no later than November 21, 2017.

ADDRESSES: All meetings will be held at the Omni Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, Louisiana 70130; *https://www.omnihotels.com/hotels/new-orleans-riverfront.*

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Written comments must be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comment submission, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Instructions: You are free to submit comments at any time, including orally at the meetings, but if you want Committee members to review your comment before the meetings, please submit your comments no later than November 21, 2017. We are particularly interested in comments on the issues in the ''Agenda'' section below. You must include ''Department of Homeland Security'' and the docket number USCG–2016–1059. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review the Privacy Act and Security Notice for the Federal Docket Management System at *https://www.regulations.gov/privacyNotice.*

Docket Search: For access to the docket or to read documents or comments related to this notice, go to *http://www.regulations.gov,* insert USCG–2016–1059 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Commander Jose Perez, Designated Federal Officer of the Towing Safety Advisory Committee, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509; telephone 202–372–1410, fax 202–372–8382 or email *jose.a.perez3@uscg.mil,* or Mr. Kenneth Doyle, telephone 202–372–1363 or email *kenneth.j.doyle@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* Title 5 United States Code Appendix. The Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

Agenda of Meetings

On December 5 and 6, 2017, from 8 a.m. to 5 p.m. the Towing Safety Advisory Committee and its subcommittees will meet to review, discuss, deliberate, and formulate recommendations, as appropriate, on the following:

(1) Current Subcommittees

a. Articulated Tug and Barge Operations and Manning (Task 15–02)
b. Subchapter M Implementation (Task 16–01)
c. Inland Firefighting (Task 16–02)
d. Towing Liquefied Natural Gas Barges (Task 16–03)
e. Regulatory Reform (Task 17–01)

(2) Proposed New Subcommittee and Task

a. Load Line Exemption for River Barges on Lakes Erie and Ontario (Task 17–02)

A copy of all meeting documentation, including any draft final reports, will be available at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/tsac/meetings-minutes* no later than November 28, 2017. Alternatively, you may contact Mr. Kenneth Doyle as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: 23 October 2017.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2017–23382 Filed 10–26–17; 8:45 am]

BILLING CODE 9110–04–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: November 6, 2017, 1:30 p.m.–5:00 p.m.

PLACE: Offices of Baker/McKenzie LLP, 815 Connecticut Avenue NW., Washington, DC 20006.

STATUS: Meeting of the Board of Directors with the Advisory Council, Open to the public.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the meetings held in April, May, and September 2017
- Advisory Council Membership Update
- Management Report
- IAF Mexico Earthquake Response
- New Business
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Paul Zimmerman, General Counsel, (202) 683–7118.

Paul Zimmerman,

General Counsel.

[FR Doc. 2017–23545 Filed 10–25–17; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2017–N130; FXES11140400000–178–FF04E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given in **ADDRESSES** by November 27, 2017.

ADDRESSES: *Reviewing Documents:* Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for

a copy of such documents to the following office within 30 days of the date of publication of this notice (see **DATES**): U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

Submitting Comments: If you wish to comment, you may submit comments by any one of the following methods:

- *U.S. mail or hand-delivery:* U.S. Fish and Wildlife Service's Regional Office (see above).
- *Email: permitsR4ES@fws.gov.*

Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 404–679–7097 (telephone) or 404–679–7081 (fax).

SUPPLEMENTARY INFORMATION: We invite review and comment from local, State, and Federal agencies and the public on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. With some exceptions, the ESA prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Applications

Permit application No.	Applicant	Species/numbers	Location	Activity	Type of take	Permit action
TE 049502–8	Carola A. Haas, Blacksburg, VA.	Reticulated flatwoods salamander (*Ambystoma bishopi*).	Eglin Air Force Base and Apalachicola National Forest, Florida.	Research on habitat use, population dynamics, landscape genetic analyses, and population augmentation.	Take tail clips from larvae and terrestrial salamanders; remove eggs and larvae from ponds for head-starting in cattle tanks on site and release following metamorphosis.	Amendment.
TE 070800–4	Ecological Solutions, Inc., Roswell, GA.	Alabama red-bellied turtle (*Pseudemys alabamensis*), eastern indigo snake (*Drymarchon corais couperi*), flattened musk turtle (*Sternotherus depressus*), gopher tortoise (*Gopherus polyphemus*), amber darter (*Percina antesella*), blue shiner (*Cyprinella caerulea*), Cherokee darter (*Etheostoma scotti*), Etowah darter (*Etheostoma etowahae*), goldline darter (*Percina aurolineata*), rush darter (*Etheostoma phytophilum*), snail darter (*Percina tanasi*), spring pygmy sunfish (*Elassoma alabamae*), vermilion darter (*Etheostoma chermocki*), Alabama pearlshell (*Margaritifera marrianae*), Choctaw bean (*Villosa choctawensis*), Cumberland bean (*Villosa trabalis*), fuzzy pigtoe (*Pleurobema strodeanum*), Georgia pigtoe (*Pleurobema hanleyianum*), narrow pigtoe (*Fusconaia escambia*), rabbitsfoot (*Quadrula cylindrica cylindrica*), round ebonyshell (*Fusconaia rotulata*), sheepnose mussel (*Plethobasus cyphyus*), slabshell pearlymussel (*Pleuronaia dolabelloides*), snuffbox mussel (*Epioblasma triquetra*), southern kidneyshell (*Ptychobranchus jonesi*), southern sandshell (*Hamiota australis*), spectaclecase (*Cumberlandia monodonta*), tapered pigtoe (*Fusconaia burkei*), and rough hornsnail (*Pleurocera foremani*).	AL, FL, GA, NC, SC, and TN.	Presence/absence surveys.	Scope burrows, capture, handle, release.	Renewal and Amendment.

Permit application No.	Applicant	Species/numbers	Location	Activity	Type of take	Permit action
TE 171545–3	Ronald K. Redman, Benton, AR.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), Virginia big-eared bat (*C. t. virginianus*).	AL, AR, CO, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VT, VA, WV, WI.	Presence/absence surveys and white-nose syndrome research.	Enter hibernacula or maternity roost caves, capture with mist nets or harp traps, handle, identify, band, radio-tag, wing-punch, and hold temporarily.	Renewal and Amendment.
TE 070796–9	Apogee, Inc., Whitesburg, KY.	Ozark big-eared bat (*Corynorhinus townsendii ingens*).	AR, MO, OK	Presence/absence surveys.	Capture with mist nets or harp traps, handle, collect hair samples, band, radio-tag, light-tag, and wing-punch.	Amendment.
TE 71854A–1	David Eargle, South Carolina DHEC Bureau of Water, Columbia, SC.	Carolina heelsplitter (*Lasmigona decorata*).	NC, SC	Presence/absence surveys and collection of relic shells.	Capture, handle, release, salvage shells.	Renewal.
TE 05565B–1	UT-Battelle Corp., Oak Ridge, TN.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*).	Oak Ridge Reservation, Tennessee.	Presence/absence surveys.	Enter hibernacula or maternity roost caves, salvage dead bats, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio-tag, light-tag, and wing-punch.	Renewal and Amendment.
TE 65968A–1	Richard J. Dickey, Tallahassee, FL.	Alabama pearlshell (*Margaritifera marrianae*), Chipola slabshell (*Elliptio chipolaensis*), Choctaw bean (*Villosa choctawensis*), fat threeridge (*Amblema neislerii*), fuzzy pigtoe (*Pleurobema strodeanum*), Gulf moccasinshell (*Medionidus penicillatus*), narrow pigtoe (*Fusconaia escambia*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), purple bankclimber (*Elliptoideus sloatianus*), round ebonyshell (*Fusconaia rotulata*), shinyrayed pocketbook (*Lampsilis subangulata*), southern kidneyshell (*Ptychobranchus jonesi*), southern sandshell (*Hamiota australis*), Suwannee moccasinshell (*Medionidus walkeri*), and tapered pigtoe (Fusconaia burkei).	AL, FL, GA	Presence/absence surveys.	Capture, identify, and release.	Renewal and Amendment.
TE 37219B–1	Roger W. Perry, USDA Forest Service, Hot Springs, AR.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*).	AR, LA, OK, TX	Presence/absence surveys and studies to document habitat use.	Enter hibernacula or maternity roost caves, salvage dead bats, capture with mist nets, handle, identify, collect hair samples, band, radio-tag, light-tag, wing-punch, and selectively euthanize.	Amendment.
TE 79580A–3	Jason M. Butler, Midway, KY.	Indiana bat (*Myotis sodalis*) and northern long-eared bat (*M. septentrionalis*).	VA	Presence/absence surveys.	Enter hibernacula or maternity roost caves, salvage dead bats, capture with mist nets or harp traps, handle, identify, band, and radio-tag.	Amendment.

Permit application No.	Applicant	Species/numbers	Location	Activity	Type of take	Permit action
TE 034476–4	Florida Forest Service, Blackwater Forestry Center, Milton, FL.	Red-cockaded woodpecker (*Picoides borealis*).	Blackwater River State Forest, Florida.	Population management and monitoring.	Install artificial nest cavities and restrictors, monitor nest cavities, capture, band, and translocate.	Renewal and Amendment.

Authority: We provide this notice under section 10(c) of the Act.

Dated: September 7, 2017.

Aaron L. Valenta,

Acting Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2017–23390 Filed 10–26–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD06000.51010000. ER0000.LVRWB17B5480 17X5017AP; CACA41880]

Notice of Availability of the Draft Supplemental Environmental Impact Statement and Environmental Impact Report and Draft Land Use Plan Amendment for the Palen Solar Photovoltaic Project, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Amendment to the California Desert Conservation Area (CDCA) Plan and a Draft Supplemental Environmental Impact Statement (EIS) for the Palen Solar Photovoltaic (PSP) Project and by this Notice is announcing the opening of the comment period. This document is also an Environmental Impact Report (EIR) prepared by Riverside County under the California Environmental Quality Act (CEQA).

DATES: To ensure that all comments will be considered, the BLM must receive written comments on the Draft Supplemental EIS/EIR within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, on the project Web site, and/or mailings.

ADDRESSES: You may submit comments related to the PSP Project by any of the following methods:

Web site: https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=68122.

Email: palensolar@blm.gov.

Mail: Palen Solar PV Project, c/o Aspen Environmental Group, 235 Montgomery Street, Suite 935, San Francisco, CA 94104

Copies of the Draft Supplemental EIS/EIR are available in the BLM-Palm Springs South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262, and at the BLM California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553, and electronically on the project Web site. Compact Disc copies of the document are available through request on this project Web site address.

FOR FURTHER INFORMATION CONTACT: Mark DeMaio, BLM Project Manager, telephone: (760) 833–7124; address: BLM, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262; email: *mdemaio@blm.gov.*

Persons who use telecommunication devices for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or questions with the above individual regarding the project. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: EDF Renewable Energy has applied for a Right-of-Way (ROW) from the BLM to construct, operate, maintain, and decommission a 500 megawatt (MW) solar photovoltaic facility near Desert Center, Riverside County, California. The ROW application area comprises about 4,200 acres, with a proposed project footprint of about 3,400 acres. The proposed project also includes construction of a 6.7-mile single circuit 230 kilovolt generation interconnection (gen-tie) transmission line connecting the project to the Southern California Edison (SCE) Red Bluff Substation.

The BLM is also considering an amendment to the CDCA Plan that would be necessary to authorize the project. This is a joint EIS/EIR for compliance with NEPA and CEQA. Riverside County is the lead agency under CEQA.

This Project application was originally submitted in 2007 as the Palen Solar Power Project (PSPP) by Palen Solar I, LLC (PSI), a wholly owned subsidiary of Solar Millennium. The PSPP was proposed as a solar trough project, and was the subject of an EIS under NEPA. The BLM, pursuant to its obligations under FLPMA and NEPA, published a Draft EIS, followed by a Proposed Resource Management Plan Amendment (RMP) and Final EIS on May 13, 2011 (76 FR 28064).

Before the BLM issued a Record of Decision (ROD), PSI informed the BLM that it would not construct the Project due to bankruptcy. As a result, the BLM did not issue a ROD, did not amend the RMP, and did not issue a ROW grant for the PSPP.

On June 21, 2012, the bankruptcy court approved the transfer of the application from PSI to Palen Solar III, LLC (PSIII). BrightSource Energy Inc., (BSE) then acquired all rights to PSIII at auction. PSIII submitted a revised ROW application to the BLM for the Palen Solar Electricity Generating System Project (PSEGS), a 500 MW concentrating solar power tower technology facility and single-circuit 230 kV gen-tie line. On July 27, 2013, the BLM issued a Draft Supplemental EIS and Plan Amendment to evaluate the potential additional environmental impacts caused by PSEGS. As part of the State permitting process, the California Energy Commission evaluated the PSEGS under CEQA, and issued Preliminary and Final Staff Assessments for the amended project in June and November of 2013, respectively.

The BLM did not issue a Final Supplemental EIS for the PSEGS Project because BSE and its partner, Abengoa Solar Inc., abandoned the State authorization proceedings at the California Energy Commission. In December 2015, EDF Renewable Energy acquired the PSEGS project. EDF Renewable Energy has submitted a revised ROW application for the Proposed Project, which is analyzed in

this Draft Supplemental EIS/EIR and Draft Plan Amendment.

For the PSP Project, the BLM held public meetings on the revised ROW application in June and August 2016 in Palm Springs, California. The Draft Supplemental EIS/EIR includes analysis of the revised ROW application as it relates to the following issues:

(1) Updated description of the Proposed Project, based on the revised ROW application;

(2) Impacts to cultural resources and tribal concerns;

(3) Impacts to the Sand Transport Corridor and Mojave fringe-toed lizard habitat and washes;

(4) Impacts to Joshua Tree National Park;

(5) Impacts to avian species;

(6) Impacts to visual resources; and

(7) Relationship between the project and the regional renewable energy planning in the Desert Renewable Energy Conservation Plan.

In addition to the Proposed Action, the Draft Supplemental EIS/EIR considers a No-Action Alternative and two additional action alternatives. Alternative 1, Reduced Footprint, would be a 500 MW Photovoltaic (PV) array on about 3,100 acres. It avoids the central and largest desert wash and incorporates a more efficient use of the land for the solar array. Alternative 2, Avoidance Alternative, would be an up to 230 MW solar PV array on about 1,620 acres. Like the Proposed Action, under each of these alternatives, the BLM would amend the CDCA Plan to allow the project. Under the No-Action Alternative, the BLM would deny the ROW application, and would not amend the CDCA Plan to allow the project.

The BLM has selected Alternative 1—Reduced Footprint Alternative—as the Agency-Preferred Alternative for the Draft Supplemental EIS. The BLM and other cooperating agencies involved are inviting Draft Supplemental EIS reviewers to offer comments on the comparison of alternatives, as presented in the document.

Your input is important and will be considered in the environmental and land-use planning analysis. Please note that public comments and information submitted, including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Danielle Chi,

Deputy State Director, California.

[FR Doc. 2017–23417 Filed 10–26–17; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–979]

Certain Radio Frequency Identification (''RFID'') Products and Components Thereof Commission Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to find no violation of section 337 of the Tariff Act of 1930, in the above-identified investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 11, 2016, based on a complaint filed by Neology, Inc. of Poway, California (''Neology''). 81 FR 1205–06 (Jan. 11, 2016). The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency identification (''RFID'') products and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,325,044 (''the '044 patent''); 7,119,664 (''the '664 patent''); and 8,587,436 (''the '436 patent''). The complaint further alleges that an industry in the United States exists as required by 19 U.S.C. 1337(a)(2). The notice of investigation named numerous respondents. Respondents Kapsch TrafficCom IVHS, Inc. of McLean, Virginia; Kapsch TrafficCom Holding Corp. of McLean, Virginia; Kapsch TrafficCom Canada, Inc. of Mississauga, Ontario, Canada; Star Systems International, Ltd. of Kwai Chung, Hong Kong; and STAR RFID Co., Ltd. of Bangkok, Thailand (collectively, ''Respondents'') remain in the investigation. The Office of Unfair Import Investigations is also a party in this investigation.

All asserted claims of the '664 patent and certain asserted claims of the '044 patent and the '436 patent have been terminated from the investigation. *See* Comm'n Notice (Sept. 27, 2016). Only claims 13, 14, and 25 of the '044 patent and claims 1, 2, and 4 of the '436 patent remain in the investigation (collectively, ''the Asserted Claims'').

On June 22, 2017, the ALJ issued her final ID finding no violation of section 337 by the Respondents in connection with the Asserted Claims. The final ID found that all of the Asserted Claims are invalid on multiple grounds. Had the Asserted Claims not been found invalid, the final ID also found that the accused products infringe the Asserted Claims; that Neology's domestic industry products practice claim 25 of the '044 patent and claims 1, 2, and 4 of the '436 patent; and that Neology has satisfied the economic prong of the domestic industry requirement as to the '044 and the '436 patents.

Neology filed a timely petition for review of the final ID, challenging the final ID's finding that the Asserted Claims are invalid. That same day, the Commission's Investigative Attorney (''IA'') filed a contingent petition for review of the final ID and Respondents filed a joint contingent petition for review of the final ID. Neology and the IA both challenge certain of the final ID's findings with respect to the economic prong of the domestic industry requirement as to the '436 patent. Respondents also challenge the final ID's finding that the Asserted

Claims are not invalid under 35 U.S.C. 101. On July 13, 2017, the parties each filed a timely response to the petitions for review. On July 24, 2017, Respondents filed their public interest comments pursuant to Commission Rule 210.50(a)(4). Two days later, Neology filed a response to Respondents' public interest comments. The Commission also received public interest comments from multiple non-parties.

On August 16, 2017, the Commission determined to review-in-part the final ID. Specifically, the Commission determined to review the following findings in the final ID: (1) The Asserted Claims are not entitled to claim priority to an earlier filing date; (2) the Asserted Claims are invalid under 35 U.S.C. 102, 103, and/or 112; (3) the Asserted Claims are not invalid under 35 U.S.C. 101; and (4) Neology has satisfied the economic prong of the domestic industry requirement with respect to the '436 patent. The Commission requested briefing from the parties on certain issues under review. The Commission did not solicit briefing from the parties and from the public on the issues of remedy, bonding, and the public interest.

Having reviewed the parties' submissions and the record evidence, the Commission has determined to affirm, with modified reasoning, the ID's finding of no violation of section 337 by the Respondents in connection with the Asserted Claims because Respondents have shown that the Asserted Claims are invalid under 35 U.S.C. 102, 103 and/or 112. The Commission has also determined to affirm with modifications the ID's finding that the Asserted Claims are not entitled to claim priority to an earlier filing date. The Commission has further determined to take no position on the ID's findings that the Asserted Claims are directed at patent eligible subject matter under 35 U.S.C. 101 and that Neology has satisfied the economic prong of the domestic industry requirement with respect to the '436 patent. A Commission opinion will be issued shortly.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 23, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23366 Filed 10–26–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–567–569 and 731–TA–1343–1345 (Final)]

Silicon Metal From Australia, Brazil, Kazakhstan, and Norway; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–567–569 and 731–TA–1343–1345 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of silicon metal, provided for in subheadings 2804.69.1000 and 2804.69.5000 of the Harmonized Tariff Schedule of the United States, from Australia, Brazil, and Norway preliminarily determined by the Department of Commerce to be sold at less than fair value, and imports of silicon metal preliminarily determined to be subsidized by the governments of Australia, Brazil, and Kazakhstan.

DATES: October 12, 2017.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones ((202) 205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, the Department of Commerce has defined the subject merchandise as follows: ''all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation. Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Australia, Brazil, and Kazakhstan of silicon metal, and that such products imported from Australia, Brazil, and Norway are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on March 8, 2017, by Globe Specialty Metals, Inc., Beverly, Ohio.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 1, 2018, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on February 15, 2018, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 9, 2018. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on February 13, 2018, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 8, 2018. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 22, 2018. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before February 22, 2018. On March 19, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 21, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 23, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23363 Filed 10–26–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–388, 389, and 391 and 731–TA–817, 818, and 821 (Third Review)]

Cut-to-Length Carbon Steel Plate From India, Indonesia, and Korea; Revised Schedule for the Subject Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

DATES: October 20, 2017.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch ((202) 205–2387)), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 4, 2017, the Commission established a schedule for the conduct of full reviews (82 FR 37465, August 10, 2017). In light of overlapping Commission commitments, the Commission is revising its schedule in this proceeding.

The Commission's new schedule for the full reviews is as follows: The prehearing staff report will be placed in the nonpublic record on December 12, 2017; the deadline for filing prehearing briefs is December 21, 2017; requests to appear at the hearing must be filed with the Secretary to the Commission not later than December 22, 2017; the prehearing conference will be held at the U.S. International Trade Commission Building on January 3, 2018, if deemed necessary; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on January 4, 2018; the deadline for filing posthearing briefs is January 12, 2018; the Commission will make its final release of information on February 5, 2018; and final party comments are due on February 7, 2018.

For further information concerning the full reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through

E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23431 Filed 10–26–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–578 and 731–TA–1368 (Final)]

100- to 150-Seat Large Civil Aircraft From Canada; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–578 and 731–TA–1368 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of 100- to 150-seat large civil aircraft from Canada, provided for in subheading 8802.40.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be subsidized and sold at less-than-fair-value.

DATES: October 13, 2017.

FOR FURTHER INFORMATION CONTACT: Carolyn Carlson (202–205–3002) and Andrew Dushkes (202–205–3229), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''aircraft, regardless of seating configuration, that have a standard 100- to 150-seat two-class seating capacity and a minimum 2,900 nautical mile range, as these terms are defined below. 'Standard 100- to 150-seat two-class seating capacity' refers to the capacity to accommodate 100 to 150 passengers, when eight passenger seats are configured for a 36-inch pitch, and the remaining passenger seats are configured for a 32-inch pitch. 'Pitch' is the distance between a point on one seat and the same point on the seat in front of it. 'Standard 100- to 150-seat two-class seating capacity' does not delineate the number of seats actually in a subject aircraft or the actual seating configuration of a subject aircraft. Thus, the number of seats actually in a subject aircraft may be below 100 or exceed 150. A 'minimum 2,900 nautical mile range' means: (i) Able to transport between 100 and 150 passengers and their luggage on routes equal to or longer than 2,900 nautical miles; or (ii) covered by a U.S. Federal Aviation Administration (FAA) type certificate or supplemental type certificate that also covers other aircraft with a minimum 2,900 nautical mile range. The scope includes all aircraft covered by the description above, regardless of whether they enter the United States fully or partially assembled, and regardless of whether, at the time of entry into the United States, they are approved for use by the FAA. The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8802.40.0040. The merchandise may alternatively be classifiable under HTSUS subheading 8802.40.0090. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Canada of 100- to 150-seat large civil aircraft, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on April 27, 2017, by The Boeing Company, Chicago, Illinois.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 6, 2017, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final

phase of these investigations beginning at 9:30 a.m. on Monday, December 18, 2017, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 13, 2017. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on December 15, 2017, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 12, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 27, 2017. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before December 27, 2017. On January 19, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 23, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23430 Filed 10–26–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0003]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revisions to a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** at 82 FR 39137 on August 17, 2017, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revisions to a currently approved collection.

(2) *Title of the Form/Collection:* Annual Progress Report for the STOP Formula Grants Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0003. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 56 STOP state administrators (from 50 states, the District of Columbia and five territories and commonwealths (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)) and their subgrantees. The STOP Violence Against Women Formula Grants Program was authorized through the Violence Against Women

Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Acts of 2000, 2005 and 2013. Its purpose is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. The STOP Formula Grants Program envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. OVW administers the STOP Formula Grants Program. The grant funds must be distributed by STOP state administrators to subgrantees according to a statutory formula.

OVW is proposing revisions to the progress reporting form to reflect statutory changes as a result of the reauthorization of VAWA grant programs in 2013 which added seven new purpose areas: Developing and promoting legislation and policies to enhance best practices for responding to domestic violence, dating violence, sexual assault, and stalking; developing Sexual Assault Response Teams and related coordinated community responses to sexual assault; improving investigation and prosecution of sexual assault cases and appropriate treatment of victims; responding to sexual assault against men, women, and youth in correctional settings; responding to backlogs of sexual assault evidence including developing protocols and policies for notifying and involving victims; improving responses to male and female victims whose ability to access traditional services and responses is affected by their sexual orientation or gender identity; and supporting prevention or educational programming (limited to five percent of the award amount). The reauthorization also ensured that domestic violence, dating violence, sexual assault, and stalking are included in all the statutory purpose areas and added legal assistance in purpose area for ''victim assistance''.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 56 respondents (STOP administrators) approximately one hour to complete an annual progress report. It is estimated that it will take approximately one hour for roughly 2500 subgrantees [1] to complete the relevant portion of the annual progress report. The Annual Progress Report for the STOP Formula Grants Program is divided into sections that pertain to the different types of activities that subgrantees may engage in and the different types of subgrantees that receive funds, *i.e.* law enforcement agencies, prosecutors' offices, courts, victim services agencies, etc.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the annual progress report is 2,556 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: October 24, 2017.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2017–23393 Filed 10–26–17; 8:45 am]

BILLING CODE 4410–FX–P

[1] Each year the number of STOP subgrantees changes. The number 2,500 is based on the number of reports that OVW has received in the past from STOP subgrantees.

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of a New Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** at 82 FR 39135 on August 17, 2017, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of a new collection.

(2) *Title of the Form/Collection:* Semi-annual progress report for the Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–XXXX. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the estimated 30 grantees under the Consolidated Youth Program. The Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies (Consolidated Youth Program) was enacted in the FY 2012, 2013, 2014, 2015 and 2016 appropriation acts, which consolidated four previously authorized and appropriated programs into one comprehensive program. The

previously authorized and appropriated four programs included in these consolidations were: Services to Advocate for and Respond to Youth, Grants to Assist Children and Youth Exposed to Violence, Engaging Men and Youth in Preventing Domestic Violence and Supporting Teens through Education and Prevention grant programs. The Consolidated Youth Program creates a unique opportunity for communities to increase collaboration among non-profit victim service providers, violence prevention programs, and child and youth organizations serving victims ages 0–24. Additionally, it supports organizations and programs that promote boys' and men's role in combating violence against women and girls. Eligible applicants are nonprofit, nongovernmental entities, Indian tribes or tribal nonprofit organizations, and territorial, tribal or unit of local government entities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 30 respondents (Consolidated Youth Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in (*i.e.* victim services, training, prevention activities) and grantees will be expected to provide information only in connection with those activities supported by OVW funding.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the annual progress report is 60 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: October 24, 2017.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2017–23395 Filed 10–26–17; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revisions to a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** at 82 FR 39136 on August 17, 2017, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revisions to a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0013. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities.

OVW is proposing revisions to the progress reporting form to reflect statutory changes as a result of the reauthorization of grant programs in 2013 which included permitting grant funds to support the provision of legal services and the addition of new strategies to address sexual assault and special needs of victims in remote areas including providing training for Community Health aides involved in Indian Health Services programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage (services, law enforcement, training etc.). A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: October 24, 2017.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2017–23392 Filed 10–26–17; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of a New Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** at 82 FR 39134 on August 17, 2017, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of a new collection.

(2) *Title of the Form/Collection:* Semi-annual progress report for the Grants for Outreach and Services to Underserved Populations Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–XXXX. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the estimated 28 grantees under the Grants for Outreach and Services to Underserved Populations (Underserved Program). A new grant program authorized in the Violence Against Women Reauthorization Act of 2013, the Underserved Program supports the development and implementation of strategies targeted at adult or youth victims of sexual assault, domestic violence, dating violence, or stalking in underserved populations, and victim services to meet the needs of such populations. Eligible applicants include nonprofit organizations that serve populations traditionally underserved due to geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, and populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 28 respondents (Underserved Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in (*i.e.* victim services, training,) and grantees will be expected to provide information only in connection with those activities supported by OVW funding.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the annual progress report is 56 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: October 24, 2017.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2017–23394 Filed 10–26–17; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0006]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revisions to a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** at 82 FR 39137 on August 17, 2017, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2017.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this

notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revisions to a currently approved collection.

(2) *Title of the Form/Collection:* Semiannual Progress Report for the Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0006. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes 200 grantees from the Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program(ICJR Program) (also known as Grants to Encourage Arrest Policies and Enforcement of Protection Orders) which encourages state, local, and tribal governments and state, local, and tribal courts to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law requiring the coordinated involvement of the entire criminal justice system. Eligible applicants are states and territories, units of local government, Indian tribal governments, coalitions, victim service providers and state, local, tribal, and territorial courts.

OVW is proposing revisions to the progress reporting form to reflect statutory changes as a result of the reauthorization of VAWA grant programs in 2013 which added nine new purpose areas: Training prosecutors; improving the response of the criminal justice system to immigrant victims; developing and promoting legislation and policies to enhance best practices for responding to domestic violence, dating violence, sexual assault, and stalking; developing Sexual Assault Forensic Examiner programs; developing Sexual Assault Response Teams or similar CCRs to sexual assault; improving investigation and prosecution of sexual assault and treatment of victims; providing HIV testing, counseling, and prophylaxis for victims; addressing sexual assault evidence backlogs including notifying and involving victims; and developing multi-disciplinary high-risk teams for reducing domestic violence and dating violence homicides.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 200 respondents (ICJR Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. An ICJR Program grantee will only be required to complete the sections of the form that pertain to its own specific activities (victim services, law enforcement, training, etc.).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: October 24, 2017.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2017–23391 Filed 10–26–17; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Foreign Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Notice; Request for information and invitation to comment.

SUMMARY: This notice is a request for information and/or comment on three reports issued by the Bureau of International Labor Affairs (ILAB) regarding child labor and forced labor in certain foreign countries. Relevant information submitted by the public will be used by the Department of Labor (DOL) in preparation of its ongoing reporting under Congressional mandates and Presidential directive. The 2016 Findings on the Worst Forms of Child Labor report (TDA report), published on September 20, 2017, assesses efforts by 138 countries to reduce the worst forms of child labor over the course of 2016 and reports whether countries made significant, moderate, minimal, or no advancement during that year. It also suggests actions foreign countries can take to eliminate the worst forms of child labor through legislation, enforcement, coordination, policies, and social programs. The 2016 edition of the List of Goods Produced by Child Labor or Forced Labor (TVPRA List), published on September 30, 2016, makes available to the public a list of goods from countries that ILAB has reason to believe are produced by child labor or forced labor in violation of international standards. Finally, the List of Products Produced by Forced or Indentured Child Labor (EO List), most recently published on December 1, 2014, provides a list of products, identified by country of origin, that DOL, in consultation and cooperation with the Departments of State (DOS) and Homeland Security (DHS), have a reasonable basis to believe might have been mined, produced or manufactured

with forced or indentured child labor. Relevant information submitted by the public will be used by DOL in preparation of the next edition of the TDA report and TVPRA List, to be published in 2018, and for possible updates to the EO List as needed.

DATES: Submitters of information are requested to provide their submission to the Office of Child Labor, Forced Labor, and Human Trafficking (OCFT) at the email or physical address below by 5 p.m. January 12, 2018.

To Submit Information: Information should be submitted directly to OCFT, Bureau of International Labor Affairs, U.S. Department of Labor. Comments, identified as ''Docket No. DOL–2017–0002'', may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

The portal includes instructions for submitting comments. Parties submitting responses electronically are encouraged not to submit paper copies.

Facsimile (fax): OCFT at 202–693–4830.

Mail, Express Delivery, Hand Delivery, and Messenger Service (1 copy): Alexa Gunter at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue NW., Room S–5315, Washington, DC 20210.

Email: Email submissions should be addressed to both Alexa Gunter (*Gunter.Alexa@dol.gov*) and the TVPRA List Mailbox (*ilab-tvpra@dol.gov*).

FOR FURTHER INFORMATION CONTACT: Alexa Gunter, (202) 693–4829. Please see contact information above.

SUPPLEMENTARY INFORMATION:

I. The Trade and Development Act of 2000 (TDA), Public Law 106–200 (2000), established eligibility criterion for receipt of trade benefits under the Generalized System of Preferences (GSP). The TDA amended the GSP reporting requirements of Section 504 of the Trade Act of 1974, 19 U.S.C. 2464, to require that the President's annual report on the status of internationally recognized worker rights include ''findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.''

The TDA Conference Report clarifies this mandate, indicating that the President consider the following when considering whether a country is complying with its obligations to eliminate the worst forms of child labor: (1) Whether the country has adequate laws and regulations proscribing the worst forms of child labor; (2) whether the country has adequate laws and regulations for the implementation and enforcement of such measures; (3) whether the country has established formal institutional mechanisms to investigate and address complaints relating to allegations of the worst forms of child labor; (4) whether social programs exist in the country to prevent the engagement of children in the worst forms of child labor, and to assist with the removal of children engaged in the worst forms of child labor; (5) whether the country has a comprehensive policy for the elimination of the worst forms of child labor; and (6) whether the country is making *continual progress* toward eliminating the worst forms of child labor.''

DOL fulfills this reporting mandate through annual publication of the U.S. Department of Labor's Findings on the Worst Forms of Child Labor with respect to countries eligible for GSP. To access the 2016 TDA report and Frequently Asked Questions, please visit *https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings/.*

II. Section 105(b) of the Trafficking Victims Protection Reauthorization Act of 2005 (''TVPRA of 2005''), Public Law 109–164 (2006), 22 U.S.C. 7112(b), directed the Secretary of Labor, acting through ILAB, to ''develop and make available to the public a list of goods from countries that ILAB has reason to believe are produced by forced labor or child labor in violation of international standards'' (TVPRA List).

Pursuant to this mandate, on December 27, 2007, DOL published in the **Federal Register** a set of procedural guidelines that ILAB follows in developing the TVPRA List (72 FR 73374). The guidelines set forth the criteria by which information is evaluated; established procedures for public submission of information to be considered by ILAB; and identified the process ILAB follows in maintaining and updating the List after its initial publication.

ILAB published its first TVPRA List on September 30, 2009, and issued updates in 2010, 2011, 2012, 2013, 2014, and 2016. (In 2014, ILAB began publishing the TVPRA List every other year, pursuant to changes in the law. See 22 U.S.C. 7112(b).) The next TVPRA List will be published in 2018. For a copy of previous editions of the TVPRA List, Frequently Asked Questions, and other materials relating to the TVPRA List, see ILAB's TVPRA Web page at *http://www.dol.gov/ilab/reports/child-labor/list-of-goods/.*

III. Executive Order No. 13126 (E.O. 13126) declared that it was ''the policy of the United States Government . . . that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to E.O. 13126, and following public notice and comment, the Department of Labor published in the January 18, 2001, **Federal Register**, a final list of products (''EO List''), identified by country of origin, that the Department, in consultation and cooperation with the Departments of State (DOS) and Treasury [relevant responsibilities are now within the Department of Homeland Security (DHS)], had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353). In addition to the List, the Department also published on January 18, 2001, ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor,'' which provide for maintaining, reviewing, and, as appropriate, revising the EO List (66 FR 5351).

Pursuant to Sections D through G of the Procedural Guidelines, the EO List may be updated through consideration of submissions by individuals or through OCFT's own initiative.

DOL has officially revised the EO List four times, most recently on December 1, 2014, each time after public notice and comment as well as consultation with DOS and DHS.

The current EO List, Procedural Guidelines, and related information can be accessed on the Internet at *http://www.dol.gov/ilab/reports/child-labor/list-of-products/index-country.htm.*

Information Requested and Invitation to Comment: Interested parties are invited to comment and provide information regarding these reports. DOL requests comments on or information relevant to maintaining and updating the TVPRA and EO Lists, updating the findings and suggested government actions for countries reviewed in the TDA report, and assessing each country's individual advancement toward eliminating the worst forms of child labor during the current reporting period compared to previous years. For more information on the types of issues covered in the TDA report, please see Appendix III of the report. Materials submitted should be confined to the specific topics of the TVPRA List, EO List, and TDA report. DOL will generally consider sources with dates up to five years old (*i.e.,* data not older than January 1, 2013). DOL appreciates the extent to which

submissions clearly indicate the time period to which they apply. In the interest of transparency in our reporting, classified information will not be accepted. Where applicable, information submitted should indicate its source or sources, and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. Please see the TVPRA List, EO List, and TDA report for a complete explanation of relevant terms, definitions, and reporting guidelines employed by DOL. Per our standard procedures, submissions will be published on the ILAB Web page at *https://www.dol.gov/ilab/submissions/.*

This notice is a general solicitation of comments from the public.

Signed at Washington, DC, this 19 day of October 2017.

Martha Newton,

Deputy Undersecretary for International Affairs.

[FR Doc. 2017–23319 Filed 10–26–17; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–002]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: NARA proposes to request an extension from the Office of Management and Budget (OMB) of approval to collect information from individuals requesting a research card. People must have a research card to use original archival records in a NARA facility. We invite you to comment on certain aspects of this proposed information collection.

DATES: We must receive written comments on or before December 26, 2017.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694, or by email at *tamee.fechhelm@nara.gov,* with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: We invite the public and other Federal agencies to comment on information collections we propose to renew. We submit proposals to renew information collections first through a public comment period and then to OMB for review and approval pursuant to the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We invite comments and suggestions on one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions, including whether the proposed information collection will have practical utility; (b) our estimate of the information collection's burden on respondents; (c) ways to enhance the quality, utility, and clarity of the information we propose to collect; (d) ways to minimize the burden on respondents of collecting the information, including through use of information technology; and (e) whether this collection affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, NARA solicits comments concerning the following information collection:

Title: Researcher Application.

OMB number: 3095–0016.

Agency form number: NA Form 14003.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.

Estimated number of respondents: 15,967.

Estimated time per response: 8 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 2,129 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.8. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility and we request their name, address, contact information, and information about the research purpose and the records they wish to access. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017–23446 Filed 10–26–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to advise the Chairman of the National Endowment for the Humanities (NEH) with respect to policies, programs and procedures for carrying out his functions; to review applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman; and to consider gifts offered to NEH and make recommendations thereon to the Chairman.

DATES: The meeting will be held on Thursday, November 16, 2017, from 10:30 a.m. until 12:30 p.m., and Friday, November 17, 2017, from 9:00 a.m. until adjourned.

ADDRESSES: The meeting will be held at Constitution Center, 400 7th Street SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., 4th Floor, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended). The Committee meetings of the National Council on the Humanities will be held on November 16, 2017, as follows: The policy discussion session (open to the public) will convene at 10:30 a.m. until approximately 11:00 a.m., followed by the discussion of specific grant applications and programs before the Council (closed to the public) from 11:00 a.m. until 12:30 p.m. The following Committees will meet in the NEH offices:

Digital Humanities.

Education Programs.

Federal/State Partnership.

Preservation and Access/Challenge Grants.

Public Programs.

Research Programs.

The plenary session of the National Council on the Humanities will convene on November 17, 2017, at 9:00 a.m. in the Conference Center at Constitution Center. The agenda for the morning session (open to the public) will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Acting Chairman's Remarks
2. Assistant Chairman for Programs' Remarks
3. Presentation
4. Congressional Affairs Report
5. Reports on Policy and General Matters
a. Digital Humanities
b. Education Programs
c. Federal/State Partnership
d. Preservation and Access
e. Challenge Grants
f. Public Programs
g. Research Programs

The remainder of the plenary session will be for consideration of specific applications and therefore will be closed to the public.

As identified above, portions of the meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6) and 552b(c)(9)(b) of Title 5 U.S.C., as amended. The closed sessions will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Please note that individuals planning to attend the public sessions of the meeting are subject to security screening procedures. If you wish to attend any of the public sessions, please inform NEH as soon as possible by contacting Ms. Katherine Griffin at (202) 606–8322 or *kgriffin@neh.gov.* Please also provide advance notice of any special needs or accommodations, including for a sign language interpreter.

Dated: October 24, 2017.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2017–23416 Filed 10–26–17; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 27, 2017. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2018–024

1. *Applicant:* Joseph A. Covi, University of North Carolina at Wilmington, Department of Biology and Marine Biology, Wilmington, NC 28403.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The application proposes to enter four Antarctic Specially Protected Areas (ASPAs) on King George Island, South Shetland Islands, Antarctica for the purposes of collecting small sediment samples from freshwater lakes and ephemeral ponds. The applicant would enter ASPA 125, Fildes Peninsula; ASPA 132, Potter Peninsula; ASPA 150, Ardley Island, Maxwell Bay; and ASPA 171 Narebski Point, Barton Peninsula. The applicant plans to access the ASPAs by boat and on foot. Up to six sediment samples will be collected near the shoreline or from an inflatable boat from each of up to eight lakes and eight ephemeral ponds in total. Sediment core samples may be taken through holes drilled in the ice cover, as applicable. The applicant and agents will adhere to the management plans for each of the ASPAs that they propose to enter.

Location

King George Island, South Shetland Islands, Antarctica; ASPA 125, Fildes Peninsula; ASPA 132, Potter Peninsula; ASPA 150, Ardley Island, Maxwell Bay; and ASPA 171 Narebski Point, Barton Peninsula.

Dates of Permitted Activities

January 23, 2018–March 1, 2019.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 2017–23361 Filed 10–26–17; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 27, 2017. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at

the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant*—Permit Application: 2018–023
   Cory Wolff, National Center for Atmospheric Research, P.O. Box 3000, Boulder, CO 80307–3000.

Activity for Which Permit Is Requested

Waste Management. The applicant is seeking a permit for waste management activities associated with an atmospheric research study over the Southern Ocean. The applicant proposes to release up to 30 expendable weather reconnaissance devices, dropsondes, from a Gulfstream V research aircraft while flying between 60 and 65 degrees south. Each dropsonde consists of a 12-inch long, 2-inch diameter resin tube containing a lead-free circuit board, plastic components, and small lithium batteries with a small parachute attached.

Location

Southern Ocean, south of Hobart, Tasmania.

Dates of Permitted Activities

January 15–February 26, 2018.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 2017–23362 Filed 10–26–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 1, 2017, 11545 Rockville Pike, Room T–2B3, Rockville, Maryland 20852.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 1, 2017—12:00 p.m. Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown at 240–888–9835 to be escorted to the meeting room.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–23365 Filed 10–26–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336; NRC–2017–0197]

Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 2, Request for Exemption Regarding the Use of Operator Manual Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 28, 2016, request from Dominion Nuclear Connecticut, Inc. (the licensee, Dominion) for Millstone Power Station, Unit No. 2 (Millstone 2), Docket No. 50–336, for the use of operator manual actions (OMAs) in lieu of meeting the circuit separation and protection requirements for four plant fire areas.

DATES: The exemption was issued on October 24, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0197 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0197. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Guzman, Office of Nuclear

Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1030, email: *Richard.Guzman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Dominion is the holder of Renewed Facility Operating License No. DPR–65, which authorizes operation of Millstone 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC, now or hereafter in effect.

Millstone 2 shares the site with Millstone Power Station, Unit No. 1, a permanently defueled boiling-water reactor nuclear unit, and Millstone Power Station, Unit No. 3, a pressurized-water reactor. The facility is located in Waterford, Connecticut, approximately 3.2 miles southwest of New London, Connecticut. This exemption applies to Millstone 2 only. The other units, Millstone 1 and 3, are not part of this exemption.

II. Request/Action

Section 50.48 of title 10 of the *Code of Federal Regulations* (10 CFR), requires that nuclear power plants that were licensed before January 1, 1979, satisfy the requirements of appendix R to 10 CFR part 50, section III.G, ''Fire protection of safe shutdown capability.'' Millstone 2 was licensed to operate prior to January 1, 1979. As such, the licensee's fire protection program (FPP) must provide the established level of protection as intended by section III.G.

By letter dated October 28, 2016 (ADAMS Accession No. ML16305A330), the licensee requested an exemption for Millstone 2 from certain technical requirements of 10 CFR part 50, appendix R, section III.G.2 (III.G.2), for the use of OMAs in lieu of meeting the circuit separation and protection requirements contained in section III.G.2 for fire areas R–9, R–10, R–13, and R–14.

III. Discussion

Pursuant to § 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, § 50.12(a)(2) states that the Commission will not consider granting an exemption unless special circumstances are present as set forth in § 50.12(a)(2). Under § 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

The licensee stated that special circumstances are present in that the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule, which is consistent with the language included in § 50.12(a)(2)(ii). The licensee further stated that the OMAs included in the exemption request provide assurance that one train of systems necessary to achieve and maintain hot shutdown will remain available in the event of a fire.

In accordance with § 50.48(b), nuclear power plants licensed before January 1, 1979, are required to meet section III.G. The underlying purpose of section III.G is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event. The regulation intends for licensees to accomplish this by extending the concept of defense-in-depth (DID) to:

a. Prevent fires from starting;

b. Rapidly detect, control, and extinguish promptly those fires that do occur;

c. Provide protection for structures, systems, and components (SSCs) important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

The stated purpose of section III.G.2 is to ensure that in the event of a fire, one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage. Section III.G.2 requires one of the following means to ensure that a redundant train of safe shutdown cables and equipment is free of fire damage where redundant trains are located in the same fire area outside of primary containment:

a. Separation of cables and equipment by a fire barrier having a 3-hour rating;

b. Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and an automatic fire suppression system installed in the fire area; or

c. Enclosure of cables and equipment of one redundant train in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system installed in the fire area.

The licensee stated that the OMAs addressed in the exemption request are those contained in the Millstone 2 10 CFR part 50, appendix R compliance report (report). The licensee also stated that the Millstone 2 appendix R report was submitted to the NRC for review on May 29, 1987 (ADAMS Legacy Accession No. 8706120088), and found acceptable by an NRC safety evaluation report (SER) dated July 17, 1990 (ADAMS Accession No. ML012880391). However, the SER did not specifically evaluate the OMAs (*i.e.,* pursuant to § 50.12).

By letter dated June 30, 2011 (ADAMS Accession No. ML11188A213), as revised by letter dated October 29, 2012 (ADAMS Accession No. ML12318A128), the licensee submitted an exemption request for the OMAs contained in the Millstone 2 appendix R report. However, four OMAs related to loss of instrument air for four specific fire areas were removed by letter dated February 29, 2012 (ADAMS Accession No. ML12069A016) because the loss of instrument air was not considered a postulated event. The NRC approved the revised exemption by NRC letter dated December 18, 2012 (ADAMS Accession No. ML12312A373).

During the 2016 triennial fire inspection (ADAMS Accession No. ML16258A175), it was identified that a loss of offsite power will result in a loss of instrument air prior to the emergency diesel generators starting. Since instrument air does not automatically restart, nor can it be manually started from the control room, the licensee has submitted this exemption request for those four OMAs related to loss of instrument air for the four specific fire areas.

Each OMA included in this review consists of a sequence of tasks to be performed in various fire areas upon confirmation of a fire in a particular fire area. Table 1 lists the OMAs included in this review (OMAs are listed in the order they are conducted for a fire originating in a particular area). Some OMAs are listed more than once if they are needed for fires that originate in different areas.

TABLE 1

OMA No.	OMA description	Area of fire origin	OMA location	Required OMA completion time	Equipment	Postulated damage type
1	Manually open valve to establish charging pump suction.	R–10	R–4/A–6A (AppR–2)	Within 72 minutes after restoring charging.	2–CH–192, Refueling Water Storage Tank (RWST) Isolation Valve.	Cable damage or loss of instrument air.
1	Manually open valve to establish charging pump suction.	R–9, R–13, and R–14.	R–4/A–6A (AppR–2)	Within 72 minutes after restoring charging.	2–CH–192, RWST Isolation Valve.	Loss of instrument air.
9	Control at Fire Shutdown Panel C–10 until loss of backup air or local manual operation.	R–13, R–14	R–2/T–10 (AppR–9), R–3/T–1A (AppR–7).	Within 45 minutes after loss of main feedwater.	2–FW–43B, Auxiliary Feedwater (AFW) Flow Control Valve.	Loss of instrument air.
10	Manually operate valve to transition main steam safety valves (MSSVs).	R–10	R–17/A–10C (AppR–6)	After establishing AFW	2–MS–190A, Atmospheric Dump Valve.	Cable damage or loss of instrument air.
11	Control at Fire Shutdown Panel C–10 (R–13 fire) until loss of air, manually operate valve to transition from MSSVs.	R–9, R–14	R–2/T–10(C–10) (AppR–9), R–2/A–8E (Manual operation) (AppR–6).	After establishing AFW	2–MS–190B, Atmospheric Dump Valve.	Cable damage or loss of instrument air.
11	Control at Fire Shutdown Panel C–10 (R–13 fire) until loss of air, manually operate valve to transition from MSSVs.	R–13	R–2/T–10(C–10) (AppR–9), R–2/A–8E (Manual operation) (AppR–6).	After establishing AFW	2–MS–190B, Atmospheric Dump Valve.	Loss of instrument air.

The designations Z1 and Z2 are used throughout this exemption. The licensee stated that the 4.16 kilovolt (kV) subsystems are divided into two specific ''facilities.'' Facility Z1 powers one train of engineered safety features (ESFs) and is provided with an emergency power supply by the ''A'' emergency diesel generator (EDG). Facility Z2 powers a redundant second train of ESF and is provided with an emergency power supply by the ''B'' EDG. The licensee also stated that vital power and control cables fall mainly into two redundancy classifications: Channel Z1 and Channel Z2, and that in a few cases, there is also a Channel Z5, which is a system that can be transferred from one source to another. The licensee further stated that Facility Z1 would be synonymous with ''A'' train, while Facility Z2 would be synonymous with ''B'' train.

The licensee stated that its exemption request is provided in accordance with the information contained in NRC Regulatory Issue Summary 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions,'' dated June 30, 2006, which states that an approved § 50.12 exemption is required for all OMAs, even those accepted in a previously issued NRC SER.

As indicated above, the licensee has requested an exemption from the requirements of section III.G.2 for Millstone 2 to the extent that one of the redundant trains of systems necessary to achieve and maintain hot shutdown is not maintained free of fire damage in accordance with one of the required means for a fire occurring in the following fire areas:

- R–9 Facility Z1 DC switchgear room and battery room,
- R–10 Facility Z2 DC switchgear room and battery room;
- R–13 west 480 VAC switchgear room;
- R–14 Facility Z1 lower 4.16kV switchgear room and cable vault.

The licensee stated that the OMAs are credited for the section III.G.2 deficiencies, such as having only a single safe shutdown train, lack of separation between redundant trains, lack of detection and automatic suppression in the fire area, or a combination of those deficiencies. The NRC staff notes that having only a single safe shutdown train is not uncommon to this plant design. Single train systems at Millstone 2 include IA, ''A'' and ''B'' boric acid storage tank (BAST) control room (CR) level indication, condensate storage tank (CST) CR level indication, suction-side flow to the charging pumps from the refueling water storage tank (RWST), auxiliary spray to the pressurizer, and charging pump discharge to the reactor coolant system (RCS).

The licensee also stated that it has evaluated and modified all motor-operated valves (MOVs) relied upon by OMAs consistent with NRC Information Notice 92–18, ''Potential for Loss of Remote Shutdown Capability During a Control Room Fire,'' dated February 28, 1992, which details the potential for fires to damage MOVs that are required for safe shutdown so that they can no longer be remotely or manually operated, and that as a result of this evaluation and modifications, the possibility that the desired result was not obtained is minimized. The licensee further stated that all the equipment operated to perform these OMAs is not fire affected and, therefore, is reasonably expected to operate as designed.

In its submittals, the licensee described elements of its FPP that provide its justification that the concept of DID in place in the above fire areas is consistent with that intended by the regulation. To accomplish this, the licensee utilizes various protective measures to accomplish the concept of DID. Specifically, the licensee stated that the purpose of its request was to credit the use of OMAs, in conjunction with other DID features, in lieu of the separation and protective measures required by 10 CFR part 50, appendix R, section III.G.2.

The licensee indicated that its FPP uses the concept of DID, both procedurally and physically, to meet the following objectives:

1. Prevent fires from starting;
2. Rapidly detect, control, and extinguish promptly those fires that do occur; and
3. Provide protection for SSCs important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

The licensee provided an analysis that described how fire prevention is addressed for each of the fire areas for which the OMAs may be required. Unless noted otherwise below, all of the fire areas included in this exemption have a combustible fuel load that is considered to be low, with fuel sources consisting primarily of fire-retardant cable insulation and limited floor-based combustibles. There are no high energy ignition sources located in the areas except as noted in fire area R–14. The fire areas included in the exemption request are not shop areas, so hot work activities are infrequent with administrative control (*e.g.,* hot work permits, fire watch, and supervisory controls) programs in place if hot work activities do occur. The administrative controls are described in the Millstone FPP, which is incorporated into the Updated Final Safety Analysis Report.

The licensee stated that the storage of combustibles is administratively controlled by the site's FPP procedures to limit the effects of transient fire exposures on the plant and in addition, hot work (*i.e.,* welding, cutting, grinding) is also administratively controlled by a site FPP procedure.

The licensee also stated that the integration of the program, personnel, and procedures, which are then collectively applied to the facility, reinforce the DID aspect of the FPP and that strict enforcement of ignition source and transient combustible control activities (through permitting) and monthly fire prevention inspections by the site fire marshal ensure that this work is actively monitored to prevent fires.

The licensee stated that the Millstone fire brigade consists of a minimum of a Shift Leader and four fire brigade personnel. The affected unit (Millstone 2 or Millstone 3) supplies an advisor, who is a qualified Plant Equipment Operator (PEO). The advisor provides direction and support concerning plant operations and priorities. Members of the fire brigade are trained in accordance with Millstone procedures. Fire brigade personnel are responsible for responding to all fires, fire alarms, and fire drills. To ensure availability, a minimum of a Shift Leader and four fire brigade personnel remain in the owner-controlled area and do not engage in any activity that would require a relief in order to respond to a fire. The licensee further stated that the responding fire brigade lead may request the Shift Manager augment the on-shift five-member fire brigade with outside resources from the Town of Waterford Fire Department, which has a letter of agreement with Millstone, to respond to the site (when requested) in the event of a fire emergency or rescue and will attempt to control the situation with available resources.

Millstone 2 has been divided into fire areas, as described in the Millstone FPP. Three-hour fire barriers are normally used to provide fire resistive separation between adjacent fire areas. In some cases, barriers with a fire resistance rating of less than 3 hours are credited, but exemptions have been approved, or engineering evaluations performed, in accordance with Generic Letter (GL) 86–10, ''Implementation of Fire Protection Requirements,'' to demonstrate that the barriers are sufficient for the hazard. Walls separating rooms within fire areas are typically constructed of concrete. The licensee stated that in general, fire-rated assemblies separating appendix R fire areas meet Underwriters Laboratories/Factory Mutual (UL/FM) design criteria and the requirements of American Society of Testing Materials (ASTM) E–119, ''Fire Tests of Building Construction and Materials,'' for 3-hour rated fire assemblies. The licensee also stated that openings created in fire-rated assemblies are sealed utilizing penetration seal details that have been tested in accordance with ASTM E–119 and are qualified for a 3-hour fire rating. In addition, fireproof coating of structural steel conforms to UL-listed recognized details and is qualified for a 3-hour fire rating. The licensee further stated that fire dampers are UL-listed and have been installed in accordance with the requirements of National Fire Protection Association (NFPA) 90A, ''Standard for the Installation of Air-Conditioning and Ventilation Systems,'' and that the code of record for fire dampers is either the version in effect at the time of original plant construction (late 1960s) or the 1985 edition. The licensee further stated that fire doors are UL-listed and have been installed in accordance with NFPA 80, ''Standard for Fire Doors and Windows,'' in effect in the late 1960s, at the time of plant construction.

The licensee provided a discussion of the impacts of any GL 86–10 evaluations and/or exemptions on the fire areas included in this exemption request. For all the areas with GL 86–10 evaluations and/or other exemptions, the licensee stated that none of the issues addressed by the evaluations would adversely impact, through the spread of fire or products of combustion, plant areas where OMAs are performed or the respective travel paths necessary to reach these areas. The licensee also stated that there are no adverse impacts on the ability to perform OMAs and that the conclusions of the GL 86–10 evaluations and the exemption requests would remain valid with the OMAs in place. In addition to these boundaries, the licensee provided a hazard analysis that described how detection, control, and extinguishment of fires are addressed for each of the fire areas for which the OMAs may be needed.

Unless noted otherwise below, fire areas are provided with ionization smoke detectors. The licensee stated that the smoke and heat detection systems were designed and installed using the guidance of the requirements set forth in several NFPA standards, including the 1967, 1979, and 1986 Editions of NFPA 72D, ''Standard for the Installation, Maintenance and Use of Proprietary Protective Signaling Systems for Watchman, Fire Alarm and Supervisory Service,'' and the 1978 and 1984 Editions of NFPA 72E, ''Standard on Automatic Fire Detectors.'' Upon detecting smoke or fire, the detectors initiate an alarm in the CR enabling fire brigade response. The licensee stated that in most cases, no automatic fire suppression systems are provided in the areas included in this exemption request except for plant areas with significant quantities of combustibles, such as lube oil. Automatic fire suppression systems have also been installed in areas with 1-hour barrier walls and 1-hour rated electrical raceway encapsulation.

The licensee stated that fire suppression systems were designed in general compliance with, and to meet the intent of, the requirements of several NFPA standards, depending on the type of system, including the 1985 Edition of NFPA 13, ''Standard for the Installation of Sprinkler Systems''; the 1985 Edition of NFPA 15, ''Standard for Water Spray Fixed Systems For Fire Protection''; and the 1987 Edition of NFPA 12A, ''Standard on Halon 1301 Fire Extinguishing Systems.''

The licensee stated that, in general, fire extinguishers and hose stations have been installed in accordance with the requirements of the 1968 Edition of NPFA 10, ''Standard for the Installation of Portable Fire Extinguishers,'' and the 1978 Edition of NFPA 14, ''Standard for the Installation of Standpipe and Hose Systems,'' respectively. The licensee stated that Equipment Operators are trained fire brigade members and would likely identify and manually suppress or extinguish a fire using the portable fire extinguishers and manual hose stations located either in or adjacent to, or both, these fire areas.

Each of the fire areas included in this exemption is analyzed below with regard to how the concept of DID is achieved for each area and the role of

the OMAs in the overall level of safety provided for each area.

A.1 Fire Area R–9, ''A'' East DC Equipment Room

A.1.1 Fire Prevention

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation, and that potential ignition sources include electrical faults.

A.1.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with a cross-zoned ionization and photoelectric smoke detection system that activates a total flooding Halon 1301 fire suppression system and that the Halon 1301 suppression system has manual release stations at each doorway and an abort switch located at the doorway to the east CR/cable vault stairway. The licensee also stated that this system alarms locally at the Halon control panel and at the main fire alarm panel in the CR. The licensee further stated that duct smoke detection is provided between this area, the ''B'' (west) DC equipment room (fire hazard analysis (FHA) Zone A–21), and the auxiliary building cable vault (FHA Zone A–24) and that this system alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of a bus or electrical panel located in the room and that combustibles in this area consist predominantly of Institute of Electrical and Electronics Engineers (IEEE) 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring outside of a bus/electrical panel failure, which could act as a pilot ignition source for the cable insulation and that a bus/electrical panel failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire in this area, it would be rapidly detected by the cross-zoned ionization and photoelectric smoke detection smoke detection system, subsequently extinguished by the total flooding Halon 1301 suppression system, and the smoke detection system would also aid in providing prompt fire brigade response.

A.1.3 Preservation of Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the area are related to a loss of IA or a loss of power to the ''A'' DC buses (such as DV10) and that cables for valves 2–CH–192, 2–CH–508, and 2–CH–509 do not pass through this room.

The licensee stated that a fire in the area will affect all Facility Z1 shutdown components that Facility Z2 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an abnormal operating procedure (AOP).

A.1.4 OMAs Credited for a Fire in This Area

The licensee stated that OMAs 1 and 11 are credited for a fire originating in Fire Area R–9 in order to provide decay heat removal and restore charging system flow to RCS in the event of cable damage or loss of IA.

A.1.4.1 Auxiliary Feedwater (AFW) and Charging System Flow

A.1.4.1.1 OMAs 1 and 11 Open Valve 2–CH–192 and Control Valve 2–MS–190B at Panel C10 or Local Manual Operation

The licensee stated that establishing AFW flow to the credited steam generator (SG) is required to be accomplished within 45 minutes and that the required flow path utilizes the turbine driven auxiliary feedwater (TDAFW) pump. The licensee also stated that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the main steam safety valves (MSSVs) and that after AFW is established from the CR, operation of the atmospheric dump valve (ADV) (2–MS–190B) (OMA 11) is the required method of removing decay heat to maintain Hot Standby and transition to Cold Shutdown. The licensee further stated that there is no cable damage from fire to the required ADV (2–MS–190B); however, the fire may cause a loss of IA, which is required to operate the ADVs to support decay heat removal. The licensee stated that upon a loss of air, the ADV will fail closed and that this design prevents excessive RCS cooldown prior to AFW start; therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW flow is established. The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that after restoration of the charging system, the BASTs are credited for maintaining RCS inventory and that the BASTs have a minimum level specified in the technical requirements manual (TRM), which ensures 72 minutes of flow. The licensee further stated that once the BASTs are depleted, Operators switch over to the RWST. The licensee further stated that due to fire damage, the 2–CH–192 valve may spuriously close and in order to establish the RWST as the suction path for the charging system, an OMA is required to open valve 2–CH–192 (OMA 1) prior to BAST depletion. OMA 1 establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established.

A.1.4.2 OMA Timing

AFW flow is established from the CR within the required 45-minute time period. Should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established? The OMA to establish charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes, which provides a 40-minute margin, since the required completion time is 72 minutes.

A.1.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection and suppression, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

A.2 Fire Area R–10, ''B'' West Direct Current (DC) Equipment Room

A.2.1 Fire Prevention

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation, and that potential ignition sources include electrical faults.

A.2.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with a cross-zoned ionization and photoelectric smoke detection system that activates a total flooding Halon 1301 fire suppression system and that the Halon 1301 suppression system has manual release stations at each

doorway and an abort switch located at the doorway to the ''A'' (east) DC equipment room (FHA Zone A–20). The licensee also stated that this system alarms locally on the Halon control panel and at the main fire alarm panel in the CR. The licensee further stated that duct smoke detection is provided between this fire area, the ''A'' (east) DC equipment room (FHA Zone A–20), and the AB cable vault (FHA Zone A–24), and that this system alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of a bus or electrical panel located in the room and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring outside of a bus/electrical panel failure, which could act as a pilot ignition source for the cable insulation, and that a bus/electrical panel failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire in this area, it would be rapidly detected by the cross-zoned ionization and photoelectric smoke detection smoke detection system and subsequently extinguished by the total flooding Halon 1301 suppression system installed in this area and that the smoke detection system would also aid in providing prompt fire brigade response.

A.2.3 Preservation of Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the area are related to loss of power to the ''B'' AC vital power panels (such as VA20) and that cables for level transmitters LT–206, LT–208, and LT–5282 do not pass through this room.

The licensee stated that a fire in the area will affect all Facility Z2 shutdown components that Facility Z1 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

A.2.4 OMAs Credited for a Fire in This Area

The licensee stated that OMAs 1 and 10 are credited for a fire originating in R–10 to provide decay heat removal and restore charging system flow to RCS in the event of cable damage or loss of IA.

A.2.4.1 AFW and Charging System Flow

A.2.4.1.1 OMAs 1 and 10 Open Valve 2–CH–192 and Control Valve 2–MS–190A

The licensee stated that establishing AFW flow to the credited SG is required to be accomplished within 45 minutes and that the required flow path utilizes the TDAFW pump. The licensee also stated that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs and that after AFW is established from the CR, operation of the ADV (2–MS–190A) (OMA 10) is the required method of removing decay heat to maintain Hot Standby and transition to Cold Shutdown. The licensee further stated that there is no cable damage from fire to the required ADV (2–MS–190A); however, the fire may cause a loss of IA which is required to operate the ADVs to support decay heat removal. The licensee stated that upon a loss of air, the ADV will fail closed and that this design prevents excessive RCS cooldown prior to AFW start and, therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190A after AFW flow is established. The licensee further stated that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR and that after restoration of the charging system, the BASTs are credited for maintaining RCS inventory and that the BASTs have a minimum level specified in the TRM which ensures 72 minutes of flow. The licensee further stated that once the BASTs are depleted, Operators switch over to the RWST. The licensee further stated that due to fire damage, the 2–CH–192 valve may spuriously close and that in order to establish the RWST as the suction path for the charging system, an OMA is required to open valve 2–CH–192 (OMA 1) prior to BAST depletion. OMA 1 establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established.

A.2.4.2 OMA Timing

AFW flow is established from the CR within the required 45-minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish charging system flow from the RWST prior to BAST depletion can be completed in 24 minutes, which provides a 48-minute margin, since the required completion time is 72 minutes.

A.2.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection and suppression, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

A.3 Fire Area R–13, West 480 V Load Center Room

A.3.1 Fire Prevention

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

A.3.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with ionization smoke detection that alarms at the main fire alarm panel in the CR. The licensee also stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a bus failure and that combustibles in the area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring outside of a bus failure, which could act as a pilot ignition source for the cable insulation, and that a bus failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire, it would be rapidly detected by the ionization smoke detection system installed in the area and that the smoke detection system will aid in providing prompt fire brigade response.

A.3.3 Preservation of Safe Shutdown Capability

The licensee stated that the components of concern for the area are

for valves 2–CH–192, 2–CH–508, 2–CH–509, 2–FW–43B and 2–MS–190B; breaker A406, H21 (TDAFW speed control circuit); level transmitter LT–5282, P18C (''C'' charging pump); SV–4188 (TDAFW steam supply valve); and breaker DV2021.

The licensee stated that a fire in the area will affect Facility Z1 safe shutdown equipment, the ''A'' EDG will be unavailable due to a loss of the Facility Z1 power supply for the diesel room ventilation fan F38A, Facility Z2 is used to achieve and maintain Hot Standby, and plant shutdown to Hot Standby can be accomplished using an AOP.

A.3.4 OMAs Credited for a Fire in This Area

The licensee stated that OMAs 1, 9, and 11 are credited for a fire originating in Fire Area R–13 in order to provide decay heat removal and restore charging system flow to RCS in the event of cable damage or loss of IA.

A.3.4.1 AFW and Charging System Flow

A.3.3.4.1.1 OMAs 1, 9, and 11 Open Valve 2–CH–192, Control AFW Flow Valve 2–FW–43B, and Control Valve 2–MS–190B at Panel C10 or Local Manual Operation

The licensee stated that establishing AFW flow to the credited SG is required to be accomplished within 45 minutes and that the required flow path utilizes the TDAFW pump. The licensee also stated that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs and that after AFW is established from the CR, operation of the ADV (2–MS–190B) (OMA 11) is the required method of removing decay heat to maintain Hot Standby and transition to Cold Shutdown. The licensee further stated that there is no cable damage from fire to the required ADV (2–MS–190B); however, the fire may cause a loss of IA, which is required to operate the ADVs to support decay heat removal. The licensee stated that upon a loss of air, the ADV will fail closed and that this design prevents excessive RCS cooldown prior to AFW start and, therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW flow is established. The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that after restoration of the charging system, the BASTs are credited for maintaining RCS inventory and that the BASTs have a minimum level specified in the TRM, which ensures 72 minutes of flow.

The licensee stated that a loss of IA or power causes AFW flow control valve 2–FW–43B to fail open. However, the licensee also stated that the circuit can be isolated and controlled from Fire Shutdown Panel C–10. Therefore, OMA 9 is required to isolate the damaged cables and operate the TDAFW turbine speed control to maintain level in the SG with AFW flow control valve 2–FW–43B failed open. After AFW flow is established, the licensee stated that the steam release path from the SG may be switched from the MSSVs to ADV 2–MS–190B using OMA 11, which will require local manual operation of the valve. The license further stated that in the event that IA is not lost, ADV 2–MS–190B and AFW flow control valve 2–FW–43B can be operated from Fire Shutdown Panel C–10.

The licensee further stated that once the BASTs are depleted, Operators switch over to the RWST. The licensee further stated that due to fire damage, the 2–CH–192 valve may spuriously close and that in order to establish the RWST as the suction path for the charging system, an OMA is required to open valve 2–CH–192 (OMA 1) prior to BAST depletion. OMA 1 establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established which takes 17 minutes.

A.3.4.4 OMA Timing

The licensee stated that the OMA for restoring charging (OMA 1) requires 32 minutes to complete and that the available time is 72 minutes, which results in 40 minutes of margin. The licensee also stated that the OMA for establishing AFW from Fire Shutdown Panel C–10 (OMA 9) requires 10 minutes to complete and that the time available is 45 minutes, leaving a margin of 35 minutes. AFW flow is established from the CR within the required 45-minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established (OMA 11).

A.3.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

A.4 Fire Area R–14, Lower 6.9 and 4.16 kV Switchgear Room, East Cable Vault

A.4.1 Fire Prevention

The licensee stated that the areas have low combustible loading that predominantly consists of cable insulation and Thermo-Lag fire resistant wrap, and that potential ignition sources include electrical faults.

A.4.2 Detection, Control, and Extinguishment

The licensee stated that the lower 6.9 and 4.16kV switchgear room contain ionization smoke detectors located directly over each switchgear cabinet that alarm at the main fire alarm panel in the CR. The licensee also stated that a fire in the lower 6.9 and 4.16 kV switchgear room that could potentially impact cables of concern would likely involve cable insulation resulting from an electrical fault in one of the cable trays routed over bus 24E or failure of bus 24E itself, and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring outside of a switchgear failure, which could act as a pilot ignition source for the cable insulation, and that a switchgear failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire, it would be rapidly detected by the ionization smoke detection system installed in the area and that the smoke detection system, which consists of an ionization smoke detector located directly over each switchgear cabinet in the area, will aid in providing prompt fire brigade response.

The licensee stated that the east cable vault is provided with an automatic wet-pipe sprinkler system designed to protect structural steel and an ionization smoke detection system that alarms at the main fire alarm panel in the CR. The licensee also stated that the vertical cable chase that leads down the AB cable vault is protected by an automatic deluge spray system, which is actuated by cross-zoned smoke detection system that alarms at a local panel and at the

main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring that could act as a pilot ignition source for the cable insulation. The licensee further stated that Thermo-Lag, while considered combustible, is 1-hour fire-rated in this area and that based on its fire resistive qualities and lack of ignition sources, a fire involving Thermo-Lag wrap is not credible. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the fire brigade and that in the unlikely event the fire advanced beyond its incipient stage (unlikely based on type of cable insulation and fire brigade suppression activities), it would actuate the installed automatic wet-pipe suppression system provided in this area, which will, at a minimum, provide reasonable assurance that a cable tray fire in this area will be controlled and confined to the immediate area of origin.

A.4.3 Preservation of Safe Shutdown Capability

The licensee stated that a fire in the Facility Z1 lower 4.16kV switchgear room and cable vault will affect all Facility Z1 shutdown components, that Facility Z2 is used to achieve and maintain Hot Standby, that plant shutdown to Hot Standby can be accomplished using an AOP, and that OMAs are required to provide decay heat removal and restore charging system flow to the RCS.

The licensee stated that the cables of concern in the east cable vault are the control and indication cabling for valve 2–FW–43B. The licensee also stated that cables for valves 2–CH–192, 2–CH–508, and 2–CH–509 are not located in this room; however, valves 2–CH–508 and 2–CH–509 are impacted due to the potential loss of the feed cables for bus 22E or the ''A'' EDG's control and power cables, which results in the loss of power to the valves.

A.4.4 OMAs Credited for a Fire in This Area

The licensee stated that OMAs 1, 9, and 11 are credited for a fire originating in Fire Area R–13 in order to provide decay heat removal and restore charging system flow to RCS in the event of cable damage or loss of IA.

A.4.4.1 AFW and Charging System Flow

A.4.4.1.1 OMAs 1, 9, and 11 Open Valve 2–CH–192, Control AFW Flow Valve 2–FW–43B, and Control Valve 2–MS–190B at Panel C10 or Local Manual Operation

The licensee stated that establishing AFW flow to the credited SG is required to be accomplished within 45 minutes and that the required flow path utilizes the TDAFW pump. The licensee also stated that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs and that after AFW is established from the CR, operation of the ADV (2–MS–190B) (OMA 11) is the required method of removing decay heat to maintain Hot Standby and transition to Cold Shutdown. The licensee further stated that there is no cable damage from fire to the required ADV (2–MS–190B); however, the fire may cause a loss of IA, which is required to operate the ADVs to support decay heat removal. The licensee stated that upon a loss of air, the ADV will fail closed and that this design prevents excessive RCS cooldown prior to AFW start and, therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW flow is established. The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that after restoration of the charging system, the BASTs are credited for maintaining RCS inventory and that the BASTs have a minimum level specified in the TRM, which ensures 72 minutes of flow.

The licensee stated that a loss of IA or power causes AFW flow control valve 2–FW–43B to fail open. However, the licensee also stated that the circuit can be isolated and controlled from Fire Shutdown Panel C–10. Therefore, OMA 9 is required to isolate the damaged cables and operate the TDAFW turbine speed control to maintain level in the SG with AFW flow control valve 2–FW–43B failed open. After AFW flow is established, the licensee stated that the steam release path from the SG may be switched from the MSSVs to ADV 2–MS–190B using OMA 11, which will require local manual operation of the valve. In the event that IA is not lost, ADV 2–MS–190B and AFW flow control valve 2–FW–43B can be operated from Fire Shutdown Panel C–10.

The licensee further stated that once the BASTs are depleted, Operators switch over to the RWST. The licensee further stated that due to fire damage, the 2–CH–192 valve may spuriously close and that in order to establish the RWST as the suction path for the charging system, an OMA is required to open valve 2–CH–192 (OMA 1) prior to BAST depletion. OMA 1 establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established, which takes 17 minutes.

A.4.4.2 OMA Timing

The licensee stated that the OMA for restoring charging (OMA 1) requires 32 minutes to complete and that the available time is 72 minutes, which results in 40 minutes of margin. The licensee also stated that the OMA for establishing AFW from Fire Shutdown Panel C–10 (OMA 9) requires 4 minutes to complete and that the time available is 45 minutes, which results in 41 minutes of margin. AFW flow is established from the CR within the required 45-minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established (OMA 11).

A.4.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection (lower 6.9 and 4.16 kV switchgear room) and installed detection and suppression (east cable vault), it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

A.5 Feasibility and Reliability of the Operator Manual Actions

The licensee stated that the means to safely shut down Millstone 2 in the event of a fire that does occur and is not rapidly extinguished, as expected, has been documented in the 10 CFR part 50, appendix R report. The entire appendix R report was not reviewed by the NRC as part of this exemption; the relevant information was submitted on the docket in the letters identified above. The sections below outline the

licensee's basis for the OMA's feasibility and reliability.

The NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire'' (ADAMS Accession No. ML073020676), provides criteria and associated technical bases for evaluating the feasibility and reliability of post-fire OMAs in nuclear power plants. The following provides the Millstone 2 analysis of these criteria for justifying the OMAs specified in this exemption.

A.5.1 Bases for Establishing Feasibility and Reliability

The licensee stated that in establishing the assumed times for Operators to perform various tasks, a significant margin (*i.e.,* a factor of two) was used with respect to the required time to establish the system function for all fire area scenarios identified in the exemption request. The licensee also stated that confirmation times for valve/breaker manipulations were included in the action time for the OMAs. The licensee also stated that for valves that are operated in the field, if they are being manually opened or closed, there is local indication, plus the mechanical stops to confirm valve operation, and for valves that are throttled, the field Operator is in communication with the CR personnel who monitor control board indication to confirm the proper response. The licensee further stated that all breakers have local mechanical indication for position verification, that all sequenced steps are coordinated from the CR, and that the OMA times listed include this coordination.

A.5.2 Environmental Factors

The licensee stated that a review of ventilation systems for the fire areas addressed by the exemption request concluded that no credible paths exist that could allow the spread of products of combustion from the area of fire origin to an area that either serves as a travel path for OMAs or is an action location for an OMA. The licensee also stated that the installed ventilation systems are not used to perform smoke removal activity for the fire areas discussed in the exemption request and that smoke evacuation for these areas would be accomplished by the site fire brigade utilizing portable mechanical ventilation.

The licensee stated that the performance of all the OMAs for each of the fire areas has specific safe pathways for access and egress and that in all cases, emergency lighting units have been provided to ensure adequate lighting. The licensee also stated that during a fire event, implementation of CR actions ensure the radiation levels along these pathways, and at the location of the OMAs, are within the normal and expected levels.

The licensee stated that area temperatures may be slightly elevated due to a loss of normal ventilation; however, in no case would the temperatures prevent access along the defined routes or prevent the performance of an OMA. The licensee further stated that the most limiting time estimate is 72 minutes of charging system operation injecting the contents of the BASTs based on the tanks being at the TRM minimum level at the start of the event, and that during the event, charging may be lost or secured, and RCS inventory can meet the 10 CFR part 50, appendix R performance goal for 180 minutes. The licensee further stated that analysis indicates that valve 2–CH–192 may not need to be opened until 252 minutes into the event.

The licensee stated that fire barrier deviations that could allow the spread of products of combustion of a fire to an adjacent area that either serves as a travel path for OMAs or is an action location for an OMA have been found to not adversely impact OMA travel paths or action areas.

A.5.3 Equipment Functionality and Accessibility

The licensee stated that as part of the OMA validation process, lighting, component labeling, accessibility of equipment, tools, keys, flashlights, and other devices or supplies needed are verified to ensure successful completion of the OMA.

The licensee stated that for each OMA, the current Millstone 2 10 CFR part 50, appendix R report indicates that Operator access is assured by an alternate path, or access is not required until after the fire has been suppressed. Where applicable, the licensee stated that OMAs have sufficient emergency lighting units to provide for access to the particular component and to perform the task.

A.5.4 Available Indications

Indicators and indication cables have been evaluated by the licensee as part of the exemption request process. Where impacts to indication have been identified, the licensee provided an alternate method to obtain the needed indication(s).

A.5.5 Communications

The licensee stated that Operators are provided with dedicated radio communication equipment and that the 10 CFR part 50, appendix R communication system utilizes a portion of the Millstone 800 megahertz (MHz) trunked radio system, which consists of 800 MHz portable radio units, a CR base station transmitter, antennas, a main communication console located inside the CR, and redundant repeaters. The licensee also stated that the CR base station transmitter is provided to ensure two-way voice communications with the CR, without affecting plant safety systems that may have sensitive electronic equipment located in the area, and the resulting design configuration ensures communications capability for all 10 CFR part 50, appendix R fire scenarios.

A.5.6 Portable Equipment

The licensee stated that all equipment required to complete a required action is included in a preventative maintenance program and is also listed in the TRM, which identifies surveillances for the equipment utilized in each OMA.

A.5.7 Personnel Protection Equipment

The licensee stated that there are no OMAs required in fire areas identified in the exemption request that necessitate the use of self-contained breathing apparatus. No fire areas necessitate reentry to the area of fire origin.

A.5.8 Procedures and Training

The licensee stated that entry into its AOP for ''FIRE'' is at the first indication of a fire from a panel alarm or report from the field and if the fire is in a 10 CFR part 50, appendix R area, the shift is directed to determine if a fire should be considered a fire subject to 10 CFR part 50, appendix R (*i.e.,* requiring use of the appendix R AOPs) by:

1. Identifying actual or imminent damage to safe shutdown components, switchgear, motor control centers, cable trays, or conduit runs;

2. Observation of spurious operation of plant components needed for safe shutdown;

3. Observation of loss of indication, control, or function of safe shutdown plant systems or components;

4. Observation of conflicting instrument indication for safe shutdown systems or components; or

5. Observation of parameters associated with safe shutdown systems or components not being within expected limits for the existing plant configuration.

The licensee stated that its AOP for ''FIRE'' has various attachments that have 10 CFR part 50, appendix R egress/access routes that provide a safe pathway to reach the required equipment necessary to complete the

OMAs and that it has confirmed that the pathways will be free of hazards to the Operators due to the subject fire.

The licensee also stated that there is a 10 CFR part 50, appendix R AOP corresponding to each appendix R fire area, which is entered when an appendix R fire is declared, and that Operations personnel train to those AOPs, which identify the steps to perform each OMA. The licensee further stated that time-critical OMAs are also identified within operating procedures, which require that Operations personnel train to perform these time-critical activities and that the OMAs presented in this exemption request are encompassed in the time-critical procedure.

The licensee further stated that Operations personnel train to these procedures and the AOPs identify the steps to perform each OMA. The licensee further stated that the times allotted to perform these tasks are easily achieved by experienced and inexperienced Operators during training sessions, evaluated requalification training, and supervised walkdowns, and that for each case, there is sufficient margin to account for the uncertainties associated with stress, environmental factors, and unexpected delays.

A.5.9 Staffing

The licensee stated that the Operations shift staffing requirements include one additional licensed or non-licensed Operator over the minimum technical specification requirement to be on duty each shift during Modes 1, 2, 3, or 4, and that this Operator is designated as the 10 CFR part 50, appendix R Operator and is specified in the TRM. The licensee also stated that the number of individuals available to respond to the OMAs is one RO, two PEOs, and one additional licensed or non-licensed individual (10 CFR part 50, appendix R Operator). The licensee stated that the exemption request allocated tasks to PEO–1, PEO–2, PEO–3, and RO–1, and that one of the three PEOs would be the TRM required 10 CFR part 50, appendix R Operator, and with the exception of the panel C10 activities, the assignments are interchangeable between the four Operators, and since these individuals are specified by the technical specification and TRM, they are not members of the fire brigade and have no other collateral duties.

The licensee stated that Millstone 2 has a station emergency response organization (SERO) and appropriate emergency response facilities, and that declaration of an ALERT (events that are in progress or have occurred and involving an actual or potential substantial degradation of the level of safety of the plant, with releases expected to be limited to small fractions of the Environmental Protection Agency Protective Action Guideline exposure levels) activates the SERO organization, which is immediately staffed by on-site personnel and is fully established with on-call personnel within 60 minutes of the ALERT being declared. The licensee also stated that after this time, off-shift Operations staff (*e.g.,* personnel in training, performing administrative functions, etc.) may be called in as requested by the Shift Manager. The licensee further stated that many of the OMAs are not required prior to the establishment of SERO and that the additional staff available through SERO will improve the reliability of these OMAs.

The licensee stated that Operators are required and assumed to be within the protected area and that the time lines account for the initial response by the field Operator. The licensee also stated that upon the announcement of a fire, the field Operators are directed to report to the CR and await further directions and that initially, upon a report of a fire, the CR Operators enter their AOP for ''FIRE.'' The licensee further stated that the flow path to get into a 10 CFR part 50, appendix R fire scenario is that upon indication of a fire the fire brigade is dispatched and, based on the report or indications in the CR, an appendix R fire may be declared, and in the development of the time lines, the Operators are allowed 5 minutes to respond and report to the CR.

A.5.10 Demonstrations

The licensee provided its validation process for the OMAs included in the exemption request. The validation process included the following: (1) Validation objectives, (2) validation frequency, (3) validation methods, (4) validation attributes, and (5) validation performance.

The licensee stated that all OMAs are encompassed in its operating procedures and that an enhancement to the tracking and training on time-critical activities has been developed and is currently being implemented.

The licensee stated that all of the OMAs identified are contained in the AOPs to respond to a 10 CFR part 50, appendix R fire and that during initial validation of these procedures, the OMAs were performed, and all of the time performance objectives were met as a result of the validation.

A.5.11 Feasibility Summary

The licensee's analysis demonstrates that, for the expected scenarios, the OMAs can be diagnosed and executed within the amount of time available to complete them. The licensee's analysis also demonstrates that various factors, including the factor of two times margin, the use of the minimum BAST inventory, and the use of the CST inventory, have been considered to address uncertainties in estimating the time available. Therefore, the OMAs included in this review are feasible because there is adequate time available for the Operator to perform the required OMAs to achieve and maintain hot shutdown following a postulated fire event. Where a diagnosis time has been identified, it is included as part of the required time for a particular action. Where an action has multiple times or contingencies associated with the ''allowable'' completion time, the lesser time is used. This approach is considered to represent a conservative approach to analyzing the timelines associated with each of the OMAs with regard to the feasibility and reliability of the actions included in this exemption. All OMAs have at least 30 minutes of margin. Margin is based on using the most limiting information from the licensee; for example, if the licensee postulated a range of time for diagnosis, the required time includes the largest number in the range.

The completion times indicate reasonable assurance that the OMAs can reliably be performed under a wide range of conceivable conditions by different plant crews because it, in conjunction with the time margins associated with each action and other installed fire protection features, accounts for sources of uncertainty such as variations in fire and plant conditions, factors unable to be recreated in demonstrations and human-centered factors.

Finally, these numbers should not be considered without the understanding that the manual actions are a fallback, in the unlikely event that the fire protection DID features are insufficient. In most cases, there is no credible fire scenario that would necessitate the performance of these OMAs. The licensee provided a discussion of the activity completion times and associate margins related to the OMAs.

A.5.12 Reliability

A reliable action is a feasible action that is analyzed and demonstrated as being dependably repeatable within an available time. The above criteria, Sections 3.5.1 through 3.5.10, provide

the NRC staff's basis that the actions are feasible. Section 3.5.11 provides a discussion of the available time margin. The licensee provided a basis that the actions were reliable based on the available time margin; the administrative controls such as procedures, staffing levels, and availability of equipment; and by accounting for uncertainty in fires and plant conditions. Therefore, the OMAs included in this review are reliable because there is adequate time available to account for uncertainties not only in estimates of the time available, but also in estimates of how long it takes to diagnose a fire and execute the OMAs (*e.g.,* as based, at least in part, on a plant demonstration of the actions under non-fire conditions). For example, OMA 1 establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established. Further, since the BASTs have a minimum TRM specified inventory to ensure 72 minutes of flow, OMA 1 can be completed with 40 minutes of margin.

A.6 Summary of DID and Operator Manual Actions

In summary, the DID concept for a fire in the fire areas discussed above provides a level of safety that results in the unlikely occurrence of fires, rapid detection, control, and extinguishment of fires that do occur and the protection of SSCs important to safety. As discussed above, the licensee has provided preventative and protective measures in addition to feasible and reliable OMAs that, together, demonstrate the licensee's ability to preserve or maintain safe shutdown capability in the event of a fire in the analyzed fire areas.

B. Authorized by Law

This exemption would allow Millstone 2 to rely on OMAs, in conjunction with the other installed fire protection features, to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event as part of its fire protection program, in lieu of meeting the requirements specified in 10 CFR part 50, appendix R, section III.G.2, for a fire in the analyzed fire areas. As stated above, § 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

C. No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, appendix R, section III.G, is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. Based on the above, no new accident precursors are created by the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas. Therefore, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

D. Consistent With the Common Defense and Security

This exemption would allow Millstone 2 to credit the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas discussed above, in lieu of meeting the requirements specified in 10 CFR part 50, appendix R, section III.G.2. This change, to the operation of the plant, has no relation to security issues. Therefore, the common defense and security is not diminished by this exemption.

E. Special Circumstances

One of the special circumstances described in § 50.12(a)(2)(ii) is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR part 50, appendix R, section III.G, is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. While the licensee does not comply with the explicit requirements of 10 CFR part 50, appendix R, section III.G.2, specifically, it does meet the underlying purpose of section III.G as a whole by ensuring that safe shutdown capability remains available through the combination of DID and OMAs. Therefore, special circumstances exist that warrant the issuance of this exemption as required by § 50.12(a)(2)(ii).

IV. Conclusion

Based on the all of the features of the DID concept discussed above, the NRC staff concludes that the use of the requested OMAs, in these particular instances and in conjunction with the other installed fire protection features, in lieu of strict compliance with the requirements of 10 CFR part 50, appendix R, section III.G.2, is consistent with the underlying purpose of the rule. As such, the level of safety present at Millstone 2 is commensurate with the established safety standards for nuclear power plants.

Accordingly, the Commission has determined that, pursuant to § 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants Dominion an exemption from the requirements of 10 CFR part 50, appendix R, section III.G.2, to utilize the OMAs discussed above at Millstone 2.

Pursuant to § 51.32, an environmental assessment and finding of no significant impact related to this exemption was published in the **Federal Register** on September 28, 2017 (82 FR 45322). Based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance of this **Federal Register** notice.

Dated at Rockville, Maryland, this 24th day of October, 2017.

For the Nuclear Regulatory Commission.

Eric J. Benner,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–23427 Filed 10–26–17; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from February 1, 2017 to February 28, 2017.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, (202) 606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A,

B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No schedule A authorities to report during February 2017.

Schedule B

No schedule B authorities to report during February 2017.

The following Schedule C appointing authorities were approved during February 2017.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Commerce	Immediate Office of the Secretary	Senior Advisor	DC170056	02/27/2017
Department of Health And Human Services.	Office of the Assistant Secretary for Public Affairs.	Special Advisor	DH170088	02/21/2017
	Office of the Assistant Secretary for Health.	Associate Director for Policy	DH170094	02/21/2017
		Special Assistant	DH170097	02/21/2017
	Office of Global Affairs	Senior Advisor	DH170103	02/21/2017
		Advisor	DH170113	02/21/2017
	Administration for Children and Families.	Special Assistant	DH170127	02/21/2017
	Office of the Secretary	Special Assistant (2)	DH170128	02/21/2017
			DH170112	02/22/2017
		Policy Advisor for Health Policy.	DH170093	02/21/2017
	Centers for Medicare and Medicaid Services.	Senior Advisor	DH170108	02/27/2017
	Office of Intergovernmental and External Affairs.	Director of External Affairs	DH170136	02/27/2017
Department of Justice	Office of the Attorney General	Deputy White House Liaison	DJ170039	02/23/2017
Department of the Navy	Office of the Under Secretary of the Navy.	Special Assistant for International Affairs.	DN170007	02/06/2017
		Residence Director	DN170017	02/09/2017
Official Residence of the Vice President.	Official Residence of the Vice President.	Deputy Residence Manager	RV170001	02/09/2017
Department of Transportation	Office of the Secretary	Special Assistant for Scheduling and Advance.	DT170036	02/28/2017
Department of the Treasury	Office of the Secretary	Director, Operations (Scheduling and Advance).	DY170060	02/27/2017
		Senior Advisor	DY170065	02/27/2017

The following Schedule C appointing authorities were revoked during February 2017.

Agency name	Organization name	Position title	Request No.	Date vacated
Commodity Futures Trading Commission.	Division of Enforcement	Director, Division of Enforcement.	CT140008	02/04/2017
	Office of the Chairperson	Administrative Assistant to the Commissioner.	CT100004	02/04/2017
Consumer Product Safety Commission	Office of Commissioners	Chief of Staff	PS140013	02/08/2017
		Special Assistant	PS140016	02/08/2017
	Office of Congressional Relations	Director, Office of Congressional Relations.	PS160001	02/09/2017
National Credit Union Administration	National Credit Union Administration	Staff Assistant	CU090004	02/04/2017
		Director, Public and Congressional Affairs/Chief Policy Advisor to the Chairman.	CU110004	02/18/2017
National Endowment for the Arts	Office of the Chief of Staff	White House Liaison/Senior Advisor to the Chief of Staff.	NA160006	02/03/2017
Securities and Exchange Commission	Office of the Chief Operating Officer	Writer-Editor	SE140001	02/10/2017

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–23425 Filed 10–26–17; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from April 1, 2017 to April 30, 2017.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, (202) 606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No schedule A authorities to report during April 2017.

Schedule B

No schedule B authorities to report during April 2017.

The following Schedule C appointing authorities were approved during April 2017.

Agency name	Organization name	Position title	Request No.	Effective date
DEPARTMENT OF AGRICULTURE.	Rural Housing Service	Staff Assistant	DA170124	04/12/2017
	Office of the Assistant Secretary for Congressional Relations.	Legislative Analyst	DA170129	04/12/2017
	Office of Communications	Deputy Press Secretary	DA170141	04/12/2017
		Staff Assistant	DA170142	04/12/2017
		Deputy Director (Press Secretary)	DA170138	04/14/2017
	Office of the Secretary	Scheduler	DA170143	04/14/2017
		Senior Advisor	DA170148	04/14/2017
BROADCASTING BOARD OF GOVERNORS.	Office of Chief Executive Officer and Director.	Special Communications Advisor	IB170002	04/25/2017
		White House Liaison	IB170004	04/24/2017
DEPARTMENT OF COMMERCE	Office of the Chief of Staff	Program Manager, Office of Faith Based and Neighborhood Partnerships.	DC170097	04/06/2017
		Director of Advance and Protocol	DC170094	04/14/2017
		Advance Assistant	DC170081	04/14/2017
	Economic Development Administration.	Confidential Assistant	DC170101	04/06/2017
		Special Advisor	DC170063	04/14/2017
	Office of Legislative and Intergovernmental Affairs.	Director of Intergovernmental Affairs.	DC170148	04/12/2017
	Office of the Under Secretary	Press Secretary and Program Manager, Office of Public Affairs.	DC170103	04/14/2017
	Office of Policy and Strategic Planning.	Policy Assistant	DC170105	04/14/2017
	Office of Business Liaison	Special Assistant	DC170107	04/14/2017
	International Trade Administration	Senior Advisor for Budget and Administration.	DC170089	04/19/2017
				.....
		Senior Advisor	DC170085	04/20/2017
	Bureau of Industry and Security	Congressional Affairs Specialist (2)	DC170092	04/14/2017
			DC170114	04/21/2017
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chairperson	Market Intelligence Advisor	CT170008	04/11/2017
DEPARTMENT OF EDUCATION	Office of Legislation and Congressional Affairs.	Confidential Assistant (2)	DB170077	04/03/2017
			DB170096	04/18/2017
	Office of the General Counsel	Attorney Advisor	DB170082	04/03/2017
		Confidential Assistant	DB170092	04/06/2017
	Office of the Secretary	Confidential Assistant (4)	DB170093	04/19/2017
			DB170078	04/03/2017
			DB170085	04/12/2017
			DB170094	04/24/2017
		Special Assistant (4)	DB170089	04/07/2017
			DB170087	04/14/2017
			DB170105	04/27/2017
			DB170095	04/28/2017
	Office of Special Education and Rehabilitative Services.	Confidential Assistant	DB170100	04/18/2017
	Office of Elementary and Secondary Education.	Confidential Assistant	DB170102	04/18/2017
	Office of Communications and Outreach.	Special Assistant (3)	DB170088	04/07/2017
			DB170099	04/19/2017
			DB170106	04/20/2017

Agency name	Organization name	Position title	Request No.	Effective date
		Confidential Assistant	DB170098	04/19/2017
DEPARTMENT OF ENERGY	Office of Public Affairs	Press Assistant (2)	DE170121	04/04/2017
			DE170125	04/14/2017
		Press Secretary	DE170129	04/14/2017
	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Senior Advisor for External Affairs	DE170119	04/06/2017
	Office of Economic Impact and Diversity.	Special Assistant	DE170117	04/14/2017
	Office of Scheduling and Advance	Director, Office of Scheduling and Advance.	DE170133	04/14/2017
FEDERAL COMMUNICATIONS COMMISSION.	Office of Media Relations	Director	FC170008	04/13/2017
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	White House Liaison	GS170016	04/05/2017
	Office of Congressional and Intergovernmental Affairs.	Policy Advisor	GS170020	04/14/2017
	Office of Regional Administrators	Special Assistant to the Regional Administrator.	GS170019	04/17/2017
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Legislation.	Director of Investigations	DH170184	04/03/2017
	Office of the Secretary	Special Assistant	DH170180	04/06/2017
		Briefing Coordinator	DH170218	04/14/2017
		Director of Boards and Commissions.	DH170177	04/28/2017
		Special Assistant for Public Health and Science.	DH170187	04/14/2017
	Office of the Assistant Secretary for Public Affairs.	Assistant Speechwriter (2)	DH170208	04/11/2017
			DH170212	04/19/2017
	Office of the Assistant Secretary for Public Affairs.	Press Assistant (Regional Media)	DH170175	04/14/2017
	Office of Administration for Children and Families.	Special Assistant	DH170190	04/12/2017
	Office of Intergovernmental and External Affairs.	Special Assistant	DH170199	04/14/2017
	Office of Administration for Community Living.	Advisor	DH170234	04/26/2017
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency.	Director, Department of Homeland Security Center for Faith-Based and Neighborhood Partnerships.	DM170110	04/13/2017
	Office of Privacy Officer	Advisor	DM170113	04/24/2017
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Senior Advisor	DU170084	04/03/2017
		Advisor	DU170087	04/03/2017
	Office of the Administration	Advance Coordinator	DU170106	04/03/2017
		Director of Scheduling	DU170116	04/06/2017
		Briefing and Book Coordinator	DU170114	04/07/2017
		Director of Advance	DU170103	04/12/2017
	Office of Public Affairs	Director of Speechwriting	DU170112	04/14/2017
	Office of Policy Development and Research.	Director for Strong Cities and Strong Communities.	DU170111	04/19/2017
	Office of the Secretary	Senior Advisor	DU170100	04/28/2017
DEPARTMENT OF THE INTERIOR.	Office of Congressional and Legislative Affairs.	Deputy Director, Office of Congressional and Legislative Affairs.	DI170042	04/12/2017
DEPARTMENT OF LABOR	Office of the Solicitor	Attorney Advisor	DL170051	04/06/2017
	Office of the Secretary	Counselor	DL170052	04/28/2017
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of the Administrator	White House Liaison	NN170039	04/19/2017
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Special Assistant	BO170057	04/07/2017
		Confidential Assistant (2)	BO170047	04/12/2017
		Deputy Chief of Staff	BO170062	04/24/2017
			BO170060	04/14/2017
	Office of General Government Programs.	Confidential Assistant	BO170061	04/07/2017
	Office of the General Counsel	Counsel	BO170050	04/14/2017
	Office of Natural Resource Programs.	Confidential Assistant	BO170054	04/14/2017
	Office of Legislative Affairs	Legislative Analyst	BO170056	04/14/2017
	Office of Information and Regulatory Affairs.	Counselor	BO170063	04/14/2017
	Office of Communications	Press Secretary	BO170065	04/19/2017
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of the Ambassador	Executive Secretary	TN170011	04/19/2017

Agency name	Organization name	Position title	Request No.	Effective date
SMALL BUSINESS ADMINISTRATION.	Office of Entrepreneurial Development.	Senior Advisor	SB170020	04/06/2017
	Office of Field Operations	Senior Advisor	SB170026	04/11/2017
	Office of the Administrator	Senior Advisor	SB170022	04/14/2017
	Office of Congressional and Legislative Affairs.	Legislative Assistant	SB170027	04/19/2017
DEPARTMENT OF TRANSPORTATION.	Office of Small and Disadvantaged Business Utilization.	Senior Advisor	DT170088	04/04/2017
	Office of the Secretary	Counselor	DT170080	04/12/2017
		Executive Assistant	DT170091	04/14/2017
		Senior Advisor	DT170051	04/14/2017
	Office of Public Affairs	Deputy Director for Public Affairs	DT170055	04/14/2017
	Office of the Assistant Secretary for Transportation Policy.	Deputy Assistant Secretary for Transportation Policy.	DT170075	04/14/2017
	Office of the Administrator	Director of Governmental Affairs	DT170081	04/14/2017
	Immediate Office of the Administrator.	Director of Governmental, International and Public Affairs.	DT170085	04/14/2017
	Office of the Assistant Secretary for Governmental Affairs.	Governmental Affairs Officer	DT170092	04/14/2017
DEPARTMENT OF THE TREASURY.	Office of the Secretary	White House Liaison	DY170102	04/14/2017
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Special Advisor	DV170047	04/14/2017

The following Schedule C appointing authorities were revoked during April 2017.

Agency name	Organization name	Position title	Request No.	Date vacated
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chairperson	Director of Legislative Affairs	CT140006	04/01/2017
NATIONAL ENDOWMENT FOR THE ARTS.	Office of the Chief of Staff	Confidential Assistant to the Chief of Staff.	NA160004	04/01/2017
NATIONAL MEDIATION BOARD	Office of the Chairman	Confidential Assistant	NM140001	04/01/2017

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–23424 Filed 10–26–17; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from March 1, 2017 to March 31, 2017.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, (202) 606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

11. Department of Homeland Security (Sch. A, 213.3111)

(d) Department of Homeland Security

(1) Not to exceed 1,000 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after the completion of regulations implementing the Border Patrol Agency Pay Reform Act of 2014 or January 15, 2019.

Schedule B

No schedule B authorities to report during March 2017.

The following Schedule C appointing authorities were approved during March 2017.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE.	Office of the Assistant Secretary for Congressional Relations.	Legislative Analyst	DA170125	03/28/2017
	Office of the Secretary	Staff Assistant	DA170099	03/30/2017
		Deputy White House Liaison	DA170116	03/30/2017
		Confidential Assistant for Special Projects.	DA170103	03/28/2017
	Farm Service Agency	Confidential Assistant	DA170131	03/31/2017
DEPARTMENT OF COMMERCE	Office of Public Affairs	Senior Public Affairs Coordinator	DC170052	03/06/2017
		Press Assistant	DC170057	03/22/2017
		Deputy Director of Public Affairs and Press Secretary.	DC170066	03/23/2017
		Senior Speechwriter and Press Assistant.	DC170071	03/31/2017
		Deputy Director of Speechwriting	DC170075	03/27/2017
	Office of White House Liaison	Deputy Director, Office of White House Liaison.	DC170053	03/06/2017
		Director, Office of White House Liaison.	DC170061	03/21/2017
	Office of Assistant Secretary Legislative and Intergovernmental Affairs.	Associate Director for Legislative Affairs.	DC170080	03/14/2017
	Office of the Chief of Staff	Confidential Assistant	DC170062	03/22/2017
		Director of Scheduling	DC170083	03/28/2017
	Patent and Trademark Office	Deputy Chief Communications Officer for Strategic Communications.	DC170077	03/23/2017
		Senior Advisor	DC170088	03/24/2017
	Office of Scheduling and Advance	Deputy Director of Advance	DC170079	03/24/2017
	Office of Executive Secretariat	Associate Director, Office of Executive Secretariat.	DC170067	03/28/2017
	Office of Business Liaison	Special Assistant (2)	DC170082	03/28/2017
			DC170069	03/22/2017
	Minority Business Development Agency.	Special Advisor for Business Development.	DC170093	03/28/2017
	Office of Assistant Secretary for Industry and Analysis.	Associate Director for Intergovernmental Affairs.	DC170073	03/31/2017
	Office of the General Counsel	Senior Counsel	DC170095	03/31/2017
DEPARTMENT OF EDUCATION	Office of the Secretary	Director, White House Liaison	DB170074	03/16/2017
DEPARTMENT OF ENERGY	Office of Assistant Secretary for Congressional and Intergovernmental Affairs.	Special Advisor	DE170110	03/29/2017
	Congressional and Intergovernmental Affairs.	Advisor for Intergovernmental and External Affairs.	DE170116	03/30/2017
		Legislative Affairs Advisor (2)	DE170092	03/15/2017
			DE170093	03/10/2017
	Office of the Secretary	Executive Support Specialist	DE170114	03/13/2017
		Special Assistant (3)	DE170115	03/13/2017
			DE170118	03/31/2017
			DE170109	03/29/2017
	Office of Assistant Secretary for Fossil Energy.	Special Advisor	DE170091	03/14/2017
	Office of Assistant Secretary for Nuclear Energy.	Senior Advisor and Chief of Staff	DE170095	03/21/2017
	Office of Public Affairs	Deputy Director, Office of Public Affairs.	DE170107	03/21/2017
		Digital Strategy Advisor	DE170108	03/21/2017
	Office of Energy Policy and Systems Analysis.	Special Advisor	DE170111	03/29/2017
	Office of Assistant Secretary for International Affairs.	Special Advisor	DE170120	03/30/2017
	Office of Management	Director of Scheduling	DE170124	03/30/2017
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	White House Liaison	EP170026	03/28/2017
GENERAL SERVICES ADMINISTRATION.	Office of the Regional Administrators.	Special Assistant	GS170015	03/10/2017
	Office of the Administrator	Senior Advisor for Technology	GS170021	03/31/2017
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Health Reform	Policy Advisor	DH170139	03/03/2017
		Senior Policy Advisor	DH170141	03/03/2017
		Policy Advisor for Health Reform	DH170098	03/17/2017
	Administration for Children and Families.	Policy Advisor	DH170138	03/20/2017
		Confidential Assistant	DH170086	03/23/2017
	Office of the Secretary	Deputy Scheduler	DH170158	03/23/2017
		Director of Advance	DH170169	03/23/2017

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Health.	Liaison	DH170137	03/28/2017
	Centers for Medicare and Medicaid Services.	Senior Advisor	DH170172	03/28/2017
	Office of Intergovernmental and External Affairs.	Director of Intergovernmental Affairs.	DH170133	03/30/2017
	Office of the Assistant Secretary for Legislation.	Special Advisor (2)	DH170120	03/07/2017
			DH170157	03/30/2017
	Food and Drug Administration	Senior Advisor	DH170188	03/31/2017
DEPARTMENT OF HOMELAND SECURITY.	Office of the Chief of Staff	Advance Representative	DM170080	03/15/2017
		Special Assistant	DM170085	03/16/2017
	Office of the Secretary	Director, Trips & Advance	DM170079	03/16/2017
	Office of the Assistant Secretary for Public Affairs.	Special Assistant	DM170083	03/23/2017
	Office of the Assistant Secretary for Policy.	Advisor (2)	DM170104	03/31/2017
			DM170105	03/31/2017
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	White House Liaison	DU170059	03/02/2017
		Executive Assistant	DU170062	03/02/2017
	Office of Public Affairs	Deputy Assistant Secretary for Public Affairs.	DU170090	03/20/2017
		Press Secretary	DU170017	03/23/2017
		Speechwriter	DU170081	03/31/2017
	Office of Congressional and Intergovernmental Relations.	Congressional Relations Specialist	DU170095	03/20/2017
	Office of the Administration	Special Assistant	DU170096	03/20/2017
		Director, Office of Executive Scheduling and Operations.	DU170058	03/27/2017
	Office of the General Counsel	Senior Counsel	DU170094	03/23/2017
	Office of Public and Indian Housing.	Special Advisor (2)	DU170054	03/27/2017
			DU170055	03/27/2017
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Special Assistant (Scheduling and Advance) (2).	DI170043	03/10/2017
			DI170044	03/10/2017
		Director, Office of Scheduling and Advance.	DI170045	03/10/2017
		White House Liaison	DI170047	03/10/2017
		Special Assistant	DI170048	03/10/2017
	Office of Assistant Secretary—Indian Affairs.	Advisor	DI170046	03/16/2017
DEPARTMENT OF JUSTICE	Office of the Attorney General	Special Assistant	DJ170040	03/01/2017
	Office of Public Affairs	Principal Deputy Director	DJ170037	03/07/2017
	Office of Legal Policy	Counsel	DJ170048	03/30/2017
NATIONAL ENDOWMENT FOR THE ARTS.	Office of the Senior Deputy Chairman.	Confidential Assistant	NA170006	03/21/2017
OFFICE OF MANAGEMENT AND BUDGET.	Office of Legislative Affairs	Deputy for Legislative Affairs (2)	BO170040	03/08/2017
			BO170032	03/10/2017
	Office of the Director	Confidential Assistant	BO170038	03/31/2017
	Office of Health Division	Confidential Assistant	BO170048	03/31/2017
	Office of the General Counsel	Assistant Deputy General Counsel	BO170051	03/31/2017
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of the Director	White House Liaison	QQ170003	03/09/2017
		Digital Engagement Specialist	QQ170002	03/31/2017
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of the Director	Confidential Assistant	TS170005	03/29/2017
SMALL BUSINESS ADMINISTRATION.	Office of Communications and Public Liaison.	Assistant Director for Internal Communications and Public Liaison.	SB170009	03/07/2017
	Office of Congressional and Legislative Affairs.	Legislative Assistant	SB170011	03/10/2017
		Deputy Assistant Administrator	SB170015	03/30/2017
	Office of the Administrator	Special Advisor	SB170013	03/10/2017
	Office of Capital Access	Special Advisor	SB170021	03/21/2017
	Office of Field Operations	Regional Administrator Region IX	SB170019	03/24/2017
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Special Advisor	DT170043	03/14/2017
		White House Liaison	DT170048	03/14/2017
		Special Assistant (3)	DT170064	03/28/2017
			DT170078	03/24/2017
			DT170052	03/30/2017
		Senior White House Advisor	DT170050	03/14/2017
	Office of Public Affairs	Speechwriter	DT170044	03/24/2017
	Office of the Executive Secretariat	Special Assistant	DT170057	03/24/2017
	Office of Assistant Secretary for Budget and Programs.	Special Assistant	DT170065	03/31/2017
DEPARTMENT OF THE TREASURY.	Office of Chief of Staff	Advance Representative	DY170070	03/01/2017
		Deputy Chief of Staff	DY170071	03/01/2017
		Advance Representative	DY170068	03/06/2017

Agency name	Organization name	Position title	Authorization No.	Effective date
		Assistant	DY170069	03/10/2017
	Office of the Executive Secretary ..	Special Assistant	DY170074	03/16/2017
	Office of Legislative Affairs	Senior Advisor	DY170083	03/22/2017
	Office of the Secretary	Personal Aide	DY170073	03/23/2017

The following Schedule C appointing authorities were revoked during March 2017.

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF AGRICULTURE.	Farm Service Agency	State Executive Director—Delaware.	DA130170	03/04/2017
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chairperson	Public Affairs Specialist (Speechwriter).	CT150002	03/31/2017
OFFICE OF THE SECRETARY OF DEFENSE.	Office of Assistant Secretary of Defense (Public Affairs).	Speechwriter	DD160089	03/01/2017
	Office of the Secretary	Confidential Assistant	DD150135	03/04/2017
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of the Managing Director	Confidential Assistant	TB150007	03/15/2017
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Confidential Assistant	SE130005	03/31/2017
		Writer-Editor	SE150004	03/31/2017

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–23426 Filed 10–26–17; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–29]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 31, 2017.

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

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–29; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* October 23, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 31, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–23421 Filed 10–26–17; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Civil Monetary Penalty Inflation Adjustment

AGENCY: Railroad Retirement Board.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2017.

SUMMARY: As required by Section 701 of the Bipartisan Budget Act of 2015, entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Railroad Retirement Board (Board) hereby publishes its 2017 annual adjustment of civil penalties for inflation.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–2092, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015), entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (Inflation Adjustment Act) to require agencies to publish regulations adjusting the amount of civil monetary penalties provided by law within the jurisdiction of the agency not later than July 1, 2016, and annual adjustments thereafter. The Board published an interim final rule in the **Federal Register** in accordance with this requirement on May 2, 2016 (see 81 FR 26127).

For the 2017 annual adjustment for inflation of the maximum civil penalty under the Program Fraud Civil Remedies Act of 1986, the Board applies the formula provided by the 2015 Act and the Board's interim final rule of May 2, 2016. In accordance with the 2015 Act, the amount of the adjustment is based on the percent increase between the CPI–U for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. The percent increase between the CPI–U for October 2016 and October 2015, as provided by Office of Management and Budget Memorandum M–17–11 (December 16, 2016) is 1.01636 percent. Therefore, the new maximum penalty under the Program Fraud Civil Remedies Act is $10,957 (the 2016 maximum penalty of $10,781 multiplied by 1.01636, rounded to the nearest dollar). The new minimum penalty under the False Claims Act is $10,957 (the 2016 minimum penalty of $10,781 multiplied by 1.01636, rounded to the nearest dollar), and the new maximum penalty is $21,916 (the 2016 maximum penalty of $21,563 multiplied by 1.01636, rounded to the nearest dollar). The adjustments in penalties will be effective October 27, 2017.

By Authority of the Board.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2017–23351 Filed 10–26–17; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81924; File No. SR–BatsBZX–2017–69]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Amended and Restated Certificate of Incorporation

October 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2017, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 seeks to amend its Amended and Restated Certificate of Incorporation. The text of the proposed rule change is provided below.
(additions are *italicized;* deletions are [bracketed])

* * * * *

Amended and Restated Certificate of Incorporation of Bats BZX Exchange, Inc.

The name of the corporation is Bats BZX Exchange, Inc. The corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Delaware on November 1, 2007 *under the name BATS Exchange, Inc.* This Amended and Restated Certificate of Incorporation of the corporation, which restates and integrates and also further amends the provisions of the corporation's Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of its sole stockholder in accordance with Section 228 of the General Corporation Law of the State of Delaware. The [Amended and Restated]Certificate of Incorporation of the corporation is hereby amended, integrated and restated to read in its entirety as follows:

* * * * *

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BZX recently amended its Certificate of Incorporation in connection with a corporate transaction (the ''Transaction'') involving, among other things, the recent acquisition of BZX, along with Bats BZY Exchange, Inc. (''Bats BYX''), Bats EDGX Exchange, Inc. (''Bats EDGX''), and Bats EDGA Exchange, Inc. (''Bats EDGA'' and, together with Bats BYX, Bats EDGX, and Bats BZX, the ''Bats Exchanges'') by CBOE Holdings, Inc. (''CBOE Holdings''). CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated (''CBOE'') and C2 Options Exchange, Incorporated (''C2''). Particularly, the filing proposed, among other things, to amend and restate the certificate of incorporation of the Exchange based on certificates of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

incorporation of CBOE and C2.[3] The Exchange notes that in conforming the Exchange's Certificate to the certificates of CBOE and C2, it inadvertently (1) did not comply with a provision of Delaware law and (ii) referred to an inaccurate version of the Certificate in the introductory paragraph. The Exchange seeks to correct those errors.

Particularly, Section 245(c) of the Delaware General Corporation Law (DGCL) requires that a restated certificate of incorporation ''shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the secretary of state.'' The Exchange notes that the conformed Certificate did not reference the name under which the corporation was originally incorporated (*i.e.,* ''BATS Exchange, Inc.''). In order to comply with Section 245(c) of the DGCL, the Exchange proposes to amend its Certificate to add a reference to its original name.

The Exchange also notes that the last sentence of the introductory paragraph which provides that the current certificate is ''amended, integrated and restated to read in its entirety as follows:'' mistakenly references the new title of the amended Certificate (*i.e.,* ''Amended and Restated Certificate of Incorporation'') instead of the title of the then current (and now previous) Certificate (''Certificate of Incorporation''). As such, the Exchange proposes to eliminate the new title reference ''Amended and Restated'' from that sentence to accurately reflect the correct version of the Certificate that was amended and restated.

The Exchange notes that the proposed changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is [sic] any way.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes correcting inadvertent non-substantive, technical errors in its Certificate in order to comply with Delaware law and reflect the correct and accurate version of the Certificate that was amended will avoid potential confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest of market participants. As noted above, the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change is merely attempting to correct inadvertent technical errors in the Exchange's introductory paragraph of its Certificate. The proposed rule change has no impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2017–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2017–69. 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

[3] *See* Securities Exchange Act Release No. 81497 (August 30, 2017), 82 FR 42181 (September 6, 2017) (SR–BatsBZX–2017–55).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–69 and should be submitted on or before November 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23377 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81917; File No. SR–NASDAQ–2017–111]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Name Change

October 23, 2017.

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 October 18, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules as well as certain corporate documents of the Exchange to reflect legal name changes.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to reflect in the Exchange's governing documents (and the governing documents of its parent company) [3] and the Exchange's Rulebook a non-substantive corporate branding change to the Exchange's name.[4] Specifically, current references will be changed as follows:

- References to ''NASDAQ'' will be changed to ''Nasdaq''
- References to ''The NASDAQ Stock Market LLC'' or ''NASDAQ Stock Market LLC'' will be changed to ''The Nasdaq Stock Market LLC''
- References to ''NASDAQ PHLX LLC'' or ''NASDAQ PHLX'' will be changed to ''Nasdaq PHLX LLC'' or ''Nasdaq PHLX''
- References to ''NASDAQ BX, Inc.'' or ''NASDAQ BX'' will be changed to ''Nasdaq BX, Inc.'' or ''Nasdaq BX''
- References to ''NASDAQ OMX PSX'' or ''NASDAQ PSX'' will be changed to ''Nasdaq PSX''
- References to ''The NASDAQ OMX Group, Inc.'' or ''NASDAQ OMX Group, Inc.'' will be changed to ''Nasdaq, Inc'' [5]
- In addition to the preceding changes, all references to ''OMX'' will be removed from the Rulebook.[6]
- References to ''NASDAQ Options Market LLC'' will be replaced with ''The Nasdaq Options Market LLC''
- References to ''NASDAQ Execution Services, LLC'' will be changed to ''Nasdaq Execution Services, LLC''
- In all instances where the word ''the'' should have been capitalized, (*e.g.,* Rule 4758(b)(1)), the Exchange will make the appropriate correction.

No other changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3). In lieu of providing a copy of the marked changes, the Exchange represents that it will make the necessary non-substantive revisions to the Certificate of Formation, Second Amended Limited Liability Company Agreement, By-Laws, the Rulebook and post updated versions of each on the Exchange's Web site pursuant to Rule 19b–4(m)(2).

The Exchange notes that the following references are not being amended in the Exchange's governing documents and the Exchange's Rulebook:

- Any name with a trademark (TM) or service mark (SM) attached to the name.
- Any references in the Certificate of Formation or Second Amended Limited Liability Company Agreement which references [sic] a prior name of the Exchange and reflects [sic] a historical date wherein that name was in effect.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to 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 avoiding confusion with the name. The Exchange proposes to conform its name to that of its parent, Nasdaq Inc., by changing the capitalization in the word ''NASDAQ'' to ''Nasdaq.'' The Exchange also proposes to amend the names of affiliated markets in a similar manner, by changing the name ''NASDAQ'' to ''Nasdaq.'' The name change of the Exchange as well as other name changes

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to amend: (i) The Certificate of Formation; (ii) Second Amended Limited Liability Company Agreement; (iii) By-Laws; and (iv) Rule Book.

[4] NASDAQ PHLX LLC and NASDAQ BX, Inc. will also be filing similar rule changes.

[5] *See* Securities Exchange Act Release No. 75421 (July 10, 2015), 80 FR 42136 (July 16, 2015) (SR–BSECC–2015–001, SR–BX–2015–030, SR–NASDAQ–2015–058, SR–Phlx–2015–46, SR–SCCP–2015–01).

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

to related entities are non-substantive changes. No changes to the ownership or structure of the Exchange have taken place.

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 name change will align with the parent company, Nasdaq, Inc.

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

Pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(3) thereunder,[10] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization, and therefore has become effective.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2017–111 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–2017–111. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–111, and should be submitted on or before November 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23370 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32866; 812–14796]

Blackstone/GSO Floating Rate Enhanced Income Fund, et al.

October 23, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 6(c) and 23(c)(3) of the Investment Company Act of 1940 (the ''Act'') for an exemption from rule 23c–3 under the Act.

SUMMARY OF APPLICATION: Applicants request an order under sections 6(c) and 23(c)(3) of the Act for an exemption from certain provisions of rule 23c–3 to permit certain registered closed-end investment companies to make repurchase offers on a monthly basis.

APPLICANTS: Blackstone/GSO Floating Rate Enhanced Income Fund (''BGFREI''), GSO/Blackstone Debt Funds Management LLC (the ''Adviser''), and Blackstone Advisory Partners L.P. (the ''Distributor'').

FILING DATES: The application was filed on July 3, 2017 and amended on October 17, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 17, 2017, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 345 Park Avenue, 31st Floor, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Asen Parachkevov, Senior Counsel, or David Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. BGFREI is a Delaware statutory trust that is registered under the Act as a continuously offered, non-diversified, closed-end management investment company that will be operated as an

interval fund. BGFREI's investment objective is to provide attractive income with low sensitivity to rising interest rates. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to BGFREI. The Distributor is a Delaware partnership, is a registered broker-dealer and a member of the Financial Industry Regulatory Authority, Inc. (''FINRA''), and is BGFREI's principal underwriter and distributor.

2. Applicants request that any relief granted also apply to any registered closed-end management investment company that operates as an interval fund pursuant to rule 23c–3 for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser (the ''Future Funds'', together with BGFREI, the ''Funds'', and each, individually, a ''Fund'').[2]

3. BGFREI's investment objective is to provide attractive income with low sensitivity to rising interest rates. BGFREI has applied for exemptive relief from the Commission to permit BGFREI to issue multiple classes of shares and to impose asset-based distribution fees and an early withdrawal charge.[3] BGFREI currently intends to offer three classes of shares, Class T, Class D and Class I, to the public at net asset value plus any applicable sales charge. From time to time the Funds may create additional classes of shares, the terms of which may differ from BGFREI's Class T, Class D and Class I shares. BGFREI's common shares are not listed on any securities exchange, and BGFREI anticipates that no secondary market will develop for the common shares.

4. Applicants request an order to permit each Fund to offer to repurchase a portion of its common shares at one-month intervals, rather than the three, six, or twelve-month intervals specified by rule 23c–3.

5. Each Fund will disclose in its prospectus and annual reports its fundamental policy to make monthly offers to repurchase a portion of its common shares at net asset value, less deduction of a repurchase fee, if any, as permitted by rule 23c–3(b)(1), and the imposition of early withdrawal charges to the extent permitted pursuant to exemptive relief granted by the Commission. The fundamental policy will be changeable only by a majority vote of the holders of such Fund's outstanding voting securities. Under the fundamental policy, the repurchase offer amount will be determined by the board of trustees of the applicable Fund (''Board'') prior to each repurchase offer. Each Fund will comply with rule 23c–3(b)(8)'s requirements with respect to its trustees who are not interested persons of such Fund, within the meaning of section 2(a)(19) of the Act (''Disinterested Trustees'') and their legal counsel. Under its fundamental policy, each Fund will make monthly offers to repurchase not less than 5% of its outstanding shares at the time of the repurchase request deadline. The repurchase offer amounts for the then-current monthly period, plus the repurchase offer amounts for the two monthly periods immediately preceding the then-current monthly period, will not exceed 25% of the outstanding common shares of the applicable Fund.

6. The prospectus of each Fund will state the means to determine the repurchase request deadline and the maximum number of days between each repurchase request deadline and the repurchase pricing date. Each Fund's repurchase pricing date normally will be the same date as the repurchase request deadline and pricing will be determined after close of business on that date.

7. Pursuant to rule 23c–3(b)(1), each Fund will repurchase shares for cash on or before the repurchase payment deadline, which will be no later than seven calendar days after the repurchase pricing date. BGFREI (and any Future Fund) currently intends to make payment on the next business day following the repurchase pricing date. Each Fund will make payment for shares repurchased in the previous month's repurchase offer at least five business days before sending notification of the next repurchase offer. BGFREI will, and a Future Fund may, deduct a repurchase fee in an amount not to exceed 2% from the repurchase proceeds payable to tendering shareholders, in compliance with rule 23c–3(b)(1).

8. Each Fund will provide common shareholders with notification of each repurchase offer no less than seven days and no more than fourteen days prior to the repurchase request deadline. The notification will include all information required by rule 23c–3(b)(4)(i). Each Fund will file the notification and the Form N–23c–3 with the Commission within three business days after sending the notification to its respective common shareholders.

9. The Funds will not suspend or postpone a repurchase offer except pursuant to the vote of a majority of its Disinterested Trustees, and only under the limited circumstances specified in rule 23c–3(b)(3)(i). The Funds will not condition a repurchase offer upon tender of any minimum amount of shares. In addition, each Fund will comply with the pro ration and other allocation requirements of rule 23c–3(b)(5) if common shareholders tender more than the repurchase offer amount. Further, each Fund will permit tenders to be withdrawn or modified at any time until the repurchase request deadline, but will not permit tenders to be withdrawn or modified thereafter.

10. From the time a Fund sends its notification to shareholders of the repurchase offer until the repurchase pricing date, a percentage of such Fund's assets equal to at least 100% of the repurchase offer amount will consist of: (a) Assets that can be sold or disposed of in the ordinary course of business at approximately the price at which such Fund has valued such investment within a period equal to the period between the repurchase request deadline and the repurchase payment deadline; or (b) assets that mature by the next repurchase payment deadline. In the event the assets of a Fund fail to comply with this requirement, the Board will cause such Fund to take such action as it deems appropriate to ensure compliance.

11. In compliance with the asset coverage requirements of section 18 of the Act, any senior security issued by, or other indebtedness of, a Fund will either mature by the next repurchase pricing date or provide for such Fund's ability to call, repay or redeem such senior security or other indebtedness by the next repurchase pricing date, either in whole or in part, without penalty or premium, as necessary to permit that Fund to complete the repurchase offer in such amounts determined by its Board.

12. The Board of each Fund will adopt written procedures to ensure that such Fund's portfolio assets are sufficiently liquid so that it can comply with its fundamental policy on repurchases and the liquidity requirements of rule 23c–3(b)(10)(i). The Board of each Fund will review the overall composition of the portfolio and make and approve such changes to the procedures as it deems necessary.

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All entities currently intending to rely on the requested relief have been named as applicants. Any entity that relies on the requested order in the future will do so only in accordance with the terms and conditions of the application.

[3] *See* In the Matter of Blackstone/GSO Floating Rate Enhanced Income Fund, *et al.,* File Number 812–14795.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 23(c) of the Act provides in relevant part that no registered closed-end investment company shall purchase any securities of any class of which it is the issuer except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

3. Rule 23c–3 under the Act permits a registered closed-end investment company to make repurchase offers for its common stock at net asset value at periodic intervals pursuant to a fundamental policy of the investment company. ''Periodic interval'' is defined in rule 23c–3(a)(1) as an interval of three, six, or twelve months. Rule 23c–3(b)(4) requires that notification of each repurchase offer be sent to shareholders no less than 21 calendar days and no more than 42 calendar days before the repurchase request deadline.

4. Applicants request an order pursuant to sections 6(c) and 23(c) of the Act exempting them from rule 23c–3(a)(1) to the extent necessary to permit the Funds to make monthly repurchase offers. Applicants also request an exemption from the notice provisions of rule 23c–3(b)(4) to the extent necessary to permit each Fund to send notification of an upcoming repurchase offer to shareholders at least seven days but no more than fourteen calendar days in advance of the repurchase request deadline.

5. Applicants contend that monthly repurchase offers are in the shareholders' best interests and consistent with the policies underlying rule 23c–3. Applicants assert that monthly repurchase offers will provide investors with more liquidity than quarterly repurchase offers. Applicants assert that shareholders will be better able to manage their investments and plan transactions, because if they decide to forego a repurchase offer, they will only need to wait one month for the next offer. Applicants also contend that the portfolio of each Fund will be managed to provide ample liquidity for monthly repurchase offers. Applicants do not believe that a change to monthly repurchases would necessitate any change in portfolio management practices of any of the Funds in order to satisfy rule 23c–3. In fact, applicants expect limited or no impact on overall portfolio management or performance of such Funds upon converting to monthly offers and believe that it may be easier to manage the cash of the portfolio for the smaller monthly offers compared to the larger quarterly ones.

6. Applicants propose to send notification to shareholders at least seven days, but no more than fourteen calendar days, in advance of a repurchase request deadline. Applicants assert that, because BGFREI (and any Future Fund) currently intends to make payment on the next business day following the pricing date, the entire procedure can be completed before the next notification is sent out to shareholders; thus avoiding any overlap. Applicants believe that these procedures will eliminate any possibility of investor confusion. Applicants also state that monthly repurchase offers will be a fundamental feature of the Funds, and their prospectuses will provide a clear explanation of the repurchase program.

7. Applicants submit that for the reasons given above the requested relief is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. BGFREI (and any Future Fund relying on this relief) will make a repurchase offer pursuant to rule 23c–3(b) for a repurchase offer amount of not less than 5% in any one-month period. In addition, the repurchase offer amount for the then-current monthly period, plus the repurchase offer amounts for the two monthly periods immediately preceding the then-current monthly period, will not exceed 25% of BGFREI's (or Future Fund's, as applicable) outstanding common shares. BGFREI (and any Future Fund relying on this relief) may repurchase additional tendered shares pursuant to rule 23c–3(b)(5) only to the extent the percentage of additional shares so repurchased does not exceed 2% in any three-month period.

2. Payment for repurchased shares will occur at least five business days before notification of the next repurchase offer is sent to shareholders of BGFREI (or Future Fund relying on this relief).

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23368 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32867; File No. 812–14756]

PIMCO Funds, et al.

October 23, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: PIMCO Funds, PIMCO Variable Insurance Trust, PIMCO ETF Trust, PIMCO Equity Series, PIMCO Equity Series VIT, PIMCO Managed Accounts Trust, each an investment company organized as a Delaware statutory trust or a Massachusetts business trust and registered under the Act as an open-end management investment company, on behalf of all existing series,[1] and Pacific Investment Management Company LLC (the ''Adviser''), a Delaware limited liability company registered as an investment

[1] Currently, one series of the Funds (as defined below) is a money market fund that complies with Rule 2a–7 of the Act, and applicants request that the order also apply to any future Fund that is a money market fund that complies with rule 2a–7 of the Act (each a ''Money Market Fund''). Money Market Funds typically will not participate as borrowers under the interfund lending facility because they rarely need to borrow cash to meet redemptions.

adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on March 17, 2017 and amended on June 28, 2017 and October 16, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 17, 2017 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Joshua Ratner, Pacific Investment Management Company LLC, 1633 Broadway, New York, New York 10019 and Robert W. Helm, Brendan C. Fox, Dechert LLP, 1900 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Robert H. Shapiro, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.[2] The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.[3]

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management and administrative agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility.[4] The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.[5]

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.[6] Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).[7]

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the open-end Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the open-end Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part

[2] Applicants request that the order apply to the applicants and to any existing or future registered open-end management investment company or series thereof for which the Adviser or any successor thereto or an investment adviser controlling, controlled by, or under common control with the Adviser or any successor thereto serves as investment adviser (each a ''Fund'' and collectively the ''Funds'' and each such investment adviser an ''Adviser''). For purposes of the requested order, ''successor'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

[3] Any Fund, however, will be able to call a loan on one business day's notice.

[4] Members of the designated committee may include one or more investment professionals, including individuals involved in making investment decisions regarding short-term investments.

[5] Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

[6] Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

[7] Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23369 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81918; File No. SR–NYSEArca–2017–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of The Gold Trust Under NYSE Arca Rule 8.201–E

October 23, 2017.

I. Introduction

On August 30, 2017, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of The Gold Trust under NYSE Arca Rule 8.201–E. The proposed rule change was published for comment in the **Federal Register** on September 15, 2017.[3] On September 28, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission has not received any comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. The Description of the Proposed Rule Change, as Modified by Amendment No. 1 [5]

The Exchange proposes to list and trade shares (''Shares'') of The Gold Trust (''Trust''), a series of the World Currency Gold Trust (''WCGT''),[6] under NYSE Arca Rule 8.201–E.[7] NYSE Arca Rule 8.201–E governs the listing and trading, or trading pursuant to unlisted trading privileges, of Commodity-Based Trust Shares on the Exchange.[8]

The investment objective of the Trust is for the Shares to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations. The Trust will not trade in gold futures, options, or swap contracts on any futures exchange or over the counter. The Trust will not hold or trade in commodity futures contracts, commodity interests, or any other instruments regulated by the Commodity Exchange Act. The Trust will take delivery of physical gold that complies with the London Bullion Market Association (''LBMA'') gold delivery rules. According to the Exchange, the Shares, which are Commodity Based Trust Shares, will represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

The sponsor of the Trust is WGC USA Asset Management Company, LLC (''Sponsor''). The sole trustee of WCGT is Delaware Trust Company. BNY Mellon Asset Servicing, a division of The Bank of New York Mellon (''BNYM''), will be the Trust's administrator and transfer agent. BNYM will serve as the custodian of the Trust's cash, if any. A bank will serve as the custodian of the Trust's gold.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposed rule change, as modified by Amendment No. 1, to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with Section 11A(a)(1)(C)(iii) of the Act,[10] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The last-sale price for the Shares will be disseminated over the Consolidated Tape. According to the Exchange, there is a considerable amount of information about gold and gold markets available on public Web sites and through professional and subscription services. Investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of gold from various financial information service providers.[11]

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81568 (Sep. 11, 2017), 82 FR 43417.

[4] Amendment No. 1 to the proposed rule change replaces and supersedes the original filing in its entirety. In Amendment No. 1, the Exchange: (1) Provided additional information regarding the futures exchanges that trade in gold futures contracts and which of those exchanges are members of the Intermarket Surveillance Group (''ISG''); (2) stated that the net asset value (''NAV'') of the Trust will be published by the Sponsor (as defined herein) by 5:30 p.m., Eastern time on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's Web site; (3) clarified that the intraday indicative value (''IIV'') per Share for the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session (as defined in the Exchange's rules; and (4) stated that the Web site for the Trust will provide the two most recent reports to stockholders. Amendment No. 1 also made non-substantive, technical amendments. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2017-98/nysearca201798-2614707-161129.pdf.* Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

[5] A more detailed description of the Trust and the Shares, as well as investment risks, creation and redemption procedures, NAV calculation, availability of information and fees, among other things, is included in the Registration Statement, *infra* note 7, and in Amendment No. 1, *supra* note 4.

[6] According to the Exchange, WCGT is a Delaware statutory trust consisting of multiple series, each of which issues common units of beneficial interest, which represent units of fractional undivided beneficial interest in and ownership of such series. The term of WCGT and each series will be perpetual (unless terminated earlier in certain circumstances).

[7] On August 29, 2017, WCGT submitted to the Commission its draft registration statement on Form S–1 with respect to the Trust (''Registration Statement'') under the Securities Act of 1933 (''1933 Act'').

[8] A ''Commodity-Based Trust Share'' is a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity. *See* NYSE Arca Rule 8.201–E(c)(1).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[11] The Exchange states that Reuters and Bloomberg, for example, provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to

Additionally, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,[12] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Exchange has surveillance-sharing agreements with significant, regulated markets for trading futures on gold. Specifically, according to the Exchange, (1) the most significant gold futures exchange is COMEX, a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the Chicago Mercantile Exchange Group (''CME Group''), and ICE Futures US (''ICE'') also lists gold futures; [13] and (2) the CME Group and ICE are members of the ISG,[14] which will allow NYSE Arca to obtain surveillance information from COMEX and ICE. Both COMEX and ICE are regulated by the U.S. Commodity Futures Trading Commission (''CFTC'').[15]

The Commission believes that the proposed rule change, as modified by Amendment No. 1, is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. NYSE Arca Rule 8.201–E(e)(2)(v) requires that an IIV (which is referred to in the rule as the ''Indicative Trust Value'') be calculated and disseminated at least every 15 seconds. The IIV will be calculated based on the amount of gold held by the Trust and a price of gold derived from updated bids and offers indicative of the spot price of gold. The Exchange states that the IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[16] The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's Web site.[17] The Trust also will publish the following information on its Web site: (1) The mid-point of the bid-ask price at the close of trading (''Bid/Ask Price''), and a calculation of the premium or discount of such price against the NAV; (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; (3) the Trust's prospectus, as well as the two most recent reports to stockholders; and (4) the last-sale price of the Shares as traded in the U.S. market.[18] In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Commission also believes that the proposal, as modified by Amendment No. 1, is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares 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 conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[19] The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily.[20] The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV; if the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[21]

Additionally, the Commission notes that market makers in the Shares would be subject to the requirements of NYSE Arca Rule 8.201–E(g), which allow the Exchange to ensure that they do not use their positions to violate the requirements of Exchange rules or applicable federal securities laws.[22]

In support of this proposal, the Exchange has made the following additional representations:

(1) The Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E.[23]

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[24]

(3) The Exchange deems the Shares to be equity securities.[25]

(4) The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.[26]

(5) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and 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.[27]

---

subscribers for a fee that provides information on gold prices directly from market participants. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk. See* Amendment No. 1, *supra* note 4.

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Amendment No. 1, *supra* note 4.

[14] *See id.*

[15] *See https://www.theice.com/futures-us/regulation* (''ICE Futures U.S. is a Designated Contract Market pursuant to the Commodity Exchange Act and regulated by the CFTC.''); *http://www.cmegroup.com/market-regulation/rulebook.html* (COMEX is regulated by the CFTC).

[16] *See* Amendment No. 1, *supra* note 4.

[17] *See id.*

[18] *See id.*

[19] *See* NYSE Arca Rule 7.12–E.

[20] *See* Amendment No. 1, *supra* note 4.

[21] *See id.*

[22] Commentary .04 of NYSE Arca Rule 6.3–E requires that an Equity Trading Permit Holder (''ETP Holder'') acting as a registered market maker in the Shares, and its affiliates, establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments. *See* Amendment No. 1, *supra* note 4.

[23] *See id.*

[24] *See id.*

[25] *See id.* The Commission notes that, as a result, trading of the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

[26] *See id.*

[27] *See id.* FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is

Continued

(6) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[28]

(7) 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. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in creation units (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(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) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information.[29]

(8) All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.[30]

(9) The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m).[31]

This approval order is based on all of the Exchange's representations—including those set forth above and in Amendment No. 1—and the Exchange's description of the Trust.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act [32] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[33] that the proposed rule change (SR–NYSEArca–2017–98), as modified by Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23371 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81916; File No. PCAOB–2017–01]

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules on the Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, and Departures From Unqualified Opinions and Other Reporting Circumstances, and Related Amendments to Auditing Standards

October 23, 2017.

I. Introduction

On July 19, 2017, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b) [1] of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and Section 19(b) [2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), a proposal to adopt AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion* and related amendments to other auditing standards (collectively, the ''Proposed Rules'').[3] The Proposed Rules were published for comment in the **Federal Register** on July 28, 2017.[4] At the time the notice was issued, the Commission extended to October 26, 2017 the date by which the Commission should take action on the Proposed Rules.[5] The Commission received approximately 50 comment letters in response to the notice.[6] This order approves the Proposed Rules, which we find to be consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

II. Description of the Proposed Rules

On June 1, 2017, the Board adopted AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion,* which replaces portions of AS 3101, *Reports on Audited Financial Statements,* and re-designates the remaining portions of AS 3101 as AS 3105, *Departures from Unqualified Opinions and Other Reporting Circumstances.* The Proposed Rules will require that the auditor provide new information about the audit that is intended to make the auditor's report

responsible for FINRA's performance under this regulatory services agreement. *See id.*

[28] *See id.*

[29] *See id.*

[30] *See id.*

[31] *See id.*

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] The Board originally issued a concept release on these matters in 2011. *See Concept Release on Possible Revisions to PCAOB Standards Related to Reports on Audited Financial Statements and Related Amendments to PCAOB Standards,* PCAOB Release No. 2011–003 (June 21, 2011) (''PCAOB Concept Release''), *available at https://pcaobus.org/Rulemaking/Docket034/Concept_Release.pdf.* In 2013, the Board issued a proposed rule. *See Proposed Auditing Standards—The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion; The Auditor's Responsibilities Regarding Other Information in Certain Documents Containing Audited Financial Statements and the Related Auditor's Report; and Related Amendments to PCAOB Standards,* PCAOB Release No. 2013–005 (August 13, 2013) (''PCAOB Proposal''), *available at https://pcaobus.org/Rulemaking/Docket034/Release_2013-005_ARM.pdf.* The Board issued a re-proposal in 2016. *See Proposed Auditing Standard—The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards,* PCAOB Release No. 2016–003 (May 11, 2016) (''PCAOB Re-proposal''), *available at https://pcaobus.org/Rulemaking/Docket034/Release-2016-003-ARM.pdf.*

[4] *See* Release No. 34–81187 (July 21, 2017), 82 FR 35396 (July 28, 2017) *available at https://www.sec.gov/rules/pcaob/2017/34-81187.pdf.*

[5] *See id.*

[6] Copies of the comment letters received on the Commission order noticing the Proposed Rules are available on the Commission's Web site at *https://www.sec.gov/comments/pcaob-2017-01/pcaob201701.htm.*

more informative and relevant to investors and other financial statement users, as discussed further below.

A. Changes to PCAOB Standards

The Proposed Rules retain the pass/fail opinion of the existing auditor's report but make significant changes to the existing auditor's report, including the following:

- Critical audit matters (''CAMs''). The Proposed Rules require the auditor to communicate in the auditor's report any CAMs arising from the current period's audit or state that the auditor determined that there are no CAMs.
- A CAM is defined as any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that:

(1) Relates to accounts or disclosures that are material to the financial statements; and

(2) involved especially challenging, subjective, or complex auditor judgment.

- In determining whether a matter involved especially challenging, subjective, or complex auditor judgment, the auditor should take into account, alone or in combination, the following factors, as well as other factors specific to the audit:
- The auditor's assessment of the risks of material misstatement, including significant risks;
- The degree of auditor judgment related to areas in the financial statements that involved the application of significant judgment or estimation by management, including estimates with significant measurement uncertainty;
- The nature and timing of significant unusual transactions and the extent of audit effort and judgment related to these transactions;
- The degree of auditor subjectivity in applying audit procedures to address the matter or in evaluating the results of those procedures;
- The nature and extent of audit effort required to address the matter, including the extent of specialized skill or knowledge needed or the nature of consultations outside the engagement team regarding the matter; and
- The nature of audit evidence obtained regarding the matter.
- The communication of each CAM within the auditor's report includes:
- Identifying the CAM;
- Describing the principal considerations that led the auditor to determine that the matter is a CAM;
- Describing how the CAM was addressed in the audit; and
- Referring to the relevant financial statement accounts or disclosures.
- For each matter arising from the audit of the financial statements that (a) was communicated or required to be communicated to the audit committee, and (b) relates to accounts or disclosures that are material to the financial statements, the auditor must document whether or not the matter was determined to be a CAM (*i.e.,* involved especially challenging, subjective, or complex auditor judgment) and the basis for such determination.
- Additional Changes to the Auditor's Report. The Proposed Rules also include a number of other changes to the auditor's report that are primarily intended to clarify the auditor's role and responsibilities related to the audit of the financial statements, provide additional information about the auditor, and make the auditor's report easier to read. These include:
- Auditor tenure—a statement disclosing the year in which the auditor began serving consecutively as the company's auditor;
- Independence—a statement regarding the requirement for the auditor to be independent;
- Addressee—the auditor's report will be addressed to the company's shareholders and board of directors or equivalents (additional addressees are also permitted);
- Amendments to basic elements—certain standardized language in the auditor's report has been changed, including adding the phrase ''whether due to error or fraud,'' when describing the auditor's responsibility under PCAOB standards to obtain reasonable assurance about whether the financial statements are free of material misstatement; and
- Standardized form of the auditor's report—the opinion will appear in the first section of the auditor's report, and section titles have been added to guide the reader.

The amendments to other PCAOB standards include:

- AS 3105, *Departures from Unqualified Opinions and Other Reporting Circumstances* to (1) require the communication of CAMs in certain circumstances; (2) revise certain terminology to align with AS 3101 of the Proposed Rules; and (3) amend the illustrative reports for the basic elements of AS 3101 of the Proposed Rules and the required order of certain sections of the auditor's report;
- AS 1220, *Engagement Quality Review* to require the engagement quality reviewer to evaluate the engagement team's determination, communication, and documentation of CAMs;
- AS 1301, *Communications with Audit Committees* to require the auditor to provide to and discuss with the audit committee a draft of the auditor's report;
- AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements* to conform the example auditor's report with the example auditor's report on the financial statements in AS 3101 of the Proposed Rules;
- AS 2820, *Evaluating Consistency of Financial Statements* to include the existing reporting requirements and illustrative explanatory language related to a change in accounting principle or a restatement that is currently in AS 3105; and
- AS 4105, *Reviews of Interim Financial Information* to include the basic elements of AS 3101 of the Proposed Rules, where applicable.

B. Applicability

Critical Audit Matters

Under the Proposed Rules, communication of CAMs in the auditor's report is not required for audits of emerging growth companies (''EGCs'');[7] brokers and dealers reporting under Exchange Act Rule 17a–5;[8] investment companies other than business development companies (''BDCs''); and employee stock purchase, savings, and similar plans.

Additional Changes to the Auditor's Report

The additional changes to the auditor's report contained in the Proposed Rules apply for all audits performed under PCAOB standards, including audits of EGCs, as discussed in Section IV below.

C. Effective Date

The Proposed Rules would be effective as follows:

a. All paragraphs of the Proposed Rules, except the paragraphs related to CAMs in AS 3101 of the Proposed Rules (paragraphs .11 through .17) and amendments related to those paragraphs: All audits of fiscal years ending on or after December 15, 2017; and

b. All paragraphs related to CAMs in AS 3101 of the Proposed Rules

[7] The term ''emerging growth company'' is defined in Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). *See also Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act,* SEC Rel. 33–10332 (Mar. 31, 2017), 82 FR 17545 (Apr. 12, 2017), *available at https://www.sec.gov/rules/final/2017/33-10332.pdf.*

[8] If the broker or dealer is an issuer, the requirement to communicate CAMs would apply.

(paragraphs .11 through .17) and amendments related to those paragraphs:

- For audits of large accelerated filers: Fiscal years ending on or after June 30, 2019; and
- For audits of all other companies to which the requirements apply: Fiscal years ending on or after December 15, 2020.

III. Comment Letters

The Commission's comment period on the Proposed Rules ended on August 18, 2017. The Commission received approximately 50 comment letters from investors and investor associations, accounting firms, issuers and issuer organizations, and others.[9] Most commenters generally supported the Board's objective to improve the auditor's report to make it more informative and relevant to financial statement users. Commenters' views varied on the nature and extent of specific changes, particularly those related to CAMs. Investors and investor associations were supportive of the Proposed Rules, including communication of CAMs, and encouraged adoption without delay. Larger accounting firms were generally supportive but raised certain practical concerns and asked for guidance during the implementation phase, a safe-harbor related to CAMs, or post-implementation reviews. A number of other commenters raised questions and concerns about the Proposed Rules and their application and recommended the Commission not approve the Proposed Rules in their current form. These concerns generally relate to: (1) Usefulness of the information in CAMs; (2) the auditor's role as the potential source of original information about the company in CAMs; (3) the potential impact of CAMs on the role of the audit committee and the communication among the audit committee, management, and the auditor; (4) the potential liability impact of CAMs; (5) the economic analysis of CAMs; (6) practicability matters related to CAMs; (7) disclosure of auditor tenure in the auditor's report; (8) the effective dates of the Proposed Rules; and (9) implementation efforts.

As background, for several years, the Board has been considering changes to the auditor's report, throughout which the Board has, in various settings and formats, considered commenters' concerns on such changes. In June 2011, the Board issued the PCAOB Concept Release to solicit comment on a number of potential changes to the auditor's report. The Board also held a public roundtable in September 2011 to obtain additional insight on the alternatives presented in the PCAOB Concept Release.

After considering the results of its outreach and comments on the PCAOB Concept Release, in August 2013, the Board issued the PCAOB Proposal that included, among other things, new requirements for auditors to communicate CAMs, as well as additional changes to the auditor's report. In April 2014, the Board held a public meeting to obtain further input on the PCAOB Proposal from a diverse group of investors and other financial statement users, preparers, audit committee members, auditors, and others.

In May 2016, the Board issued the PCAOB Re-proposal that modified the PCAOB Proposal in several respects in response to feedback received. In particular, the PCAOB Re-proposal modified the source, definition, and communication requirements for CAMs.

Throughout the rulemaking process, the Board received comments from investors and investor associations that consistently stressed the importance and value to them of additional communication from the auditor. In particular, commenters indicated that tailored, audit-specific information from the auditor's point of view would reduce information asymmetries and make the auditor's report more relevant and useful, a view which also was shared by at least one of the larger accounting firms. Based on these comments and its own analysis, the Board concluded that requiring auditors to provide more information about the audit through the communication of CAMs will benefit investors and other market participants.

As further explained below, the Board also made changes in the Proposed Rules to address the significant comments received on the PCAOB Proposal and the PCAOB Re-proposal. In particular, the Board sought to balance the potential benefits of CAM communications with the concerns expressed by some commenters about potential consequences, including: The auditor's role as the potential source of original information about the company; the potential impact of CAMs on the role of the audit committee and communication among the audit committee, management, and the auditor; and the potential liability impact of CAMs. To balance among these competing factors, the Board, among other things, limited the source of CAMs to matters communicated or required to be communicated to the audit committee, added a materiality component to the definition of a CAM, and narrowed the definition of a CAM to only those matters that involved especially challenging, subjective, or complex auditor judgment. In its release accompanying the Proposed Rules, the Board acknowledged that a variety of claims can be raised related to the statements in the auditor's report and that litigation is inherently uncertain. The Board also stated that it will monitor the Proposed Rules after implementation for any unintended consequences.

The Sarbanes-Oxley Act requires us to determine whether the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws or are necessary or appropriate in the public interest or for the protection of investors.[10] In making this determination, we have considered the comments received by the Commission as well as the feedback received and modifications made by the PCAOB throughout its rulemaking process. The discussion below addresses the significant points raised in the comment letters received by the Commission, which were generally consistent with the comments the PCAOB received during its deliberations.

A. Usefulness of the Information in CAMs

A number of commenters provided feedback related to the potential usefulness of CAMs. Comments from investors and investor associations consistently indicated they would find CAM communications to be beneficial in understanding the audit.[11] One commenter stated that CAMs will provide tailored, audit-specific information directly from the auditor's point of view and should provide insights that will add to the mix of information that could be used in investors' capital allocation and voting

[9] See *supra* footnote 6.

[10] *See* Section 107(b)(3) of the Sarbanes-Oxley Act. The Sarbanes-Oxley Act also specifies that the provisions of Section 19(b) of the Exchange Act shall govern the proposed rules of the Board. *See* Section 107(b)(4) of the Sarbanes-Oxley Act. Section 19 of the Exchange Act covers the registration, responsibilities, and oversight of self-regulatory organizations. Under the procedures prescribed by the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, the Commission must either approve or disapprove, or institute proceedings to determine whether the proposed rules of the Board should be disapproved; and these procedures do not expressly permit the Commission to amend or supplement the proposed rules of the Board.

[11] *See e.g.,* Letter from Council of Institutional Investors, August 8, 2017 (''CII Letter''); Letter from Hermes Investment Management, August 18, 2017 (''Hermes Letter''), Letter from CFA Institute, August 24, 2017 (''CFA Institute Letter'').

decisions.[12] This commenter also stated a belief that CAMs will benefit investors, particularly institutional investors, in engaging with management and the audit committee and in voting on the ratification of the auditor.[13] Another commenter noted that CAMs will reduce the information asymmetry between investors and auditors, which in turn should reduce the information asymmetry between investors and management about the company's financial performance.[14] One commenter noted that, from its perspective as a long-term investor, the communication of CAMs would provide an augmented basis from which investors can more fully understand challenging, subjective, or complex auditor judgment.[15] Another commenter stated that, through CAMs, investors would have more information from which to make investment decisions.[16] The same commenter noted that, as it indicated in comment letters to the PCAOB, the inclusion of CAMs would enhance transparency, relevance, reliability, and credibility in audits.[17] Another commenter, noting that the Board has balanced the differing perspectives of various stakeholders, indicated that investors desire robust information within the auditor's report *beyond* the requirements in the Proposed Rules.[18]

In commenting on the Proposed Rules, one large accounting firm acknowledged that many financial statement users have expressed dissatisfaction with the current reporting by auditors.[19] This same commenter also stated that the enhanced transparency of the audit process benefits all stakeholders and promotes the important role of independent auditors in serving the public interest.[20] Another large accounting firm generally agreed with the views of investors and investor associations that communication of CAMs will enhance the value and relevance of audits to the capital markets.[21]

We agree with these commenters and the Board that communicating CAMs to investors will reduce information asymmetries. In particular, we are persuaded that the communication of CAMs, as structured in the Proposed Rules, will add to the total mix of information available to investors by eliciting more information about the audit itself—information that is uniquely within the perspective of the auditor and, thus, not otherwise available to investors and other financial statement users. In so doing, we believe the communication of CAMs could enhance the value and relevance of audits to the capital markets and be useful to investors and other financial statement users in assessing a company's financial reporting and making capital allocation and voting decisions. We are, therefore, of the view that the requirement to communicate CAMs, as structured in the Proposed Rules, is consistent with the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors.

We recognize that some commenters questioned the usefulness of CAMs, including asserting that the communications will not provide meaningful information, likely will duplicate management disclosures, or will use standardized language (some commenters referred to this as ''boilerplate'').[22] A few commenters expressed concern that CAMs could also provide information that conflicts with management disclosures, which some argued would be confusing to investors.[23] Some commenters indicated CAMs will force issuers to make reactive disclosures because they will not want auditors to be the source of information about the company that would not otherwise have been disclosed (which commenters referred to as ''original information''), which they argued could increase costs and reduce disclosure effectiveness.[24] Some commenters expressed concern that auditors may communicate an overabundance of CAMs to reduce litigation risk, as CAMs may be seen as a shield from litigation.[25]

Similar concerns were raised in the PCAOB's rulemaking process. In response to these concerns, the Board stated in the release accompanying the Proposed Rules that the requirements in the Proposed Rules ''aim to provide investors with the auditor's unique perspective on the areas of the audit that involved the auditor's especially challenging, subjective, or complex judgments. Limiting critical audit matters to these areas should mitigate the extent to which expanded auditor reporting could become standardized. Focusing on auditor judgment should limit the extent to which expanded auditor reporting could become duplicative of management's reporting.''

We acknowledge the risks identified by commenters that CAMs will not provide meaningful incremental information, either because the information is duplicative of what is already provided by the issuer, or because auditors will communicate numerous or boilerplate CAMs. With respect to the duplication risk, the requirement for CAM communications focuses on the auditor's perspective, not the issuer's. Specifically, as discussed above in Section II.A, ''Changes to PCAOB Standards,'' the auditor must identify the CAM, describe the principal considerations that led the auditor to determine that the matter is a CAM, describe how the CAM was addressed in the audit, and refer to the relevant financial statement accounts or disclosures. With the exception of the reference to the relevant portions of the financial statements, those required communications are not expected to overlap with the Commission's required issuer disclosures, which generally do not focus on the audit. Also, the required reference to the relevant financial statement accounts or disclosures provides context for the CAM-related communications but does not necessarily duplicate those disclosures.

With respect to the risk that auditors would communicate unnecessary CAMs or boilerplate CAMs, we acknowledge that our own experience with the disclosure by companies of risk factors under Item 503(c) of Regulation S–K[26] illustrates the potential challenges of disclosure practices. The Commission and SEC staff have issued numerous releases and other guidance seeking to

[12] *See* CII Letter.

[13] *See id.*

[14] *See* Letter from J. Robert Brown Jr., et. al., August 21, 2017 (''J. Robert Brown Jr. Letter'')

[15] *See* Letter from California State Teachers' Retirement System, August 23, 2017.

[16] *See* Letter from California Public Employees' Retirement System, August 18, 2017 (''CalPERS Letter'').

[17] *See id.*

[18] *See* CFA Institute Letter.

[19] *See* Letter from Ernst & Young LLP, August 18, 2017 (''EY Letter'').

[20] *See id.*

[21] *See* Letter from Deloitte & Touche LLP, August 18, 2017 (''Deloitte Letter'').

[22] *See e.g.,* Letter from Aetna Inc. et al., August 18, 2017 (''Aetna Letter''); Letter from Quest Diagnostics Inc., August 15, 2017 (''Quest Letter''); Letter from Northrop Grumman Corporation, August 18, 2017 (''Northrop Grumman Letter''); Letter from New York City Bar, August 18, 2017 (''New York City Bar Letter''); Letter from Davis Polk & Wardell LLP, August 18, 2017 (''Davis Polk Letter''); Letter from Robert N. Waxman, August 19, 2017 (''Robert Waxman Letter'').

[23] *See e.g.,* Aetna Letter; Letter from Society for Corporate Governance, August 18, 2017 (''Society for Corporate Governance Letter'').

[24] *See e.g.,* Society for Corporate Governance Letter; Letter from Sullivan & Cromwell LLP, August 18, 2017 (''Sullivan & Cromwell Letter''). We discuss commenters' concerns regarding the auditor's role as the potential source of original information in section III.B below.

[25] *See e.g.,* Davis Polk Letter; Quest Letter.

[26] 17 CFR 229.503(c).

induce registrants to focus on clear discussions of the ''most significant factors,'' rather than numerous boilerplate risk factors.[27]

We believe that some of these concerns are lessened by the way that the Board has defined CAMs. Specifically, as it relates to the concern of auditors reporting an overabundance of CAMs, we note that, under the Proposed Rules, a matter must meet each element of the definition of a CAM. In our view, the inclusion of a materiality component in the definition; narrowing the source of potential CAMs to matters communicated or required to be communicated to the audit committee; limiting CAMs to those areas that involved especially challenging, subjective, or complex auditor judgment; and refining the factors to take into account in determining whether a matter involved especially challenging, subjective, or complex auditor judgment should all act to mitigate the risk of auditors reporting too many CAMs.

Similarly, we believe that the focus on auditor judgment in the definition of CAMs, along with the requirement to disclose *why* a matter is a CAM and how it was addressed, should mitigate the extent to which expanded auditor reporting could become standardized. Moreover, we believe these concerns must be balanced against the additional insights into the audit that we believe would be gained from the reporting of CAMs.

Having considered the public comments, we are persuaded that the reporting of CAMs, as structured in the Proposed Rules will be beneficial. The communication of CAMs should not be numerous and boilerplate and will provide additional information about the audit—and from the auditor's own unique perspective—that will be useful to investors and other financial statement users in assessing a company's financial reporting and making capital allocation and voting decisions.

B. The Auditor's Role as the Potential Source of Original Information About the Company

A number of commenters expressed concern with the auditor potentially disclosing original information, including potentially immaterial or confidential information.[28] Some of these commenters asserted that this runs counter to the U.S. regulatory framework, or confuses the role of the auditor.[29] Further, at least one commenter questioned whether the PCAOB has the regulatory authority to require such disclosure.[30] Conversely, as stated in the Board's release accompanying the Proposed Rules, ''[i]nvestor commenters, including the auditor's report working group of the Investor Advisory Group, argued that there should not be any limitation on the auditor providing original information and that [the PCAOB Re-proposal] went too far in constraining the auditor from providing original information in response to concerns expressed by other commenters. . . .'' Furthermore, as discussed above, investors and investor associations have indicated that there is a benefit in receiving information about the audit directly from the auditor's point of view.[31]

Similar concerns regarding the auditor being the source of original information about the company were raised in response to the PCAOB Concept Release, PCAOB Proposal, and PCAOB Re-proposal. The Board acknowledged these concerns and made certain modifications in the Proposed Rules in an effort to balance investor interests in expanded auditor reporting and the concerns of other stakeholders, primarily issuers and issuer organizations and audit committees, related to the costs, benefits, and potential unintended consequences associated with communicating CAMs. For example, the Board added a materiality component in the definition of a CAM ''to respond to investor requests for informative and relevant auditor's reports while, at the same time, addressing other commenters' concerns regarding auditor communication of immaterial information that management is not required to disclose under the applicable financial reporting framework and SEC reporting requirements.'' Further, in an effort to clarify the requirements, the Board stated in the release accompanying the Proposed Rules, among other things, that ''while auditor reporting of original information is not prohibited, it is limited to areas uniquely within the perspective of the auditor: describing the principal considerations that led the auditor to determine that the matter is a critical audit matter and how the matter was addressed in the audit.'' AS 3101 of the Proposed Rules includes the following note to the same effect, ''When describing critical audit matters in the auditor's report, the auditor is not expected to provide information about the company that has not been made publicly available by the company unless such information is necessary to describe the principal considerations that led the auditor to determine that a matter is a critical audit matter or how the matter was addressed in the audit.'' [32]

With respect to whether mandating such disclosure would run counter to the U.S. regulatory framework or exceed the Board's authority, the Board observed in the release accompanying the Proposed Rules that there is no PCAOB standard, SEC rule, or other financial reporting requirement prohibiting auditor reporting of information that management has not previously disclosed.[33] Moreover, in the release accompanying the Proposed Rules, the Board stated its belief that requiring expanded auditor reporting to make the auditor's report more relevant and informative as prescribed in the Proposed Rules is consistent with the statutory mandate of the PCAOB.[34]

We agree with commenters that, in general, the preparation and disclosure of information about an issuer should be the primary responsibility of the issuer, and that the auditor's role, by contrast, is to audit the issuer's financial statements and to provide a report thereon. That said, we disagree with those commenters who expressed an

---

[27] *See e.g., Plain English Disclosure,* Release No. 33–7497 (Jan. 28, 1998), 63 FR 6370 (Feb. 6, 1998), *available at https://www.sec.gov/rules/final/33-7497.txt.*

[28] *See e.g.,* Letter from Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, August 11, 2017 (''CCMC Letter''); Quest Letter; Letter from Eli Lilly and Company, August 15, 2017 (''Eli Lilly Letter''); Letter from Regions Financial Corporation, August 17, 2017 (''Regions Letter''); Sullivan & Cromwell Letter; Letter from American Tower Corporation, et al., August 18, 2017 (''American Tower Letter''); New York City Bar Letter; Davis Polk Letter; Letter from Financial Executives International, August 18, 2017 (''FEI Letter''); Robert Waxman Letter; Letter from Cleary Gottlieb Steen & Hamilton LLP, August 24, 2017 (''Cleary Gottlieb Letter'').

[29] *See e.g.,* CCMC Letter; Quest Letter.

[30] *See e.g.,* CCMC Letter.

[31] *See e.g.,* CII Letter; Letter from The Capital Group Companies Inc., August 15, 2017 (''Capital Group Letter'').

[32] *See* Note 2 to Paragraph 14 of AS 3101 within the Proposed Rules.

[33] In the release accompanying the Proposed Rules, the Board states, ''there are areas under current law and auditing standards that require auditor reporting that goes beyond attesting to the compliance of management disclosures (*e.g.,* substantial doubt about a company's ability to continue as a going concern or illegal acts).'' *See also* Cleary Gottlieb Letter (acknowledging that no legal prohibition prevents the auditor from communicating original information).

[34] The mission of the PCAOB, as provided in Section 101(a) of the Sarbanes-Oxley Act, is ''to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest *in the preparation of informative, accurate, and independent audit reports.*'' (emphasis added).

absolute view of the relative roles and responsibilities of the issuer and the auditor. Nothing prohibits exceptions to this general principle, and indeed, existing requirements contemplate a role for the auditor in disclosing original information.[35] Until recently, for example, the auditor's role in preparing the ''going concern'' explanatory paragraph contemplated that the auditor would be required to provide original information. Pursuant to Section 101(a) of Sarbanes-Oxley Act, part of the Board's mission is ''to further the public interest in the preparation of informative, accurate, and independent audit reports.'' Providing investors and other users of financial statements with the unique perspective of the auditor regarding CAMs can give them valuable insight about the audit. This furthers the underlying purpose of the auditor's report itself—to provide investors and other users with information to use in evaluating a company's financial statements and make informed investment decisions—and is consistent with the U.S. regulatory framework.

Nor do we believe that CAMs, particularly as currently proposed, will displace the financial reporting responsibilities of management. Instead, we believe the communication of CAMs should add to the total mix of information available to investors by eliciting more information about the audit itself, which is uniquely within the perspective of the auditor, irrespective of the financial reporting responsibilities of management. Requiring communication of information about the audit, from the auditor's perspective, as the Proposed Rules require, should limit the extent to which original information would be provided by the auditor. Moreover, to the extent original information would need to be communicated in a CAM, we anticipate that the auditor, management, and the audit committee will engage in a dialogue about that communication.

While we acknowledge the important concerns raised by several commenters in this area and intend to closely monitor the implementation of the Proposed Rules, as discussed further below, we believe that the requirements for communicating CAMs in the auditor's report are reasonably designed to ameliorate these concerns and are within the Board's authority. As a result, we believe that the Proposed Rules are consistent with the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors. We address more specific concerns on this matter in the following paragraphs.

1. Definition of CAM

As discussed in Section II.A, ''Changes to PCAOB Standards'' above, under the Proposed Rules, a CAM is defined as any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) Relates to accounts or disclosures that are material to the financial statements, and (2) involved especially challenging, subjective, or complex auditor judgment.

Some commenters questioned the scope of the definition of CAMs, which states that a CAM ''relates to'' accounts or disclosures that are material to the financial statements, rather than specifying that a CAM itself has to be material to the financial statements.[36] Commenters also questioned whether there is sufficient clarity on how to apply this requirement.[37]

The commenters that raised questions about the scope of the CAM definition principally explained their concerns by discussing specific examples that might result in the auditor disclosing original information about the company as it relates to the identification of a CAM or immaterial information that is not otherwise required to be disclosed by the financial reporting framework or SEC regulations. Specifically, commenters questioned whether significant deficiencies, illegal acts, and remote loss contingencies should be identified as CAMs. The same questions were posed to the Board in response to the PCAOB Re-proposal. In the release accompanying the Proposed Rules, the Board directly addressed each of the examples by providing guidance that: (1) The determination that there is a significant deficiency in internal control over financial reporting, in and of itself, cannot be a CAM; (2) a potential illegal act, if an appropriate determination had been made that no disclosure of it was required in the financial statements, would not meet the definition of a CAM; and (3) a potential loss contingency that was communicated to the audit committee, but that was determined to be remote and was not recorded in the financial statements or otherwise disclosed under the applicable financial reporting framework, would not meet the definition of a CAM.

Other than the specific examples described above, no other examples raising concerns with the definition of a CAM have been brought to the attention of the PCAOB or the Commission. We recognize that some commenters suggested an alternative approach to materiality, but we agree with the balance struck by the PCAOB between the benefits of communicating CAMs and the possibility of the auditor providing information that has not previously been disclosed by the company. Under the Proposed Rules, communication of original information should be limited to rare circumstances, as we further discuss in section III.B.2 below, and relate only to the discussion of the principal considerations as to why a matter was a CAM or how the auditor addressed the CAM. Moreover, we believe this approach is consistent with the Board's statutory mandate under Section 101(a) of the Sarbanes-Oxley Act to further the public interest in the preparation of informative, accurate, and independent audit reports. Requiring the communication of CAMs will provide additional information about the audit from the auditor's own unique perspective that investors have indicated, and which we have found, could reduce information asymmetries and be useful to investors, in assessing a company's financial reporting and making capital allocation and voting decisions.[38]

Commenters also suggested that their alternative approach to materiality would be easier to apply in determining which matters to communicate as CAMs. However, given the clarifications provided by the Board, we believe commenters' concerns regarding the scope of the CAM definition have been adequately addressed and that the Proposed Rules' materiality component, which specifies that a CAM ''relates to'' accounts or disclosures that are material to the financial statements, will be both workable and effective in assisting an auditor in determining which matters to communicate as a CAM. Indeed, we note that the accounting firms that would be responsible for implementing the Proposed Rules, while calling for active PCAOB and SEC monitoring both pre- and post-implementation, did not raise additional concerns in their comment letters to the Commission regarding any lack of clarity within the definition of a CAM under the Proposed Rules.[39]

[35] *See supra* footnote 33.

[36] *See e.g.,* CCMC Letter; American Tower Letter; Eli Lilly Letter; New York City Bar Letter.

[37] *See e.g.,* CCMC Letter; Eli Lilly Letter.

[38] *See e.g.,* J. Robert Brown Jr. Letter; CII Letter; Letter from Colorado Public Employees' Retirement Association, August 18, 2017 (''Colorado PERA Letter'').

[39] *See e.g.,* Letter from BDO USA LLP, August 15, 2017 (''BDO Letter''); Letter from PricewaterhouseCoopers LLP, August 18, 2017 (''PwC Letter''); Deloitte Letter; EY Letter.

2. Disclosure of 'Why' a Matter Is a CAM and How It Was Addressed

As discussed in section II.A, ''Changes to PCAOB Standards,'' above, under the Proposed Rules, the communication of each CAM includes: (1) Identifying the CAM; (2) describing the principal considerations that led the auditor to determine that the matter is a CAM; (3) describing how the CAM was addressed in the audit; and (4) referring to the relevant financial statement accounts or disclosures that relate to a CAM.

Some commenters, while acknowledging that much of the discussion in CAMs will focus on the audit itself, expressed concerns that the description as to *why*[40] a matter was designated as a CAM could frequently include information not otherwise required to be disclosed by a company.[41] The example cited most frequently in comment letters as a concern was a significant deficiency in internal control over financial reporting (or control deficiencies, generally). At least one commenter suggested removing the requirements to describe (1) the principal considerations that led the auditor to determine that the matter is a CAM, *and* (2) how the matter was addressed in the audit.[42]

By contrast, comments from investors and investor associations indicated a desire for information directly from the auditor's point of view.[43] One commenter specifically stated that CAMs will make the auditor's report more relevant and useful to investors and other readers by providing tailored, audit specific information.[44] This same commenter noted that CAMs should provide insights that could be used in investors' capital allocation decisions by, for instance, enabling comparison of certain aspects of the audit across companies and over time.[45]

Regarding the requirement to describe the principal considerations that led to the identification of a CAM (*i.e.,* the ''why''), the release accompanying the Proposed Rules states: ''If auditors can adequately convey to investors the principal considerations and how the auditor addressed the matter without including previously undisclosed information, it is expected that they will. However, the standard provides that even when management has not disclosed information, the auditor is not constrained from providing such information if it is necessary to describe the principal considerations that led the auditor to determine that a matter is a critical audit matter or how the matter was addressed in the audit.'' With regard to the specific control deficiency point raised by commenters, in the release accompanying the Proposed Rules, the Board concluded that the determination that there is a significant deficiency, in and of itself, cannot be a CAM, as it does not relate to an account or disclosure that is material to the financial statements as no disclosure of the determination is required. As a result, even though it might involve especially challenging, subjective, or complex auditor judgment, this determination would not be a CAM.

Further, should the auditor deem it necessary to discuss control-related matters that do not rise to the level of a material weakness within the communication of a CAM (*e.g.,* a significant deficiency was a principal consideration for determining that a matter was a CAM), the Board stated that the auditor could ''describe the relevant control-related issues in a broader context of the critical audit matter without using the term significant deficiency.''

Regarding the requirement to describe *how* the matter was addressed in the audit, the Board indicated in the release accompanying the Proposed Rules that including this information would be ''consistent with the Board's objective of providing more information about the audit and, if developed with an appropriate focus on the intended audience, should be of interest to users.'' The Board also indicated that this information should be specific to the circumstances of the audit and avoid standardized language.

We agree with the Board and certain commenters that the ''why'' and the ''how'' elements of the CAM will provide investors with relevant information from the auditor's perspective that could assist them in understanding the audit, thereby reducing information asymmetries. We believe that, by providing insight into the audit, the ''why'' and the ''how'' elements will provide additional transparency to investors, which in turn will enhance investor confidence in the audit. We therefore believe this requirement is consistent with the Board's statutory mandate to ''protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.'' In our view, the importance of this information to investors justifies the possibility that the auditor would provide information about a company that is not otherwise required to be disclosed by the company.

Further, we are not persuaded that the description of principal considerations will frequently lead to communication of original information, as commenters suggested. We believe that situations where auditors would be required to provide information about the company that management has not already made public would be exceptions, arising only in limited circumstances, and not a pervasive occurrence. With respect to providing original information about control deficiencies in particular, we similarly believe these situations would be rare. The especially challenging, subjective, or complex auditor judgment in these cases is typically limited to the determination as to whether a control deficiency is a significant deficiency or material weakness. The other judgment to consider when a control deficiency exists is whether and how the auditor might need to adjust the original audit plan (*i.e.,* the audit response). The concerns expressed by commenters related to disclosing original information about control deficiencies are primarily related to scenarios where the company and auditor have concluded a material weakness in internal control over financial reporting does not exist but the deficiency is a principal consideration for determining that a matter is a CAM. The audit response to a deficiency that is not a material weakness is typically less extensive because the auditor has already concluded that a reasonable possibility of material misstatement due to the control deficiency does not exist. For example, the audit response might be more of the same procedures being performed without changing the nature of the procedures. In those instances, typically, judgments about the audit response would not be a principal consideration of why something is a CAM and therefore would not need to be reported.

3. Client Confidentiality—Professional Obligations and State Laws

At least one commenter stated that auditors may have a requirement to maintain client confidentiality under certain states' laws or professional obligations that could conflict with the Proposed Rules, if the Proposed Rules required the auditor to communicate original information about the

[40] Commenters indicated the second communication requirement ''describing the principal considerations that led the auditor to determine that the matter is a CAM'' is effectively a requirement to communicate 'why' a matter is a CAM.

[41] *See e.g.,* Sullivan & Cromwell Letter.

[42] *See e.g.,* Cleary Gottlieb Letter.

[43] *See e.g.,* CII Letter; Capital Group Letter.

[44] *See* CII Letter.

[45] *See* CII Letter.

company.[46] In the release accompanying the Proposed Rules, the Board noted that auditor's obligations under PCAOB standards arise under federal law and regulations and professional or state law duties of client confidentiality should not apply to, or should be preempted by, the obligation to communicate CAMs.

We agree that the communications called for by the Proposed Rules should not be precluded by existing state legal or professional obligations as to client confidentiality in light of, among other things, existing exceptions for disclosure where required by applicable law. For example, the AICPA Code of Professional Conduct articulates the professional duties of a member CPA in public practice regarding confidential client information and stipulates that ''[a] member in public practice shall not disclose any confidential client information without the specific consent of the client.'' [47] However, the Code goes on to state that ''[t]his rule shall not be construed . . . to prohibit a member's compliance with applicable laws and government regulations.'' [48] While we are sensitive to the importance of client confidentiality, and do not believe it should be overridden lightly, we believe that the benefits of requiring communication to investors of CAMs—within the confines of the Proposed Rules—justify the potential that some information that otherwise would be considered a client confidence will be made public.[49]

C. The Potential Impact of CAMs on the Role of the Audit Committee and the Communication Among the Audit Committee, Management, and the Auditor

Commenters provided mixed views on the potential impact of CAM reporting on the role of the audit committee and the communication among the audit committee, management, and the auditor. Some commenters indicated they believe the public reporting of CAMs will likely result in improved communications between auditors and audit committees.[50] At least one commenter suggested audit committees should have a particular interest in matters communicated by the auditor that are likely to be made public in the auditor's report and they will likely want to more fully understand any auditing matter that resulted in a CAM.[51]

Conversely, some commenters indicated they believe there is a risk that the requirement for auditors to communicate CAMs will result in ''chilled'' conversation among audit committees, management, and auditors.[52] Generally, these commenters expressed concern that the Proposed Rules could unintentionally discourage free and open communication between the auditor and management and between the auditor and audit committee. Further, some commenters expressed concern that the role of the audit committee will be undermined by the auditor's responsibilities under the Proposed Rules.[53]

Similar comments were received by the PCAOB in its rulemaking process. In the release accompanying the Proposed Rules, the Board explained that it believes there should not be a chilling effect or reduced communications to the audit committee because of the requirements included in AS 1301, *Communications with Audit Committees.* Any potential chilling effect would therefore relate only to matters that are not explicitly required to be communicated to the audit committee. However, the Board noted that given the broad requirements of AS 1301 (particularly paragraph .24), there may be few, if any, relevant communications affected by that possibility.

We acknowledge that there exists a risk that communications between the auditor and the audit committee could be chilled, if the auditor were to avoid raising certain issues to the audit committee's attention so as to not trigger the requirement to determine whether such issues are CAMs. However, we agree with the Board's conclusion that the existing requirements to communicate matters to the audit committee—an auditing standard that would be violated if matters were not communicated—limits the risk of chilling to matters not falling within the scope of AS 1301, but falling within the scope of a CAM. In this regard, we believe it would be highly unusual for a matter to meet the definition of a CAM and not be required to be communicated to the audit committee. To illustrate this point, the following are examples of matters that are required to be communicated to the audit committee based on the requirements in AS 1301:

- Significant risks identified during the auditor risk assessment procedures; [54]
- The nature and extent of specialized skill or knowledge needed to perform the planned audit procedures or evaluate the audit results related to a significant risk; [55]
- Critical accounting policies and practices; [56]
- Critical accounting estimates; [57]
- Significant unusual transactions; [58]
- Difficult or contentious matters for which the auditor consulted (outside of the engagement team); [59] and
- Other matters arising from the audit that are significant to the oversight of the company's financial reporting process.[60]

The Proposed Rules provide the following nonexclusive list of factors that auditors should take into account, alone or in combination, in determining whether a matter involved especially challenging, subjective, or complex auditor judgment for purposes of evaluating whether a matter falls within the definition of a CAM:

- The auditor's assessment of the risks of material misstatement, including significant risks;
- The degree of auditor judgment related to areas in the financial statements that involved the application of significant judgment or estimation by management, including estimates with significant measurement uncertainty;

[46] *See e.g.,* CCMC Letter.

[47] AICPA Code of Professional Conduct 1.700.001.01.

[48] AICPA Code of Professional Conduct 1.700.001.02. *See also, e.g.,* Rule 10–4 of the Uniform Accountancy Act Model Rules, which has been the basis for many state rules for professional conduct.

[49] One commenter stated that the PCAOB reaffirmed the propriety of confidentiality requirements imposed on auditors by other authorities within PCAOB Release No. 2008–001 which adopted Auditing Standard No. 6, *Evaluating Consistency of Financial Statements* (since reorganized as AS 2820) in which the Board stated that the revisions contained therein ''did not reflect a decision that auditor confidentiality requirements imposed by other authorities were inappropriate.'' *See* CCMC Letter. However, by reaffirming the propriety of confidentiality requirements imposed on auditors by other authorities in PCAOB Release 2008–001, we believe the Board also effectively reaffirmed professional requirements such as the AICPA's confidential client information rule, which, as discussed above, expressly states that the rule does not prohibit a member's compliance with applicable laws and government regulations.

[50] *See e.g.,* CII Letter; J. Robert Brown Jr. Letter.

[51] *See e.g.,* J. Robert Brown Jr. Letter.

[52] *See e.g.,* Letter from Bruce J. Nordstrom, August 11, 2017 (''Bruce J. Nordstrom Letter''); Northrop Grumman Letter; Sullivan & Cromwell Letter; Cleary Gottlieb Letter; Letter from Nasdaq, August 24, 2017.

[53] *See e.g.,* Bruce J. Nordstrom Letter; Quest Letter; Aetna Letter.

[54] *See* AS 1301.9.

[55] *See* AS 1301.10a.

[56] *See* AS 1301.12b.

[57] *See* AS 1301.12c.

[58] *See* AS 1301.12d.

[59] *See* AS 1301.15.

[60] *See* AS 1301.24.

- The nature and timing of significant unusual transactions and the extent of audit effort and judgment related to these transactions;
- The degree of auditor subjectivity in applying audit procedures to address the matter or in evaluating the results of those procedures;
- The nature and extent of audit effort required to address the matter, including the extent of specialized skill or knowledge needed or the nature of consultations outside the engagement team regarding the matter; and
- The nature of audit evidence obtained regarding the matter.

Given the similarity of the two lists, we believe it would be difficult to identify an example of a matter that would meet the definition of a CAM that would not otherwise need to be communicated to the audit committee based on the requirements in AS 1301. Further, it is important to bear in mind that the mere communication of information from the auditor to the audit committee is not sufficient to meet the definition of CAM. The information communicated also would have to meet all other criteria in the definition of CAM, including that the matter involved especially challenging, subjective, or complex auditor judgment. Given auditors' existing responsibilities to discuss the matters described above with audit committees, we do not believe that the Proposed Rules are likely to chill these conversations.

As it relates to the risk that the role of the audit committee will be undermined, we emphasize that the Commission has a long history of promoting effective and independent audit committees.[61] We believe the requirement for every company listed on an exchange to have an independent audit committee[62] plays an important role in protecting the interests of investors by assisting the board of directors in fulfilling its responsibility to oversee the integrity of a company's accounting and financial reporting processes and both internal and external audits. Dialogue between audit committees and auditors provides real benefits to investors and the financial reporting process. The intent of the Proposed Rules is to supplement the role of the audit committee by providing information about the audit through the lens of the auditor. The Proposed Rules are unlikely to impact this relationship or the dialogue between audit committees and auditors, and may even encourage audit committees to engage more extensively with auditors given that there will be disclosures by the auditor about those aspects of the audit that constitute CAMs.

D. The Potential Liability Impact of CAMs

Commenters provided mixed views related to potential liability impacts of the introduction of CAMs.[63] Some commenters expressed concern that the communication of CAMs may result in an increase of meritless claims under the securities laws by expanding the number and variety of statements that will be attributed to the auditor.[64] Some commenters also expressed concerns that the requirements for auditor reporting of CAMs will increase litigation risk for both auditors and companies.[65] However, other commenters expressed views that the communication of CAMs by the auditor may have the potential to decrease liability as it involves disclosure of risks and challenges, and accordingly, could effectively provide a defense for the auditor.[66]

These concerns were also raised by commenters during the PCAOB rulemaking process. As the Board acknowledged in the release accompanying the Proposed Rules, CAMs themselves would be new statements that could be the basis for asserted claims against auditors. The Board also noted in its release that information provided regarding CAMs could be used to impact other aspects of securities fraud claims, such as providing evidence to support pleadings against an issuer, an auditor, or both.

In response to these concerns, the Board limited and clarified the process for determining CAMs, including by narrowing the source of CAMs to matters communicated or required to be communicated to the audit committee, adding a materiality component to the CAM definition, and refining the factors used to determine CAMs. We believe these modifications, as well as the CAM definition's focus on the auditor's judgment, should help mitigate potential liability concerns. For example, one of the concerns expressed by commenters regarding liability is the potential omission of CAMs within the auditor's report. By narrowing the potential matters that could be CAMs, clarifying the process for determining CAMs, and revising the definition of a CAM as discussed above, the Board has provided a framework for the auditor to evaluate and demonstrate whether a matter meets the definition of a CAM in accordance with the Proposed Rules.

We recognize, as the Board did, that mandating communication of CAMs will, by design, entail new statements in the auditor's report, thereby increasing the potential for litigation regarding such statements. However, the actual litigation impacts of these communications are difficult to predict. As the Board notes, in order to succeed, any claim based on these new statements would have to establish all of the elements of the relevant cause of action (*e.g.,* when applicable, scienter, loss causation, and reliance). Moreover, as discussed above, CAMs could be used to defend as well as initiate litigation.

Nevertheless, we recognize reporting of CAMs likely will create an incremental risk of litigation and potential liability. To some degree, increased litigation risk is the by-product of any new reporting requirement and must be balanced against the perceived benefits of the required reporting. As discussed above, we are persuaded that the communication of CAMs, which can be provided only by auditors, will benefit investors and other financial statement users by providing insights into the audit—and from the auditor's own unique perspective—that can reduce information asymmetries and be used to assess a company's financial reporting and make capital allocation and voting decisions. In our view, these benefits justify any such potential incremental liability risk arising from the communication, especially in light of the steps taken by the Board to mitigate such risk, as discussed above. However, because of these risks and other concerns expressed by commenters, we expect the Board to monitor the Proposed Rules after implementation for any unintended consequences.

E. Economic Analysis of CAMs

Several commenters expressed concerns that the costs of the Proposed

[61] *See e.g., Possible Revisions to Audit Committee Disclosures,* Release No. 33–9862 (July 1, 2015), 80 FR 38995 (July 8, 2015) *available at https://www.sec.gov/rules/concept/2015/33-9862.pdf.*

[62] *See* Section 301 of the Sarbanes Oxley Act and Section 10A(m) of the Exchange Act.

[63] Some commenters suggested the Commission undertake rulemaking to provide a safe harbor around auditor reporting of CAMs. *See e.g.,* PwC Letter, CCMC Letter. The question before the Commission at this time, however, is whether the rules as proposed meet the statutory criteria for approval. Moreover, we believe it would be more appropriate to consider whether any potential rulemaking is warranted related to safe harbors after the Board and the Commission have the opportunity to observe how the Proposed Rules are implemented in practice.

[64] *See e.g.,* Quest Letter; PwC Letter; Davis Polk Letter.

[65] *See e.g.,* CCMC Letter; American Tower Letter; EY Letter.

[66] *See e.g.,* CII Letter; Letter from The Value Alliance and Corporate Governance Alliance, August 18, 2017.

Rules will exceed their benefits, or that the economic analysis performed by the Board did not sufficiently analyze the costs and benefits of the Proposed Rules.[67] Some commenters observed specifically that the Board's analysis lacked quantitative information.[68] Conversely, some commenters indicated they believe the potential costs are not likely to be significant relative to the potential benefits, for example because CAMs are based on matters already being discussed by the auditor and audit committee.[69] Further, to the extent that costs are incurred related to the Proposed Rules, commenters from the investor community stated that, as shareholders, they are willing to bear the additional costs of the Proposed Rules in exchange for enhanced information about the audit.[70]

The Board's evaluation of the potential costs and benefits of the Proposed Rules was informed by information sought and obtained from stakeholders. In the course of that analysis, the Board stated that ''the potential benefits and costs of the [Proposed Rules] are inherently difficult to quantify, therefore the Board's economic discussion is primarily qualitative in nature.'' The Board also observed that commenters that raised concerns about the Proposed Rules' costs generally did not quantify those costs and that ''[e]ven those [commenters] that, at an earlier stage of the rulemaking, conducted limited implementation testing of the proposal were unable to provide a quantified cost estimate.'' Moreover, as stated in the release accompanying the Proposed Rules, as related to comments provided to the Board, ''[c]ommenters provided views on a wide range of issues pertinent to economic considerations, including potential benefits and costs, but did not provide empirical data or quantified estimates of the costs or other potential impacts of the standard.'' As a result, in lieu of providing a quantitative analysis, the Board engaged in a detailed qualitative assessment of the Proposed Rules' potential economic impacts, including consideration of direct and indirect benefits, costs, and potential unintended consequences.

We disagree with commenters' assertions that the Board's analysis is defective for failing to adequately quantify the costs and benefits of the Proposed Rules. Analyzing the potential economic impacts, including the costs and benefits, of a proposed rule is a key way to develop regulatory changes that are well-reasoned, with potential costs that are warranted in light of the expected benefits. We believe that a high-quality qualitative analysis can allow for this type of evaluation, particularly in those cases where quantification is not feasible.[71]

We also agree with the Board that it would not have been feasible to quantify the potential costs and benefits of the Proposed Rules. While certain components of the total potential costs related to the Proposed Rules might be easier to estimate (*e.g.,* the costs an auditor might incur to draft a CAM), several of the significant components of the total potential cost are inherently difficult to estimate. For example, under the Proposed Rules, the auditor would need to determine which matters are CAMs and have incremental discussions with the audit committee regarding the draft of the CAM communications. Given the audit-specific nature of such matters, it is difficult to predict how many hours would need to be involved in the analysis and communication process as this will vary based on a number of factors, including, for example, the complexity of the company and the number of CAMs.

In addition, there are potential costs that might be incurred by the company as a consequence of the implementation of the Proposed Rules. For example, besides the audit committee, other executives and legal counsel may be required to expend more time and effort in discussing and reviewing the auditor's report as a consequence of the Proposed Rules. Again, estimating these costs is difficult because these costs likely will vary among audit engagements depending on the circumstances.

Potential benefits from new auditor reporting requirements are also inherently difficult to quantify. For example, to quantify the direct benefit to investors of a more useful and informative auditor's report, one would require an estimate of how their investment or voting decisions would be affected by CAMs and an estimate of the amount of profit from such decisions. Such estimates are either impossible or very difficult to calculate with reasonable reliability. In addition to the direct benefits, there may be indirect benefits from the new reporting requirements. For example, the communication of CAMs can provide some auditors, management, and audit committees with additional incentives to enhance audit quality. Enhanced audit quality ultimately can lead to a reduced cost of capital. However, at this time, it is impossible to predict the amount of reduction in cost of capital that would arise from the Proposed Rules.

Moreover, we agree with the Board's qualitative analysis of the possible economic consequences of the Proposed Rules. As they did before the Board, investors and investor associations have expressed strong support to the Commission for the Proposed Rules and stated that they expect the potential benefits to justify the potential costs.[72] As an example, one commenter stated the Proposed Rules will not require changes to the audit process and hence should not impose any significant incremental costs.[73] This same commenter further stated that, while incremental costs or auditor effort should be minimal, there are manifold benefits for investors.[74] Several commenters also informed the Commission that they believe that the information from the auditor's perspective that would be required by the Proposed Rules would be useful, for example, in forming voting and investment decisions.[75]

We believe these are important benefits. The Proposed Rules are consistent with the broader economic theory regarding the benefits from enhanced disclosures. More specifically, we believe that the Proposed Rules are likely to improve the information currently available to investors and facilitate their efforts to understand the financial statements. Importantly, the Proposed Rules will assist investors in identifying those matters that relate to the relevant financial statement accounts or disclosures that involved especially challenging, subjective, or complex auditor judgment. This will, in turn, provide investors with audit-specific information directly from the auditor's point of view and add to the

[67] *See e.g.,* CCMC Letter; Society for Corporate Governance Letter; Davis Polk Letter.

[68] *See e.g.,* Robert Waxman Letter; CCMC Letter; Davis Polk Letter.

[69] *See e.g.,* CII Letter; Letter from Aberdeen Asset Management, August 11, 2017 (''Aberdeen Letter''); Hermes Letter; CFA Institute Letter.

[70] Compliance and implementation costs from the auditor's standpoint could be passed through to the company and consequently investors in the form of increased audit fees. Moreover, companies themselves (and consequently investors) could incur additional costs as a consequence of the Proposed Rules, for example by engaging additional resources such as legal counsel, and such costs would impact investors. *See also e.g.,* CII Letter; Aberdeen Letter; Hermes Letter.

[71] *Cf. Nat'l Ass'n of Mfrs* v. *SEC,* 748 F.3d 359 (D.C. Cir. 2014) (acknowledging the reasonableness of the SEC's determination that it was unable to quantify benefits because it lacked the data necessary to do so).

[72] *See e.g.,* CFA Institute Letter; CII Letter.

[73] *See e.g.,* CFA Institute Letter.

[74] *See id.*

[75] *See e.g.,* CII Letter; Letter from Public Citizen, August 18, 2017; CalPERS Letter; Hermes Letter; CFA Institute Letter.

total mix of information that could be used in their capital allocation and voting decisions. Further, investors will be able to observe reported CAMs for other companies. Within the right context, such information could be used by investors to improve their understanding of both the audit itself and the company's financial statements.

Moreover, the Proposed Rules may stimulate discussions between the auditor and the company regarding CAMs, and potentially increase professional skepticism by the auditor. The public nature of CAMs may also act to further enhance auditors' professional skepticism. An increase in skepticism may lead to an increase in audit quality and, as a consequence, result in lower cost of capital for companies.

Like the Board, we recognize that there are costs associated with complying with the Proposed Rules. The Board indicated that costs to auditors are most likely to arise from additional time to prepare and review auditor's reports, including discussions with management and audit committees, as well as potential legal costs for review of the information provided in the CAMs. In addition, auditors may choose to perform more audit procedures related to areas reported as CAMs (even though auditor performance requirements have not changed in those areas), with cost implications for both auditors and companies. For auditors, costs might represent both one-time costs and recurring costs. One-time costs could be incurred as a result of: (1) Updating accounting firm audit and quality control methodologies; and (2) developing and conducting training. Recurring costs could include: (1) Drafting descriptions of CAMs and related documentation; (2) additional reviews by senior members of engagement teams, engagement quality reviewers, and national office personnel; and (3) additional time as a result of discussions with management or the audit committee regarding CAMs.

Companies, including audit committees, will likely also incur both one-time and recurring costs. One-time costs could be incurred, for example, in educating audit committee members about the requirements of the new standard and in developing management and audit committee processes for the review of draft descriptions of CAMs and the related interaction with auditors. Recurring costs could include the costs associated with carrying out those processes, potential legal costs,[76] as well as any increase in audit fees associated with new reporting requirements.

We recognize that there is some level of uncertainty as to the costs that will be incurred to comply with the Proposed Rules. However, as discussed above, the Board has taken steps to mitigate those costs, including by, as an example, limiting the source of CAMs to matters communicated or required to be communicated to the audit committee and by adding a materiality component to the definition of a CAM. At the same time, for the reasons explained above, we believe that the Proposed Rules will provide significant new benefits to investors and other financial statement users. Based on the economic analysis in the release accompanying the Proposed Rules and our own evaluation of comments received by both the Board and the Commission regarding the potential economic effects of the Proposed Rules, we are persuaded that there is a sufficient basis to conclude that the potential benefits of the Proposed Rules will justify the potential related costs, and therefore, that the Proposed Rules are necessary and appropriate in the public interest and for the protection of investors.

F. Practicability Matters Related to CAMs

Several commenters raised certain practical concerns with the Proposed Rules. We discuss each of these concerns in detail below.

1. Timing

Some commenters expressed concerns that the requirement to communicate CAMs will impose additional burdens on auditors, audit committees, and preparers during an already time-constrained period as management finalizes its annual financial statements.[77] In the release accompanying the Proposed Rules, the PCAOB acknowledged that if drafting and reviewing of CAMs takes place towards the end of the audit, there will also be an opportunity cost associated with the time constraints on the parties involved.

We also acknowledge these concerns, but we expect most matters that will ultimately need to be communicated as CAMs will be identified throughout the audit and not just at the end of the audit. As a result, we believe much of the work can be completed prior to the time-constrained period at the end of the financial reporting process. In those cases, we encourage auditors, audit committees, and preparers to coordinate and work together before the critical year-end financial reporting period so that, if other CAMs arise later in the audit, the burden can be lessened during the finalization of the audit.

2. Inconsistent Application by Auditors

Some commenters also expressed concerns that the principles-based nature of the Proposed Rules as it pertains to both the identification and communication of CAMs could lead to inconsistent application by auditors.[78] In the release accompanying the Proposed Rules, the Board stated that the determination of CAMs is principles-based and the Proposed Rules do not specify any items that would always constitute CAMs as the auditor determines CAMs in the context of the specific audit.

We recognize commenters' concerns that the subjective requirements related to CAMs could lead to diversity in communications, but we agree with the Board that it is important for the CAM requirements, particularly the communication requirements, to be principles-based in order to meet the Board's objective of having CAM communications provide tailored, audit-specific information by the auditor within the auditor's report. We also believe the guidance provided by the Board in the release accompanying the Proposed Rules will assist auditors in implementing the Proposed Rules consistently.

3. Lack of Examples

Some commenters noted that the PCAOB did not include the illustrative example CAMs from the PCAOB Re-proposal in the release accompanying the Proposed Rules, and they expressed concern that the removal of these examples will add to uncertainties and confusion for auditors in reporting CAMs.[79] As the PCAOB noted in the release accompanying the Proposed Rules, given the principles-based nature of the requirements for CAMs and the objective of providing tailored, audit-specific information, the examples in the PCAOB Re-proposal were intended to function as illustrations of how CAMs could be communicated, and not as templates for how CAMs should be communicated. In this regard, it is important to bear in mind that a number of commenters expressed concerns that

[76] *See* discussion in section III.D above, ''The Potential Liability Impact of CAMs.''

[77] *See e.g.,* Society for Corporate Governance Letter; Letter from ArcBest, August 17, 2017.

[78] *See e.g.,* CCMC Letter; Aetna Letter.

[79] *See e.g.,* CCMC Letter; Robert Waxman Letter.

the CAMs will become boilerplate and will not be useful.[80]

We agree with the Board's objective of providing tailored, audit-specific information and believe it is important for auditors to develop CAM descriptions that comply with the Proposed Rules without conforming to an example provided by the Board. As a result, inclusion of examples may lead to more boilerplate descriptions of CAMs. In addition, the PCAOB does present certain examples in the release accompanying the Proposed Rules to provide guidance on how to identify and communicate CAMs. The release includes examples such as, whether the auditor's evaluation of the company's ability to continue as a going concern could also represent a CAM and whether a potential illegal act, if an appropriate determination had been made that no disclosure of it was required in the financial statements, would be a CAM. The Proposed Rules also include a note incorporating four examples of potential approaches to addressing the requirement to describe how the CAM was addressed in the audit.

G. Disclosure of Auditor Tenure in the Auditor's Report

Commenters provided mixed perspectives related to the disclosure of auditor tenure in the auditor's report. Some commenters did not support disclosure of auditor tenure in the auditor's report. These commenters indicated such disclosure may give undue prominence to the information, thereby giving an impression that a correlation exists between auditor tenure and independence or audit quality.[81] Some of these commenters suggested alternative locations for this information, such as the proxy statement, so that the information could be provided with context from the audit committee, or PCAOB Form AP.[82] At least one commenter did not support requiring the disclosure of auditor tenure as this commenter stated the audit committee is in the best position to evaluate the auditor's independence.[83] Other commenters, including investors and investor associations, supported the disclosure of auditor tenure, indicating the information is useful in matters such as proxy voting.[84]

As described in the release accompanying the Proposed Rules, issuers are not currently required to disclose auditor tenure, although some voluntarily choose to do so. Based on recent surveys,[85] and as noted in the release accompanying the Proposed Rules, there is a growing trend of voluntary disclosure of auditor tenure in the proxy statement, presumably reflecting audit committees' use of and investors' demand for such information. We believe it is important to note, for issuers that do not disclose auditor tenure voluntarily, investors themselves, in some circumstances, may be able to determine auditor tenure based on publicly available information. Further, we are aware that various third-party commercial databases provide auditor tenure information based on public records (*e.g.,* the auditor's report in an issuer's annual report on Form 10–K). Institutional investors or professional analysts typically have access to such databases; however, retail investors typically do not. To the extent that these retail investors seek to obtain auditor tenure information, they would need to incur the cost to determine this information themselves.[86] Accordingly, we believe requiring this disclosure could lower information acquisition costs for such investors, which we find to be a compelling potential benefit in support of the requirement.

As it relates to the location of the disclosure, the PCAOB does not have the statutory authority to require disclosure in the proxy statement. While the Commission does have authority to amend the proxy rules, as discussed in the release accompanying the Proposed Rules, not all companies required to be audited under PCAOB standards are subject to the proxy rules (*e.g.,* foreign private issuers). In addition, certain issuers that are not required to hold annual meetings of shareholders, such as most registered investment companies, generally will solicit proxies less frequently than other issuers. Also, as discussed in the release accompanying the Proposed Rules, the Board considered disclosure of auditor tenure in Form AP, which requires disclosure of the name of the engagement partner and of the names and percentage of participation of other accounting firms in the audit for all issuer audits. However, Form AP was developed primarily to respond to commenter concerns about the potential liability consequences of naming persons in the auditor's report, the potential need to obtain consents from those named persons in connection with registered securities offerings, and the additional time needed to compile information about the other accounting firms. The Board's determination to create Form AP, rather than require disclosure of these items in the auditor's report, was a means to address these concerns.

We believe it is important to acknowledge that the disclosure of auditor tenure does not have the same potential liability or other consequences as disclosure of the name of the engagement partner or other accounting firms. We therefore agree with the Board that such an approach is unnecessary in the Proposed Rules. Overall, we believe it is appropriate for this disclosure to appear in the auditor's report because it will provide for a consistent location and decrease search costs with respect to information about auditor tenure.

H. The Effective Dates of the Proposed Rules

Some commenters suggested postponement or further consideration of the effective dates included in the Proposed Rules.[87] At least one commenter suggested postponement of the effective dates as companies and auditors will be dealing with the implementation of significant new GAAP standards, including those related to revenue, leases, and credit losses.[88] In the release accompanying the Proposed Rules, the Board took into consideration commenters' feedback and phased effective dates for CAMs, indicating this ''may facilitate any post-implementation review of the impact of the final standard.''

We believe the Board took a balanced approach to effective dates by adopting a reasonable phase-in schedule. For certain entities listed internationally, audit firms are already required to communicate information similar to CAMs. Given that the effective date for communication of CAMs for large accelerated filers is phased in first, larger firms will likely be able to observe practices developed by other firms within their global network in considering implementation questions.

[80] *See e.g.,* Aetna Letter; Quest Letter; Davis Polk Letter.

[81] *See e.g.,* CCMC Letter; PwC Letter; Deloitte Letter.

[82] *See e.g.,* Davis Polk Letter; Regions Letter.

[83] *See e.g.,* Bruce J. Nordstrom Letter.

[84] *See e.g.,* Colorado PERA Letter; CFA Institute Letter.

[85] *See e.g.,* Deloitte, Center for Board Effectiveness, *Audit Committee Disclosure in Proxy Statements—2017 Trend* (Aug. 2017), *available at https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/us-cbe-august-2017-on-the-boards-agenda.pdf.*

[86] Though institutional investors and professional analysts need to pay to get access to the databases, their marginal cost of acquiring this piece of information is likely much lower than that of retail investors because the database provider can spread the cost among the database's many subscribers.

[87] *See e.g.,* CCMC Letter; FEI Letter; Eli Lilly Letter.

[88] *See e.g.,* CCMC Letter.

As the Board discussed, the staggered approach to implementation may allow the Board to evaluate implementation by the first cohort of companies before applying the Proposed Rules to other companies. Also, the second cohort of auditors and companies will have more time to prepare, and will have the benefit of observing how the Proposed Rules have been implemented by the first cohort. The Commission itself, for many similar reasons, has used, at times, staggered implementation dates for new regulatory requirements.[89] With respect to the other changes to the auditor's report in the Proposed Rules that are not subject to a phase-in approach, those changes should not be a significant burden to implement as they involve relatively straightforward changes to the existing auditor's report. Accordingly, we believe the effective dates in the Proposed Rules are reasonable.

I. Implementation Efforts

Several commenters, including most notably audit firms, generally expressed support for the Proposed Rules while simultaneously expressing concern that unintended consequences may arise during implementation. These commenters stated that uncertainty surrounding the effects of the Proposed Rules would necessitate a post-implementation review.[90] Commenters called on the Commission and PCAOB to assist with implementation efforts should the Commission approve the Proposed Rules and encouraged the Board to take advantage of the proposed phased effective dates to undertake a post-implementation review of the impact of the final standard.[91] Some accounting firms have also stated their willingness to work with both the Commission and PCAOB to provide feedback on implementation experiences.[92] In the release accompanying the Proposed Rules, the Board stated that it ''intends to monitor the results of implementation, including consideration of any unintended consequences.''

The Commission acknowledges that the communication required of auditors by the Proposed Rules is a significant change in practice for auditors, companies, and audit committees. Accordingly, it will be important to closely monitor the implementation of the Proposed Rules, including potentially issuing incremental implementation guidance (if needed), providing PCAOB staff to be available to respond to questions and challenges as they arise, and completing a post-implementation review as soon as reasonably possible, including some analysis between effective dates for CAMs. The Commission expects the PCAOB to take such steps.

IV. Effect on Emerging Growth Companies

Under the Proposed Rules, the requirement to communicate CAMs would not apply to the audits of EGCs, but all other provisions within the Proposed Rules would apply to such audits.[93] As described in section II.A, these include a number of changes to the auditor's report that are primarily intended to clarify the auditor's role and responsibilities related to the audit of the financial statements, provide additional information about the auditor's tenure, and make the auditor's report easier to read.

Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as amended by Section 104 of the Jumpstart Our Business Startups Act, requires that any rules of the Board ''requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis)'' shall not apply to an audit of an EGC. The provisions of the Proposed Rules applicable to the audits of EGCs do not fall into this category.[94] Section 103(a)(3)(C) further provides that ''[a]ny additional rules'' adopted by the PCAOB after April 5, 2012, do not apply to audits of EGCs ''unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.'' The provisions of the Proposed Rules applicable to the audits of EGCs fall within this category, and thus the Commission must make a determination under the statute about the applicability of these provisions to EGCs. Having considered those statutory factors, the Commission finds that applying these provisions to the audits of EGCs is necessary or appropriate in the public interest.

In proposing application of certain of the Proposed Rules to audits of all issuers, including EGCs, the PCAOB requested that the Commission make the determination required by Section 103(a)(3)(C). To facilitate the Commission's determination, the Board provided information identified by the Board's staff from public sources, including data and analysis of EGCs that sets forth its views as to why it believes certain of the Proposed Rules should apply to audits of EGCs.

To inform consideration of the application of auditing standards to audits of EGCs, the PCAOB staff has also published a white paper that provides general information about characteristics of EGCs.[95] The data on EGCs outlined in the white paper indicates that a majority of EGCs are smaller public companies that are generally new to the SEC reporting process. This suggests that there is less information available to investors regarding such companies relative to the broader population of public companies because, in general, investors are less informed about companies that are smaller and newer.

We expect that the changes to the auditor's report that would be applied to the audits of EGCs under the Proposed Rules, will: (1) Provide a consistent location and decrease search costs with respect to information about auditor tenure; (2) enhance users' understanding of the auditor's role; and (3) make the auditor's report easier to read and facilitate comparison across companies by making the format of the report more uniform. Given the relatively straightforward nature of the additional changes to the auditor's report, we expect that the costs associated with these changes will not be significant and will be primarily one-time, rather than recurring, costs. Overall, we expect the changes to increase the efficiency with which users are able to locate and understand the information presented in the auditor's report. We do not expect the changes to

[89] *See e.g., Shareholder Approval of Executive Compensation and Golden Parachute Compensation,* Release No. 33–9178 (Jan. 25, 2011), 76 FR 6010 (Feb. 2, 2011) *available at https://www.sec.gov/rules/final/2011/33-9178.pdf.*

[90] *See e.g.,* BDO Letter; Letter from the Center for Audit Quality, August 18, 2017 (''CAQ Letter''); Deloitte Letter; EY Letter; PwC Letter.

[91] *See id.*

[92] *See e.g.,* CAQ Letter; EY Letter; PwC Letter.

[93] *See* Paragraph .05b of AS 3101 within the Proposed Rules.

[94] While the precise scope of this category of rules under Section 103(a)(3)(C) is not entirely clear, we do not interpret this statutory language as precluding the application of Board rules requiring a certain format for the auditor's report or inclusion of additional factual information about auditor tenure, auditor independence and other requirements related to the audits of EGCs. In our view, this approach reflects an appropriate interpretation of the statutory language and is consistent with our understanding of the congressional purpose underlying this provision.

[95] *See White Paper on Characteristics of Emerging Growth Companies* (Nov. 15, 2016), *available at https://pcaobus.org/EconomicAndRiskAnalysis/ORA/Documents/White-Paper-Characteristics-Emerging-Growth-Companies-November-2016.pdf.*

significantly impact competition or capital formation. As such, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, we believe there is a sufficient basis for the Commission to determine that applying the Proposed Rules, other than the provisions related to CAMs, to the audits of EGCs is necessary or appropriate in the public interest.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules, the information submitted therewith by the PCAOB, and the comment letters received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules to the audits of EGCs, which do not have a requirement to communicate CAMs, is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB–2017–01) be and hereby are approved.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23379 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81925; File No. SR–BatsBYX–2017–26]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Amended and Restated Certificate of Incorporation

October 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2017, Bats BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 seeks to amend its Amended and Restated Certificate of Incorporation. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION of BATS BYX EXCHANGE, INC.

The name of the corporation is Bats BYX Exchange, Inc. The corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Delaware on July 30, 2009 *under the name BATS Y-Exchange, Inc.* This Amended and Restated Certificate of Incorporation of the corporation, which restates and integrates and also further amends the provisions of the corporation's Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of its sole stockholder in accordance with Section 228 of the General Corporation Law of the State of Delaware. The [Amended and Restated] Certificate of Incorporation of the corporation is hereby amended, integrated and restated to read in its entirety as follows:

* * * * *

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BYX recently amended its Certificate of Incorporation in connection with a corporate transaction (the ''Transaction'') involving, among other things, the recent acquisition of BYX, along with Bats BZX Exchange, Inc. (''Bats BZX''), Bats EDGX Exchange, Inc. (''Bats EDGX''), and Bats EDGA Exchange, Inc. (''Bats EDGA'' and, together with Bats BYX, Bats EDGX, and Bats BZX, the ''Bats Exchanges'') by CBOE Holdings, Inc. (''CBOE Holdings''). CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated (''CBOE'') and C2 Options Exchange, Incorporated (''C2''). Particularly, the filing proposed, among other things, to amend and restate the certificate of incorporation of the Exchange based on certificates of incorporation of CBOE and C2.[3] The Exchange notes that in conforming the Exchange's Certificate to the certificates of CBOE and C2, it inadvertently (1) did not comply with a provision of Delaware law and (ii) referred to an inaccurate version of the Certificate in the introductory paragraph. The Exchange seeks to correct those errors.

Particularly, Section 245(c) of the Delaware General Corporation Law (DGCL) requires that a restated certificate of incorporation ''shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the secretary of state.'' The Exchange notes that the conformed Certificate did not reference the name under which the corporation was originally incorporated (*i.e.,* ''BATS Y-Exchange, Inc.''). In order to comply with Section 245(c) of the DGCL, the Exchange proposes to amend its Certificate to add a reference to its original name.

The Exchange also notes that the last sentence of the introductory paragraph which provides that the current certificate is ''amended, integrated and restated to read in its entirety as follows:'' mistakenly references the new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81498 (August 30, 2017), 82 FR 42127 (September 6, 2017) (SR–BatsBYX–2017–19).

title of the amended Certificate (*i.e.,* ''Amended and Restated Certificate of Incorporation'') instead of the title of the then current (and now previous) Certificate (''Certificate of Incorporation''). As such, the Exchange proposes to eliminate the new title reference ''Amended and Restated'' from that sentence to accurately reflect the correct version of the Certificate that was amended and restated.

The Exchange notes that the proposed changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is [sic] any way.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes correcting inadvertent non-substantive, technical errors in its Certificate in order to comply with Delaware law and reflect the correct and accurate version of the Certificate that was amended will avoid potential confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest of market participants. As noted above, the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change is merely attempting to correct inadvertent technical errors in the Exchange's introductory paragraph of its Certificate. The proposed rule change has no impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBYX–2017–26 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–BatsBYX–2017–26. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2017–26 and should be submitted on or before November 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23378 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32865; 812–14795]

Blackstone/GSO Floating Rate Enhanced Income Fund, et al.

October 23, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and shareholder service fees and early withdrawal charges.

APPLICANTS: Blackstone/GSO Floating Rate Enhanced Income Fund (''BGFREI''), GSO/Blackstone Debt Funds Management LLC (the ''Adviser''), and Blackstone Advisory Partners L.P. (the ''Distributor'').

FILING DATES: The application was filed on July 3, 2017 and amended on October 17, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 17, 2017, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 345 Park Avenue, 31st Floor, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Asen Parachkevov, Senior Counsel, or David Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. BGFREI is a Delaware statutory trust that is registered under the Act as a continuously offered, non-diversified, closed-end management investment company that will be operated as an interval fund. BGFREI's investment objective is to provide attractive income with low sensitivity to rising interest rates.

2. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to BGFREI.

3. The applicants seek an order to permit the Funds (as defined below) to issue multiple classes of shares, each having its own fee and expense structure and to impose repurchase fees, early withdrawal charges, and asset-based distribution and shareholder service fees with respect to certain classes.

4. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser and which operates as an interval fund pursuant to rule 23c–3 under the Act and/or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Future Fund'' and together with BGFREI, the ''Funds'').[2]

5. BGFREI intends to engage in a continuous offering of its shares of beneficial interest. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange nor publicly traded. There is currently no secondary market for the Funds' shares and the Funds expect that no secondary market will develop.

6. If the requested relief is granted, BGFREI will offer Class T, Class D and Class I shares, with each class having its own fee and expense structure, and may also offer additional classes of shares in the future. Because of the different distribution and/or shareholder services fees, services and any other class expenses that may be attributable to each of BGFREI's Class T, Class D and Class I shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Funds may create additional classes of shares, the terms of which may differ from Class T, Class D and Class I shares in the following respects: (i) The amount of fees permitted by different distribution plans or different shareholder services fee arrangements; (ii) voting rights with respect to a distribution and/or shareholder services plan of a class; (iii) different class designations; (iv) the impact of any class expenses directly attributable to a particular class of shares allocated on a class basis as described in the application; (v) any differences in dividends and net asset value resulting from differences in fees under a distribution and/or shareholder services plan or in class expenses; (vi) any early withdrawal charge or other sales load structure; and (vii) exchange or conversion privileges of the classes as permitted under the Act.

8. Applicants state that BGFREI is also seeking exemptive relief from the Commission to permit it to adopt a fundamental policy to repurchase 5% of its shares at net asset value on a monthly basis.[3] If such relief is not granted, BGFREI intends to adopt a fundamental policy to conduct repurchase offers on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act. Each of the other Funds will likewise adopt fundamental investment policies in compliance with rule 23c–3 and make repurchase offers to its shareholders at periodic intervals and/or provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[4] Any repurchase offers made by the Funds will be made to all holders of shares of each Fund.

9. Applicants represent that any asset-based shareholder services and

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[3] *See* In the Matter of Blackstone/GSO Floating Rate Enhanced Income Fund, *et al.,* File Number 812–14796.

[4] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933, as amended.

distribution fees for each class of shares will comply with the provisions of FINRA Rule 2341(d) (''FINRA Sales Charge Rule'').[5] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A.[6] As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[7] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[8]

10. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, shareholder service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

12. Applicants state that each Fund may impose an early withdrawal charge on shares submitted for repurchase that have been held less than a specified period and may waive the early withdrawal charge for certain categories of shareholders or transactions to be established from time to time. Applicants state that each of the Funds will apply the early withdrawal charge (and any waivers or scheduled variations of the early withdrawal charge) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

13. Applicants state that BGFREI will (and any Future Fund, as applicable, may) charge a repurchase fee of up to 2% on the common shares accepted for repurchase (including those that have been held by the investor for less than one year), in addition to any early withdrawal charge. Shares of any Future Fund, to the extent such Future Fund does not comply with the requirements of rule 23c–3 under the Act, will be subject to a repurchase fee at a rate no greater than 2% of a shareholder's repurchase proceeds if the date as of which the shares are to be valued for purposes of repurchase is less than one year following the investor's initial investment in such Future Fund. Repurchase fees will equally apply to new class shares and to all classes of shares of BGFREI (and any Future Fund, as applicable), consistent with section 18 of the Act and rule 18f–3 thereunder. To the extent BGFREI (and any Future Fund, as applicable) determines to waive, impose scheduled variations of, or eliminate a repurchase fee, it will do so consistently with the requirements of rule 22d–1 under the Act and as if such fund were an open-end investment company and such Fund's waiver of, scheduled variation in, or elimination of, the repurchase fee will apply uniformly to all shareholders of such fund regardless of class.

14. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an early withdrawal charge as if it were a contingent deferred sales load.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c)

[5] All references in the application to the FINRA Sales Charge Rule include any Financial Industry Regulatory Authority successor or replacement rule to the FINRA Sales Charge Rule.

[6] In all respects other than class-by-class disclosure, each Fund will comply with the requirements of Form N–2.

[7] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[8] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1–1, *et seq.* of the Act.

from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose early withdrawal charges on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the early withdrawal charges they intend to impose are functionally similar to contingent deferred sales loads imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose contingent deferred sales loads, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of contingent deferred sales loads where there are adequate safeguards for the investor and state that the same policy considerations support imposition of early withdrawal charges in the interval fund context. In addition, applicants state that early withdrawal charges may be necessary for the distributor to recover distribution costs. Applicants represent that any early withdrawal charge imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose early withdrawal charges in accordance with the requirements of Form N–1A concerning contingent deferred sales loads.

Asset-Based Distribution and Shareholder Service Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and shareholder service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and shareholder service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23367 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81923; File No. SR–BatsEDGX–2017–38]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.10, Order Execution

October 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2017, Bats EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.10, Order Execution, to remove language allowing a change to the minimum quantity of an order with a Minimum Execution Quantity[5] instruction to be included in a Replace message. The proposed amendments would harmonize the rule with the rules of its affiliate exchanges, Bats BYX Exchange, Inc. (''BYX''), Bats BZX Exchange, Inc. (''BZX''), and Bats EDGA Exchange, Inc. (''EDGA'').[6]

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove language allowing a change to the minimum quantity of an order with a Minimum Execution Quantity instruction to be included in a Replace message. The proposed amendments would harmonize the rule with the rules of its affiliate exchanges, BYX, BZX, and EDGA.[7]

A Minimum Execution Quantity enables a User[8] to specify a minimum share amount at which the order will execute. An order with a Minimum Execution Quantity will not execute unless the volume of contra-side liquidity available to execute against the order meets or exceeds the designated minimum. Specifically, Minimum Execution Quantity is an instruction a User may attach to an order with a Non-Displayed[9] instruction or a TIF of IOC requiring the System[10] to execute the order only to the extent that a minimum quantity can be satisfied by execution against a single order or multiple aggregated orders simultaneously. An order with a Minimum Execution Quantity will execute upon entry against a single order or multiple orders if the sum of those orders is equal to or greater than its minimum quantity. Alternatively, a User may elect that an incoming order with a Minimum Execution Quantity to forego executions where multiple resting orders could otherwise be aggregated to satisfy the order's minimum quantity but do not individually satisfy the order's minimum quantity instruction.

Paragraph (e)(3) of Rule 11.10 states that other than changing a Limit Order to a Market Order, only the price, Stop Price,[11] the sell long indicator, Short Sale instruction,[12] Max Floor[13] of an order with a Reserve Quantity, size of the order, and the minimum quantity of a Minimum Execution Quantity instruction may be changed with a Replace message. The Exchange recently proposed to amend paragraph (e)(3) of Rule 11.10, Order Execution, to allow a change to the minimum quantity of an order with a Minimum Execution Quantity instruction to be included in a Replace message.[14] However, this functionality was never implemented and the Exchange now proposes to remove this language from its rule.[15] Removal of this language would, therefore, not result in a change in functionality. The proposal would also harmonize the rule with the rules of its affiliate exchanges, BYX, BZX, and EDGA.[16]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed amendment to paragraph (e)(3) of Rule 11.10 is consistent with the Act in that it will clarify the rule by removing language that reflects functionality not offered by the Exchange, thereby avoiding any potential investor confusion. The proposed amendments would also harmonize the rule with the rules of its affiliate exchanges, BYX, BZX, and EDGA,[19] thereby ensuring consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 11.6(h) (describing the operation of the Minimum Execution Quantity order instruction).

[6] *See* BYX Rule 11.9(e)(3), BZX Rule 11.9(e)(3), and EDGA Rule 11.10(e)(3).

[7] *See supra* note 6.

[8] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[9] The term ''Non-Displayed'' is defined as ''[a]n instruction the User may attach to an order stating that the order is not to be displayed by the System on the EDGX Book.'' *See* Exchange Rule 11.6(e)(2).

[10] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[11] *See* Exchange Rules 11.8(a)(1) and (b)(1).

[12] *See* Exchange Rule 11.6(o).

[13] *See* Exchange Rule 11.6(m)(1).

[14] *See* Securities Exchange Act Release No. 81457 (August 22, 2017), 82 FR 40812 (August 28, 2017) (SR-BatsEDGX–2017–34).

[15] While the rule change became operative on September 11, 2017 and the Exchange's rules were then updated to reflect the change, no Member has attempted to change an order's Minimum Execution Quantity via a Replace message.

[16] *See supra* note 6.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 6.

rules amongst the Exchange and its affiliates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed amendment to paragraph (e)(3) of Rule 11.10 would not have any impact on competition as it simply clarifies the rule by removing language that reflects functionality not offered by the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received on the proposed rule change.

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 [20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [22] 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative upon filing. The Exchange stated that such waiver would enable the Exchange to immediately clarify its rule by removing language that reflects functionality not offered by the Exchange, and thereby avoid any potential investor confusion. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would enable the Exchange to update its rule without delay. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[23]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGX–2017–38 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–BatsEDGX–2017–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2017–38, and should be submitted on or before November 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23376 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81919; File No. SR-BatsBZX–2017–68]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 21.1, Definitions, To Modify Stop Orders and Stop Limit Orders Applicable to the Exchange's Equity Options Platform in Preparation for the C2 Options Exchange, Incorporated Technology Migration

October 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2017, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to update Rule 21.1 to make modifications to the Exchange's rules and functionality applicable to the Exchange's options platform (''BZX Options'') in preparation for the technology migration of the Exchange's affiliated options exchange, C2 Options Exchange, Incorporated (''C2''), onto the same technology as the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange and its affiliates Bats BYX Exchange, Inc. (''BYX''), Bats EDGA Exchange, Inc. (''EDGA''), and Bats EDGX Exchange, Inc. (''EDGX'') received approval to affect a merger (the ''Merger'') of the Exchange's indirect parent company, Bats Global Markets, Inc. (''BGM''), with CBOE Holdings, Inc. (''CBOE Holdings''), the direct parent of Chicago Board Options Exchange, Incorporated (''CBOE'') and C2 Options Exchange, Incorporated (''C2'', and together with the Exchange, BYX, EDGA, EDGX, and CBOE the ''CBOE Affiliated Exchanges'').[5] The CBOE Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the CBOE Affiliated Exchanges, in the context of a technology migration. Thus, the proposals set forth below are intended to add certain system functionality that is more similar to functionality offered by CBOE and C2 in order to ultimately provide a consistent technology offering for market participants who interact with the CBOE Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The Exchange proposes to modify its rules regarding Stop Orders and Stop Limit Orders, as defined in Rules 21.1(d)(11) and (d)(12), respectively.

Stop Orders are currently defined in Rule 21.1(d)(11) as an order that becomes a Market Order[6] when the stop price is elected. A Stop Order to buy is elected when the consolidated last sale in the option occurs at, or above, the specified stop price. A Stop Order to sell is elected when the consolidated last sale in the option occurs at, or below, the specified stop price. Stop Limit Orders are currently defined in Rule 21.1(d)(12) as an order that becomes a limit order[7] when the stop price is elected. A Stop Limit Order to buy is elected when the consolidated last sale in the option occurs at, or above, the specified stop price. A Stop Limit Order to sell becomes a sell limit order when the consolidated last sale in the option occurs at, or below, the specified stop price.

The Exchange proposes to modify Stop Orders and Stop Limit Orders to add that such orders will be elected based on quotations as well. Specifically, in addition to electing a Stop Order or Stop Limit Order to buy (sell) when the consolidated last sale in the option occurs at or above (below), the specified stop price, the Exchange proposes to elect such an order when the NBB (NBO) is equal to or higher (lower) than the stop price. The Exchange notes that CBOE and C2 also trigger stop orders based on quotations.[8] The Exchange further notes that it has proposed to elect Stop Orders and Stop Limit Orders based on consolidated quotations (the NBB and NBO) rather than quotations only on the Exchange. The Exchange believes that this is more consistent with its current functionality for Stop Orders and Stop Limit Orders, which are elected based on the consolidated last sale in the option.

The Exchange also proposes a minor change to the definition of Stop Limit Orders to ensure that there is consistent language between Stop Limit Orders to buy and Stop Limit Orders to sell. The current language related to Stop Limit Orders to buy focuses on the election of such orders whereas the current language related to Stop Limit Orders to sell focuses on the conversion of such orders to limit orders. The Exchange proposes to include language related both election and conversion to limit orders with respect to both Stop Limit Orders to buy and Stop Limit Orders to sell.

In addition, the Exchange proposes to restrict Stop Orders, which, as described above are converted to Market Orders when elected, from being elected when the underlying security is in a Limit State, as defined in the Limit Up-Limit Down Plan. Such an order would be held until the end of the Limit State, at which point the order would again become eligible to be elected. This aspect of the proposal is also based on the rules of CBOE[9] and C2[10] and is consistent with the Exchange's current handling of Market Orders, which are not accepted when the underlying security is in a Limit State.[11] As Stop Orders become Market Orders when elected, the Exchange believes that this change is merely an extension of its existing functionality.

Below are examples of the current and proposed functionality for Stop Orders and Stop Limit Orders.

Example 1A—Stop Order is Triggered (Current Functionality)

Assume the NBBO is 7.80 x 8.00. Assume that a User submits a Stop

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR–BatsBZX–2016–68; SR–BatsBYX–2016–29; SR–BatsEDGA–2016–24; SR–BatsEDGX–2016–60).

[6] ''Market Orders'' are orders to buy or sell at the best price available at the time of execution. Market Orders to buy or sell an option traded on are rejected if they are received when the underlying security is subject to a ''Limit State'' or ''Straddle State'' as defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan''). Any portion of a Market Order that would execute at a price more than $0.50 or 5 percent worse than the NBBO at the time the order initially reaches BZX Options, whichever is greater, will be cancelled.

[7] ''Limit Orders'' orders to buy or sell an option at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

[8] *See* CBOE Rules 6.53(c)(iii) and (c)(iv) and C2 Rules 6.10(c)(3) and (c)(4).

[9] *See* CBOE Rule 6.53, Interpretation and Policy .01C.

[10] *See* C2 Rule 6.10, Interpretation and Policy .01C.

[11] *See* Exchange Rule 21.1(d)(5).

Order to buy 500 shares with a stop price of 8.05.

• Assume the NBBO updates to 8.00 by 8.05. An execution reported by another exchange at 8.05 will trigger the stop price of the Stop Order, which will convert into a Market Order to buy.

• Note: this example would still be accurate under the proposed functionality, however, there is an additional way that a Stop Order could be elected, a change to the NBBO, as set forth in Example 1B below.

Example 1B—Stop Order is Triggered (Proposed Functionality)

Assume the NBBO is 7.80 x 8.00. Assume that a User submits a Stop Order to buy 500 shares with a stop price of 8.05.

• Assume the NBBO updates to 8.05 by 8.10. The NBB equal to the stop price of the order will trigger the stop price of the Stop Order, which will convert into a Market Order to buy. The result would be the same if the NBB were instead higher than the stop price, such as with an NBBO of 8.10 by 8.15.

Example 2A—Stop Limit Order is Triggered (Current Functionality)

Assume the NBBO is 7.80 x 8.00. Assume that a User submits a Stop Limit Order to buy 500 shares at 8.04 with stop limit price of 8.05.

• Assume the NBBO updates to 8.03 by 8.05. An execution reported by another exchange at 8.05 will trigger the stop price of the Stop Limit Order, which will convert into a limit order to buy at 8.04.

• Note: this example would still be accurate under the proposed functionality, however, there is an additional way that a Stop Limit Order could be elected, a change to the NBBO, as set forth in Example 2B.

Example 2B—Stop Limit Order is Triggered (Proposed Functionality)

Assume the NBBO is 7.80 x 8.00. Assume that a User submits a Stop Limit Order to buy 500 shares at 8.04 with stop limit price of 8.05.

Assume the NBBO updates to 8.05 by 8.10. The NBB equal to the stop price of the order will trigger the stop price of the Stop Limit Order, which will convert into a limit order to buy at 8.04. The result would be the same if the NBB were instead higher than the stop price, such as with an NBBO of 8.10 by 8.15.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] 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. In particular, consistent rules and functionality between the Exchange and its affiliated exchanges will reduce complexity and help avoid potential confusion by the Users of the Exchange that are also participants on other CBOE Affiliated Exchanges.[14]

The Exchange believes the proposed amendment will reduce complexity and increase the understanding of the Exchange's operations for all Users of the Exchange. In particular, by triggering Stop Orders and Stop Limit Orders based on quotations, in addition to trades, the Exchange's functionality will be more similar to that of CBOE and C2. In turn, when CBOE and C2 are migrated to the same technology as that of the Exchange, Users of the Exchange and other CBOE Affiliated Exchanges will have access to similar functionality on all CBOE Affiliated Exchanges. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

With respect to Stop Orders not being elected when the underlying security is in a Limit State, this proposal is based on the rules of CBOE and C2 and is also consistent with the Exchange's current handling of Market Orders, which are not accepted when the underlying security is in a Limit State.[15] As Stop Orders become Market Orders when elected, the Exchange believes that this change is merely an extension of its existing functionality.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposal will further promote consistency between the Exchange and its affiliated exchanges, and is part of a larger technology integration that will ultimately reduce complexity for Users of the Exchange that are also participants on other CBOE Affiliated Exchanges. The Exchange does not believe that the proposed changes will have any direct impact on competition. Thus, the Exchange does not believe that the proposal creates any significant impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and paragraph (f)(6) of Rule 19b–4 thereunder,[17] the Exchange has designated this rule filing as non-controversial.

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange notes that the proposed rule change will promote consistency between the Exchange and CBOE Affiliated Exchanges, and is part of a larger

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] The Exchange notes that its affiliate, EDGX, also intends to adopt Stop Orders and Stop Limit Orders that would function identical to Stop Orders and Stop Limit Orders on the Exchange, as amended by this proposal. In addition, as CBOE and C2 migrate to the same technology platform as the Exchange, CBOE and C2 intend to modify rules and functionality to be consistent with the Exchange and EDGX, unless the retention of differences is intended.

[15] *See supra,* notes 8–10.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4 (f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

technology integration that will ultimately reduce complexity for Users of the Exchange that are also participants on other CBOE Affiliated Exchanges.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investor and the public interest. The Commission notes that the proposed rule change is based on rules of its affiliated exchanges, CBOE and C2, and thus does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–BatsBZX–2017–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2017–68. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–68 and should be submitted on or before November 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23372 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81921; File No. SR–MSRB–2017–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Form G–45 To Collect Additional Data About the Transactional Fees Primarily Assessed by Programs Established To Implement the ABLE Act

October 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2017 the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend Form G–45 under MSRB Rule G–45, on reporting of information on municipal fund securities,[3] to collect additional data about the transactional fees primarily assessed by programs established to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ''ABLE Act'' and an ''ABLE program'') (the ''proposed rule change'').[4] The MSRB requests that the proposed rule change become effective on June 30, 2018.[5]

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2017-Filings.aspx,* at the MSRB's principal office, 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 MSRB 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 MSRB 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 ABLE Act added Section 529A to the Internal Revenue Code of 1986, as amended (the ''Code''), to permit a state, or an agency or instrumentality thereof, to establish and maintain a new type of tax-advantaged savings program to help support individuals with disabilities in

[3] Form G–45 is an electronic form on which submissions of the information required by Rule G–45 are made to the MSRB.

[4] The ABLE Act was enacted on December 19, 2014 as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113–295).

[5] As noted under ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'' below, the proposed rule change does not alter the date that underwriters to ABLE programs must submit data under Rule G–45 to the MSRB.

maintaining health, independence, and quality of life.[6] Section 529A was modeled, in part, on Section 529 of the Code.[7] Section 529 established college savings plans (''529 college savings plans'') to encourage saving for future higher education costs.[8] The SEC has determined that interests offered by such 529 college savings plans are municipal securities under Section 3(a)(29) of the Act.[9]

Given the similarities between the structure of ABLE accounts and 529 college savings plan accounts and the manner in which interests in ABLE accounts would be distributed, the MSRB requested and received interpretive guidance from the SEC staff about the status of interests in ABLE accounts under the federal securities laws.[10] SEC staff stated that ''at least some interests in ABLE accounts . . . may be 'municipal securities' as defined in Section 3(a)(29) of the Exchange Act, depending on the facts and circumstances'' [11] and that ''[i]f a dealer is acting as an 'underwriter' (as defined in Rule 15c2–12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2–12.'' [12]

After the MSRB received the SEC staff guidance, the MSRB provided interpretative guidance relating to interests in ABLE programs under MSRB Rule D–12, on the definition of ''municipal fund security.'' [13] That guidance was followed by the August 2016 guidance published by the Board to address particular issues, including Rule G–45, applicable to the sale of interests in ABLE programs by brokers, dealers and municipal securities dealers (collectively, ''dealers'').[14]

Specifically, in August 2016, the MSRB filed for immediate effectiveness an amendment to Rule G–45 to delay, by two years from August 29, 2016 until August 29, 2018, the date that submissions are due under Rule G–45 from underwriters to ABLE programs (the ''August filing'').[15] The MSRB believed that the delay would help ensure that the MSRB would receive reliable, complete and accurate filings on Form G–45 from such underwriters. The MSRB also believed that the delay would help ensure that the MSRB would receive more meaningful data about a larger set of ABLE programs on Form G–45.[16] Similarly, to receive more meaningful data about ABLE programs, the MSRB submits the proposed rule change. However, this proposed rule change does not alter the date that underwriters to ABLE programs must begin to submit data to the MSRB under Rule G–45.

(ii) The Collection of Additional Relevant Fee and Expense Data

At the time the MSRB submitted the August filing, there were two ABLE programs that were operational. Since that time, the MSRB understands that 27 more ABLE programs have become operational. As each additional ABLE program has become operational, the MSRB has reviewed the disclosure booklet for the program to determine whether there is data about the programs that would be beneficial for the MSRB to analyze under Rule G–45 that an underwriter to an ABLE program would not be required to submit under current Form G–45. But for the program type, the review process of ABLE program fees was identical to the review process that the MSRB used in determining the data elements relating to the fees and expenses associated with an investment in a 529 college savings plan when the MSRB first developed Form G–45.

While the MSRB believes that current Form G–45 would capture most of the data that would be informative to the MSRB, the MSRB noted that there are differences between the pricing structure of certain ABLE programs and the typical 529 college savings plan. Specifically, based on the MSRB's review, there are transactional fees assessed by ABLE programs that generally are not assessed by 529 college savings plans, and there is variance based on state residency in the level of the account maintenance fee assessed by ABLE programs that generally does not occur with 529 college savings plans.[17]

Rule G–45 requires dealers acting in the capacity as underwriters to ABLE programs or 529 college savings plans to submit on a semi-annual or annual basis (in the case of performance data) certain information about the programs or plans they underwrite. That information includes program or plan descriptive information, assets, asset allocation information (at the investment option level), contributions, withdrawals, fee and cost structure, performance, and other information. The MSRB and other regulatory authorities use this data to analyze 529 college savings plans (and will be able to use this data to analyze ABLE programs), monitor their growth rate, size and investment options, and compare 529 college savings plans based on fees, costs, and performance. By collecting this information, the MSRB enhances its understanding of 529 college savings plans (and will be able to enhance its understanding of ABLE programs). The Commission has agreed with the MSRB that the collection of information under Rule G–45 is intended to protect investors, municipal entities and the public interest and prevent fraudulent and manipulative acts and practices by allowing the MSRB to collect comprehensive, reliable, and consistent electronic data about such programs or

[6] 26 U.S.C. 529A.

[7] Report to accompany H.R. 647, Committee on Ways and Means, H.R. Rept. No. 113–614, part 1 at 7 (2014).

[8] 26 U.S.C. 529(b)(1)(A)(ii). Section 529 also established prepaid tuition plans. 26 U.S.C. 529(b)(1)(A)(i). Under a prepaid tuition plan, an investor may purchase tuition credits or certificates on behalf of a designated beneficiary, which entitle the beneficiary to the waiver or payment of qualified higher education expenses. Prepaid tuition plans generally have residency requirements. Such credits or certificates generally are not viewed as being municipal securities, and dealers generally do not participate in the marketing of prepaid tuition plans.

[9] Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67472–73 (Nov. 12, 2013). *See* Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, U.S. Securities and Exchange Commission, to Diane G. Klinke, General Counsel, Municipal Securities Rulemaking Board (Feb. 26, 1999) (determining that at least some interests in higher education trusts are municipal securities under the Act).

[10] Letter dated March 31, 2016 from Jessica S. Kane, Director, Office of Municipal Securities, U.S. Securities and Exchange Commission to Robert A. Fippinger, Esq., Chief Legal Officer, Municipal Securities Rulemaking Board, in response to letter dated December 31, 2015 from Robert A. Fippinger to Jessica S. Kane, both letters are available at *https://www.sec.gov/info/municipal/msrb-letter-033116-interests-in-able-accounts.pdf.*

[11] *Id.*

[12] *Id.*

[13] MSRB Notice 2016–14 (Apr. 12, 2016).

[14] *Id.*

[15] *See* SR–MSRB–2016–11 (Aug. 12, 2016).

[16] Further, as part of that August filing, the MSRB provided guidance in supplementary material under (i) Rule G–42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G–44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities. That guidance provided clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities. The MSRB provided that guidance in response to requests from industry groups in other Board rulemaking proposals. *Id.; see also* MSRB Notice 2016–20 (Aug. 12, 2016).

[17] The MSRB believes that the transactional fees assessed by an ABLE program reflect the nature of an ABLE program as more of a short-term, rather than as a longer-term, savings vehicle when compared to a 529 college savings plan. Further, the MSRB believes that the variance in the level or amount of the account maintenance fee assessed by an ABLE program between an in-state and an out-of-state resident account owner reflects state disability policies.

plans.[18] The Commission has stated that ''to fulfill its statutory responsibilities to investors and municipal entities in the context of 529 plans, the Commission believes that it is appropriate for the MSRB to possess basic, reliable information regarding 529 plans, including the underlying investment options.'' [19]

To help ensure that the MSRB continues to receive comprehensive information regarding ABLE programs and 529 college savings plans, the proposed rule change would amend Form G–45 to collect additional information relating to fees and expenses. This data would enhance the MSRB's understanding of the markets for ABLE programs and 529 college savings plans, including the differences among such programs or plans. Further, as discussed under ''Statutory Basis'' below, the additional fee and expense information would assist the MSRB in fulfilling its investor protection mission. The information about fees and expenses would continue to be submitted in a format that is consistent with the disclosure principles of the College Savings Plan Network (''CSPN''), an affiliate of the National Association of State Treasurers,[20] which commenters on previous MSRB rulemaking proposals relating to Form G–45 have stated is the industry norm.[21]

Under the proposed rule change, an underwriter to an ABLE program or a 529 college savings plan would be required to submit data on Form G–45 about the following additional fees and expenses, as applicable:

- Account opening fee;
- investment administration fee;
- change in account owner fee;
- cancellation/withdrawal fee;
- change in investment option/transfer fee;
- rollover fee;
- returned excess aggregate contributions fee;
- rejected ACH or EFT fee;
- overnight delivery fee;
- in-network ATM fee;
- out-of-network ATM fee;
- ATM mini statement fee;
- international POS/ATM transaction fee;
- foreign transaction fee;
- overdraft fee;
- copy of check or statement fee (per request);
- copy of check images mailed with monthly statement fee;
- check fee (*i.e.,* fee for blank checks);
- returned check fee;
- checking account option fee;
- re-issue of disbursement check fee;
- stop payment fee;
- debit card fee;
- debit card replacement fee;
- outgoing wire fee;
- expedited debit card rush delivery fee;
- paper fee; and
- miscellaneous fee (to address any miscellaneous transactional fee that is not otherwise specified on Form G–45).

In addition, under the proposed rule change, the MSRB would collect data about any variance in the annual account maintenance fee due to the residency of the account owner. The proposed rule would apply to underwriters to ABLE programs as well as to underwriters to 529 college savings plans.[22]

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[23] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The Act requires that the MSRB protect investors. To fulfill this responsibility, it is necessary for the MSRB to have a complete and reliable data set about ABLE programs and 529 college savings plans. That data includes data about the fees and expenses associated with an investment in an ABLE program or a 529 college savings plan. The proposed rule change would provide the MSRB with more meaningful data about the transactional fees primarily assessed by ABLE programs and about variances in the account maintenance fee due to the residency of the account owner. The additional information about fees and expenses associated with ABLE programs and 529 college savings plans would facilitate the MSRB's ability to analyze the market for ABLE programs and 529 college savings plans as well as to evaluate trends and differences among the ABLE programs and 529 college savings plans. The MSRB believes that understanding the costs associated with ABLE programs and 529 college savings plans as well as the other data collected under Rule G–45 are basic requirements for regulation and necessary to assist the MSRB with its evaluation as to whether its regulatory scheme for dealers that sell interests in or underwrite ABLE programs and/or 529 college savings plans is sufficient, or whether additional rulemaking is necessary to protect investors. Further, the information that would be collected by the proposed rule change would help the MSRB and other regulators that examine dealers prioritize their efforts with respect to those dealers that sell interests in or underwrite ABLE programs and 529 college savings plans. Those other regulators may use this information to determine the nature or timing of risk-based dealer examinations. In short, the MSRB believes that the information to be collected by the proposed rule change would better enable the MSRB to protect investors in these programs and plans and the public interest.

Further, the MSRB has a statutory obligation to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. In general, underwriters to ABLE programs and 529 college savings plans draft or participate in the drafting of the program or plan disclosure booklets, as well as the marketing materials for the ABLE program or 529 college savings plans. The MSRB or other regulators may use the information submitted on Form G–45 to, among other things, determine if the disclosure documents or marketing materials prepared or reviewed by underwriters are consistent with the data submitted to the MSRB for regulatory purposes.

---

[18] Exchange Act Release No. 71598 (Feb. 21, 2014), 79 FR 11161, 11167 (Feb. 27, 2014) (SR–MSRB–2013–04).

[19] *Id.*

[20] CSPN published its voluntary Disclosure Principles Statement No. 6 (''Disclosure Principles No. 6'') on July 1, 2017 available at *http://www.collegesavings.org/wp-content/uploads/2015/06/CSPN-Disclosure-Principles-Statement-No.-6.pdf.* Disclosure Principles No. 6 recommends acceptable disclosure practices for state entities that establish and maintain 529 college savings plans. CSPN states that Disclosure Principles No. 6 also may be of use to qualified ABLE programs. *See* Disclosure Principles No. 6.

To assist underwriters, the MSRB included subheadings in how certain investment options fees and expenses are displayed on Form G–45 to more closely correspond with the subheadings used in Disclosure Principles No. 6. The subheadings, however, do not change any of the data elements required to be submitted on Form G–45.

[21] *See* SR–MSRB–2013–04 (Jun. 10, 2013).

[22] The MSRB, however, anticipates that most of the data that would be collected by the proposed rule change would relate to ABLE programs. As noted, the MSRB believes that 529 college savings plans generally do not assess the fees and charges that are the subject of this proposed rule change.

[23] 15 U.S.C. 78*o*–4(b)(2)(C).

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[24] In accordance with the Board's policy on the use of economic analysis in rulemaking, the Board has reviewed the proposed rule change.[25] To fulfill its responsibility to protect investors, as ABLE programs and 529 college savings plans have significant retail investor components, the MSRB must become well informed about the fees and expenses assessed under such programs or plans and about the market for ABLE programs and 529 college savings plans as a whole. The proposed rule change is necessary for the MSRB to gather relevant data required to ensure the MSRB's regulatory scheme is sufficient and/or to determine whether additional rulemaking is necessary to protect investors and the public interest.

The proposed rule change would require an underwriter to submit additional information about the fees and expenses associated with the applicable ABLE program or 529 college savings plan. The proposed rule change would enable the MSRB to carry out its regulatory responsibilities under the Act and fulfill its mission to ensure efficiency in the market for these programs. The MSRB would realize substantial benefits in obtaining reliable and consistent information about the fees and expenses of ABLE programs and 529 college savings plans, promoting greater regulatory oversight and investor protection.

Although there are costs associated with compliance with the proposed rule change, these costs should be minimal. The data that the MSRB wishes to collect are readily available and should be known to the underwriters of these plans. Additionally, underwriters are already required to submit certain information to the MSRB on Form G–45 on a semi-annual basis.[26]

Among the possible alternatives to the proposed rule change are (a) a manual review of information in program or plan disclosure documents submitted to EMMA or on program or plan Web sites; or (b) a review of data supplied by information vendors voluntarily. However, neither of these alternatives would satisfy the regulatory needs of the MSRB. A manual review of information would be insufficient because some of the information sought by the MSRB is not disclosed in public documents in a uniform and consistent manner. Moreover, a manual review of information would be time consuming and inefficient, especially given that underwriters are already required to submit certain information to the MSRB on a semi-annual basis. In addition, while a review of information voluntarily submitted to informational vendors may be of interest, it is unreliable from a regulatory standpoint. Information supplied by dealers that are underwriters to ABLE programs and/or 529 college savings plans to information vendors may differ with respect to its reliability and quality. Essentially, the MSRB would be relying on such information vendors for important regulatory activities. For regulatory purposes, the MSRB seeks a consistent set of uniform, reliable and relevant information about ABLE programs and 529 college savings plans.

On balance, the MSRB believes that semi-annual reporting of limited information, which is readily available to dealers that are underwriters to ABLE programs and/or 529 college savings plans, would not pose an unreasonable burden on such underwriters, and the likely benefits of the proposed amendments justify the likely associated costs in both the near and long term.

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The additional information would be submitted on an equal and non-discriminatory basis, and the requirement would apply equally to all dealers that serve as underwriters to ABLE programs and/or 529 college savings plans.

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 on 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 within such longer period of 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2017–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2017–08. 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 MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish

[24] *Id.*

[25] Policy on the Use of Economic Analysis in MSRB Rulemaking is available at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx.*

[26] The proposed rule change would not impose any burden on non-underwriting dealers that only sell interests in either ABLE programs or 529 college savings plans, as the obligation to submit information semi-annually to the MSRB will only be imposed on underwriters.

to make available publicly. All submissions should refer to File Number SR–MSRB–2017–08 and should be submitted on or before November 17, 2017.

For the Commission, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23374 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81920; File No. SR–BatsEDGX–2017–39]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 21.1, Definitions, To Modify Stop Orders and Stop Limit Orders Applicable to the Exchange's Equity Options Platform in Preparation for the C2 Options Exchange, Incorporated Technology Migration

October 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2017, Bats EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to update Rule 21.1 to make modifications to the Exchange's rules and functionality applicable to the Exchange's options platform (''EDGX Options'') in preparation for the technology migration of the Exchange's affiliated options exchange, C2 Options Exchange, Incorporated (''C2''), onto the same technology as the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange and its affiliates Bats BZX Exchange, Inc. (''BZX''), Bats BYX Exchange, Inc. (''BYX''), and Bats EDGA Exchange, Inc. (''EDGA'') received approval to affect a merger (the ''Merger'') of the Exchange's indirect parent company, Bats Global Markets, Inc. (''BGM''), with CBOE Holdings, Inc. (''CBOE Holdings''), the direct parent of Chicago Board Options Exchange, Incorporated (''CBOE'') and C2 Options Exchange, Incorporated (''C2'', and together with the Exchange, BZX, BYX, EDGA, and CBOE the ''CBOE Affiliated Exchanges'').[5] The CBOE Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the CBOE Affiliated Exchanges, in the context of a technology migration. Thus, the proposals set forth below are intended to add certain system functionality that is more similar to functionality offered by CBOE and C2 in order to ultimately provide a consistent technology offering for market participants who interact with the CBOE Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The Exchange adopt Stop Orders and Stop Limit Orders, to be defined in Rules 21.1(d)(11) and (d)(12), respectively. In order to adopt such rules, the Exchange also proposes to re-number current Rule 21.1(d)(10) (related to ''Intermarket Sweep Orders'') as Rule 21.1(d)(9) (currently reserved), and current Rule 21.1(d)(11) (related to ''Qualified Continent Cross Orders'') as Rule 21.1(d)(10).

A Stop Order would be defined in Rule 21.1(d)(11) as an order that becomes a Market Order[6] when the stop price is elected. A Stop Order to buy would be elected when the consolidated last sale in the option occurs at or above, or the NBB is equal to or higher than, the specified stop price. A Stop Order to sell would be elected when the consolidated last sale in the option occurs at or below, or the NBO is equal to or lower than, the specified stop price.

In addition, the Exchange proposes to restrict Stop Orders, which, as described above, are converted to Market Orders when elected, from being elected when the underlying security is in a Limit State, as defined in the Limit Up-Limit Down Plan. Such an order would be held until the end of the Limit State, at which point the order would again become eligible to be elected. This aspect of the proposal is also based on the rules of CBOE[7] and C2[8] and is consistent with the Exchange's current handling of Market Orders, which are not accepted when the underlying security is in a Limit State.[9] As Stop Orders become Market Orders when elected, the Exchange believes that this change is merely an extension of its existing functionality.

A Stop Limit Order would be defined in Rule 21.1(d)(12) as an order that becomes a limit order when the stop price is elected. A Stop Limit Order to buy would be elected and would become a buy limit order when the consolidated last sale in the option

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR–BatsBZX–2016–68; SR–BatsBYX–2016–29; SR–BatsEDGA–2016–24; SR–BatsEDGX–2016–60).

[6] ''Market Orders'' are orders to buy or sell at the best price available at the time of execution. Market Orders to buy or sell an option traded on are rejected if they are received when the underlying security is subject to a ''Limit State'' or ''Straddle State'' as defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan''). Any portion of a Market Order that would execute at a price more than $0.50 or 5 percent worse than the NBBO at the time the order initially reaches BZX Options, whichever is greater, will be cancelled. *See* Exchange Rule 21.1(d)(5).

[7] *See* CBOE Rule 6.53, Interpretation and Policy .01C.

[8] *See* C2 Rule 6.10, Interpretation and Policy .01C.

[9] *See* Exchange Rule 21.1(d)(5).

occurs at or above, or the NBB is equal to or higher than, the specified stop price. A Stop Limit Order to sell would be elected and would become a sell limit order when the consolidated last sale in the option occurs at or below, or the NBO is equal to or lower than, the specified stop price.

The Exchange notes that CBOE and C2 also trigger stop orders based trades and quotations.[10] The Exchange further notes that it has proposed to elect Stop Orders and Stop Limit Orders based on consolidated quotations (the NBB and NBO) rather than quotations only on the Exchange.[11]

Below are examples of the proposed functionality for Stop Orders and Stop Limit Orders.

Example 1A—Stop Order Is Triggered (Trade)

Assume the NBBO is 7.80 × 8.00. Assume that a User submits a Stop Order to buy 500 shares with a stop price of 8.05.

• Assume the NBBO updates to 8.00 by 8.05. An execution reported by another exchange at 8.05 will trigger the stop price of the Stop Order, which will convert into a Market Order to buy.

Example 1B—Stop Order Is Triggered (Quotation)

Assume the NBBO is 7.80 × 8.00. Assume that a User submits a Stop Order to buy 500 shares with a stop price of 8.05.

• Assume the NBBO updates to 8.05 by 8.10. The NBB equal to the stop price of the order will trigger the stop price of the Stop Order, which will convert into a Market Order to buy. The result would be the same if the NBB were instead higher than the stop price, such as with an NBBO of 8.10 by 8.15.

Example 2A—Stop Limit Order Is Triggered (Trade)

Assume the NBBO is 7.80 × 8.00. Assume that a User submits a Stop Limit Order to buy 500 shares at 8.04 with stop limit price of 8.05.

• Assume the NBBO updates to 8.03 by 8.05. An execution reported by another exchange at 8.05 will trigger the stop price of the Stop Limit Order, which will convert into a limit order to buy at 8.04.

Example 2B—Stop Limit Order Is Triggered (Quotation)

Assume the NBBO is 7.80 × 8.00. Assume that a User submits a Stop Limit Order to buy 500 shares at 8.04 with stop limit price of 8.05.

• Assume the NBBO updates to 8.05 by 8.10. The NBB equal to the stop price of the order will trigger the stop price of the Stop Limit Order, which will convert into a limit order to buy at 8.04. The result would be the same if the NBB were instead higher than the stop price, such as with an NBBO of 8.10 by 8.15.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] 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. In particular, consistent rules and functionality between the Exchange and its affiliated exchanges will reduce complexity and help avoid potential confusion by the Users of the Exchange that are also participants on other CBOE Affiliated Exchanges.[14]

The Exchange believes the proposed amendment will reduce complexity and increase the understanding of the Exchange's operations for all Users of the Exchange. In particular, by offering Stop Orders and Stop Limit Orders, the Exchange's functionality will be more similar to that of CBOE and C2. In turn, when CBOE and C2 are migrated to the same technology as that of the Exchange, Users of the Exchange and other CBOE Affiliated Exchanges will have access to similar functionality. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

With respect to Stop Orders not being elected when the underlying security is in a Limit State, this proposal is based on the rules of CBOE and C2 and is also consistent with the Exchange's current handling of Market Orders, which are not accepted when the underlying security is in a Limit State.[15] As Stop Orders become Market Orders when elected, the Exchange believes that this change is merely an extension of its existing functionality in the context of the Exchange's adoption of Stop Orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposal will further promote consistency between the Exchange and its affiliated exchanges, and is part of a larger technology integration that will ultimately reduce complexity for Users of the Exchange that are also participants on other CBOE Affiliated Exchanges. The Exchange does not believe that the proposed changes will have any direct impact on competition. Thus, the Exchange does not believe that the proposal creates any significant impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and paragraph (f)(6) of Rule 19b–4 thereunder,[17] the Exchange has

[10] *See* CBOE Rules 6.53(c)(iii) and (c)(iv) and C2 Rules 6.10(c)(3) and (c)(4).

[11] Simultaneous with this proposal, the Exchange's affiliate, BZX, is filing a proposal to elect Stop Orders and Stop Limit Orders based on consolidated quotations. As such, the Exchange's rules, as proposed, would be identical to the rules of BZX. BZX currently elects Stop Orders and Stop Limit Orders based on consolidated trades only. *See* BZX Rules 21.1(d)(11) and (d)(12).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] The Exchange notes that its affiliate, EDGX, also intends to adopt Stop Orders and Stop Limit Orders that would function identical to Stop Orders and Stop Limit Orders on the Exchange, as amended by this proposal. In addition, as CBOE and C2 migrate to the same technology platform as the Exchange, CBOE and C2 intend to modify rules and functionality to be consistent with the Exchange and EDGX, unless the retention of differences is intended.

[15] *See supra,* notes 8–10.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4. 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.

designated this rule filing as non-controversial.

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange notes that the proposed rule change will promote consistency between the Exchange and CBOE Affiliated Exchanges, and is part of a larger technology integration that will ultimately reduce complexity for Users of the Exchange that are also participants on other CBOE Affiliated Exchanges.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investor and the public interest. The Commission notes that the proposed rule change is based on rules of its affiliated exchanges, CBOE and C2, and thus does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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–BatsEDGX–2017–39 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–BatsEDGX–2017–39. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2017–39 and should be submitted on or before November 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23373 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81922; File No. SR–IEX–2017–37]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.152 To Add Provisions Related to Market Maker Withdrawals of Quotations in Securities Listed on the Investors Exchange

October 23, 2017.

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 October 19, 2017, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Commission a proposed rule change to amend Rule 11.152 to add provisions related to Market Maker withdrawals of quotations in securities listed on IEX, remove an incorrect cross reference in paragraph (c), and to correct a typographical error in a cross-reference in paragraph (d). The Exchange has designated this proposal as ''non-controversial'' and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6] The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 240.19b–4(f)(6)(iii).

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [sic] may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On June 17, 2016, the Commission granted IEX's application for registration as a national securities exchange under Section 6 of the Act including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange. The Exchange plans to begin a listing program in the fourth quarter of 2017 and is proposing to amend Rule 11.152 to add provisions related to Market Maker withdrawals of quotations in securities listed on IEX.

IEX Rules 11.150 through 11.154 contain provisions applicable to IEX Market Makers, including registration, quotation obligations, withdrawal of quotations, voluntary termination of registration, and suspension and termination of quotations. Pursuant to Rule 11.151 a Member registered as a Market Maker is required to maintain a two-sided quotation within the designated percentage of the National Best Bid (''NBB'') and National Best Offer (''NBO''),[7] as appropriate.

IEX Rule 11.152 governs the requirements for a Market Maker to obtain excused withdrawal status thereby temporarily suspending its obligation to comply with the two-sided quotation obligation of Rule 11.151. Specifically, Rule 11.152 provides the ability for a Market Maker to obtain excused withdrawal status under the following circumstances:

• Systemic equipment problems—An IEX Market Maker that wishes to obtain excused withdrawal status based on a market maker's systemic equipment problems, such as defects in an IEX Market Maker's software or hardware systems or connectivity problems associated with the circuits connecting Exchange systems with the IEX Market Maker's systems, shall contact IEX Market Operations. IEX Market Operations may grant excused withdrawal status based on systemic equipment problems for up to five (5) business days, unless extended by IEX Market Operations.

• For securities listed on exchanges other than IEX—An IEX Market Maker that wishes to withdraw quotations shall contact IEX Regulation to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the Market Maker's control may be granted for up to five (5) business days, unless extended by IEX Regulation. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless IEX has initiated a trading halt for Market Makers in the security, pursuant to IEX Rule 11.280.[8]

• Failure to maintain a clearing arrangement—Excused withdrawal status may be granted to an IEX Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a Member of such an agency and is withdrawn from participation in the trade reporting service of the Exchange, thereby terminating its registration as an IEX Market Maker.[9]

Other than for systemic equipment problems, a Market Maker that wishes to withdraw quotations in a security shall contact IEX Regulation to obtain excused withdrawal status prior to withdrawing its quotations. Withdrawals of quotations shall be granted by IEX Regulation only upon satisfying one of the conditions specified in Rule 11.152, as described above.

Proposed Rule Change

IEX proposes to amend paragraph (c) of Rule 11.152 to add provisions for a Market Maker to obtain excused withdrawal status for securities listed on IEX. As proposed, a Market Maker in a security listed on IEX may obtain excused withdrawal status, thereby temporarily suspending its obligation to comply with the two-sided quotation obligation of Rule 11.151, under the following circumstances:

• Circumstances beyond the Market Maker's control—Excused withdrawal status based on circumstances beyond the IEX Market Maker's control,[10] other than systemic equipment problems, may be granted for up to five (5) business days, unless extended by IEX Regulation.

• Legal or regulatory requirements—Excused withdrawal status based on demonstrated legal or regulatory requirements,[11] supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to proposed amendments to paragraph (e) related to the Member that operates the Market Maker acting as a manager, distribution participant or affiliated purchaser of a distribution in the security for which it seeks excused withdrawal status).

• Religious holidays—Excused withdrawal status based on religious holidays may be granted only if written notice is received by IEX one business day in advance and is approved by IEX.

• Vacation—Excused withdrawal status based on vacation may be granted only if: (A) The written request for withdrawal is received by IEX one business day in advance, and is approved by IEX; (B) The request includes a list of securities for which withdrawal is requested; and (C) The request is made by an IEX Market Maker that meets the definition of a ''Small Firm Member'' pursuant to Definition Y of the FINRA Restated Certification of Incorporation, even if the IEX Market Maker is not a FINRA member.[12]

As proposed, the withdrawal of quotations because of pending news, a sudden influx of orders or price

[7] As defined by Regulation NMS Rule 600(b)(42). 17 CFR 242.600.

[8] Note, as described further below, the Exchange proposes to delete the final clause of this provision, which provides an exception for a trading halt initiated for Market Makers pursuant to IEX Rule 11.280. IEX Rule 11.280 (Limit Up-Limit Down Plan and Trading Halts), does not include a provision regarding a halt for Market Makers, and thus the cross-reference has no practical effect.

[9] However, if IEX finds that the IEX Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

[10] Such circumstances would include, without limitation, unpredictable events such as jury duty, bomb threats or other physical security issues, the birth of a child, or sudden illness.

[11] Such requirements would include, for example, possession of material nonpublic information regarding the security in question for which the Market Maker is seeking excused withdrawal status.

[12] In the event that FINRA's definition of a ''Small Firm Member'' is changed, IEX will file a rule change to address any such change in proposed Rule 11.152(c)(1)(C).

changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

The Exchange also proposes to amend paragraph (e) of Rule 11.152, which is currently reserved, to add provisions to provide that excused withdrawal status may be granted to an IEX Market Maker that is a distribution participant or an affiliated purchaser in order to comply with SEC Rule 101 or 104 under the Act. As proposed, such excused withdrawal status may be granted under the following conditions:

- Subparagraph (e)(1) of Rule 11.152 provides that a member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to IEX Regulation and the Market Regulation Department of FINRA no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

○ The notice required by subparagraph (e)(1) shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each IEX Market Maker that is a distribution participant or an affiliated purchaser to withdraw the IEX Market Maker's quotations and includes the contemplated date and time of the commencement of the restricted period.

○ The managing underwriter shall advise each IEX Market Maker that it has been identified as a distribution participant or an affiliated purchaser to IEX Regulation and that its quotations will be automatically withdrawn, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies IEX Regulation as required by subparagraph (e)(2) of Rule 11.152 of its intention not to participate in the prospective distribution in order to avoid having its quotations withdrawn. Further, subparagraph (e)(3) provides that if an IEX Market Maker that is a distribution participant withdraws its quotations in an IEX-listed security in order to comply with any provision of SEC Rules 101 or 104 and promptly notifies IEX Regulation of its action, the withdrawal shall be deemed an excused withdrawal. In addition, subparagraph (e)(3) provides that nothing in the subparagraph shall prohibit IEX from taking such action as is necessary under the circumstances against a Member and its associated persons for failure to contact IEX Regulation to obtain an excused withdrawal as required by subparagraphs (a) and (e) of Rule 11.152.

○ Subparagraph (e)(5) of Rule 11.152 provides that a member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (e)(1)) of Rule 11.152 shall submit a request on the Underwriting Activity Report to IEX Regulation and the Market Regulation Department of FINRA to rescind the excused withdrawal status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates.

As noted above, the Exchange proposes to delete the final clause of the final sentence in Rule 11.152(c) (described above), which states that the withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, but provides an exception for a trading halt initiated for Market Makers pursuant to IEX Rule 11.280. IEX Rule 11.280 (Limit Up-Limit Down Plan and Trading Halts), does not include a provision granting the Exchange authority to halt trading for Market Makers, and thus the cross-reference has no practical effect.[13] The Exchange further proposes to make a conforming change to the preceding clause of the final sentence in Rule 11.152(c), to remove the qualifying term ''normally'' with regard to the circumstances that will not constitute acceptable reasons for granting excused withdrawal status, because such qualification is no longer necessary or applicable after the Exchange removed the exception for a trading halt initiated for Market Makers, as described above. The proposed deletion is designed to avoid any potential confusion amongst market makers regarding the reasons the Exchange would find acceptable for granting excused withdrawal status, and make the Exchanges rules more clear, concise, and accurate. Moreover, pursuant to Rule 11.151(a)(2), in the event a security is subject to a trading halt, the Market Maker's pricing obligations are suspended, and do not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, as reported by the responsible single plan processor.

Finally, IEX proposes to correct a typographical [sic] in a cross-reference in paragraph (d) of Rule 11.152. As described above, paragraph (d) provides that excused withdrawal status may be granted to an IEX Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a Member of such an agency and is withdrawn from participation in the trade reporting service of the Exchange, thereby terminating its registration as an IEX Market Maker. Paragraph (d) also provides that if IEX finds that the Market Maker's failure to maintain a clearance arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 2.190. However, the reference to Rule 2.190 is incorrect and should instead reference Rule 11.153 which provides that a Market Maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from the Exchange, and also describes the timeframes for registration after such a termination, including in the case of failure to maintain a clearance arrangement. Rule 2.190 governs voluntary termination of rights as a Member, which is not relevant to the provisions of paragraph (d), which relate to treating a voluntary failure to maintain a clearance arrangement as a voluntary termination of Market Maker registration. Accordingly, the Exchange proposes to correct this typographical error.

As proposed, the amendments to IEX Rule 11.152 would substantially conform the Rule to Nasdaq Stock Market LLC (''Nasdaq'') Rule 4619, with minor nonsubstantive differences in terminology. Further, the proposed changes to IEX Rule 11.152(e) do not include provisions for passive market making pursuant to Rule 103 of Regulation M, which only applies to Nasdaq registered market makers.[14]

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[15] in general, and furthers the objectives of Section 6(b)(5)[16] of the Act in particular, in that

[13] The Exchange notes that this provision was inadvertently included in the Exchange's original rule set, and is substantially similar to Nasdaq Rule 4619(c)(2), which provides an identical exception for a trading halt initiated for Nasdaq market makers pursuant to Nasdaq Rule 4120.

[14] 17 CFR 242.103.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change supports these objectives because it is designed to provide appropriate, objective and transparent criteria for an IEX Market Maker in securities listed on IEX to withdraw its quotations and obtain excused withdrawal status. The Exchange further believes that the proposed rule change is consistent with the protection of investors and the public interest because the criteria to obtain excused withdrawal status accommodate legitimate issues that may be periodically encountered by IEX Market Makers that warrant an excused withdrawal, and are not designed to enable IEX Market Makers to avoid or circumvent their market making obligations through inappropriate excused withdrawals. The proposed changes to IEX Rule 11.152 are substantially similar to existing provisions of Nasdaq Rule 4619, subject to several minor differences described below. Thus, the Exchange does not believe that this rule change raises any new or novel issues not already considered by the Commission. Further, the Exchange believes that the proposed rule change is reasonable, equitable, and not unfairly discriminatory because all IEX Market Makers will be subject to the same requirements for excused withdrawals in securities listed on IEX.

Specifically, the Exchange believes that it is consistent with the protection of investors and the public interest to allow a Market Maker to obtain excused withdrawal status based on circumstances outside the Market Maker's control for up to five business days, unless extended by IEX Regulation, to provide appropriate accommodation for unpredictable events such as jury duty, bomb threats or other physical security issues, the birth of a child, or sudden illness. While the Exchange anticipates that Market Makers will utilize automated algorithms and other systemic tools to comply with the applicable quoting requirements, such systemic tools nonetheless must be overseen by one or more individuals who may experience unpredictable events that require time off. The Exchange believes that the permitted time period of up to five business days, unless extended, is reasonable and comports with the length of time that unpredictable events generally last. The proposed amendments to Rule 11.152(c) in this regard are substantially identical to Nasdaq Rule 4619 (c) except for nonsubstantive terminology differences to refer to IEX rather than Nasdaq.

The Exchange additionally believes that it is consistent with the protection of investors and the public interest to allow a Market Maker to obtain excused withdrawal status based on demonstrated legal or regulatory requirements, for not more than 60 days, as described in the Purpose section to provide appropriate relief when a Market Maker is prohibited from trading in a particular security, such as if a Market Maker is in possession of material nonpublic information regarding a security in which it is registered. The Exchange believes that 60 days is a reasonable amount of time for the legal or regulatory requirement to be resolved, and that if it persists beyond that time period it would be appropriate for the Market Maker to terminate its registration in the security in question. The proposed amendments to Rule 11.152(c) in this regard are substantially identical to Nasdaq Rule 4619(c) except for nonsubstantive terminology differences to refer to IEX rather than Nasdaq.

The Exchange also believes that it is consistent with the protection of investors and the public interest to allow a Market Maker to obtain excused withdrawal status based on religious holidays to provide for such observances by the individual(s) overseeing Market Maker systemic tools in the case of religious holidays when IEX is open. The proposed amendments to Rule 11.152(c) in this regard are substantially identical to Nasdaq Rule 4619(c) except for nonsubstantive terminology differences to refer to IEX rather than Nasdaq.

The Exchange further believes that it is consistent with the protection of investors and the public interest to allow a Market Maker to obtain excused withdrawal status based on vacation, but to limit such excused withdrawals to the circumstances described in the Purpose section, including that the Market Maker meets the definition of a FINRA Small Firm Member, even if the IEX Market Maker is not a FINRA member. The Exchange believes that Market Makers should generally be able to manage staff vacations so that it can oversee its market making activity, but recognizes that smaller firms may not have adequate staff in this regard. The Exchange notes that Nasdaq Rule 4619 provides similar relief for vacations, but limits such relief to a market maker with three or fewer Nasdaq level 3 terminals, which it believes is designed to similarly identify smaller firms. Since IEX Market Makers will not use Nasdaq terminals to connect to IEX, the Exchange believes that reference to the FINRA definition of a Small Member Firm is an appropriate alternative measure to account for smaller firms that serve as IEX Market Makers. Other than this difference, the proposed amendments to Rule 11.152(c) in this regard are substantially identical to Nasdaq Rule 4619(c) except for nonsubstantive terminology differences to refer to IEX rather than Nasdaq.

Further, the Exchange believes that it is consistent with the protection of investors and the public interest to allow a Market Maker to obtain excused withdrawal status in order to comply with SEC Rule 101 or 104 under the Act on the conditions described in the Purpose section. The Exchange notes that Rules 101 and 104 are part of Regulation M, which governs the activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities, and is intended to preclude manipulative conduct by persons with an interest in the outcome of an offering.[17] The proposed amendments to IEX Rule 11.152(e) are designed to facilitate IEX Market Makers' compliance with SEC Rules 101 and 104 and support the objectives of Regulation M generally. The proposed changes to IEX Rule 11.152(e) in this regard are substantially identical to Nasdaq Rule 4619(e) except that they do not include provisions for passive market making pursuant to Rule 103 of Regulation M, which only applies to Nasdaq registered market makers, as discussed in the Purpose section.

In addition, the Exchange believes that it is consistent with the Act to delete the final clause of Rule 11.152(c), as well as the related qualifying language in the preceding clause, because the proposed deletion is designed to avoid any potential confusion amongst market makers regarding the reasons the Exchange would find acceptable for granting excused withdrawal status, and make the Exchanges rules more clear, concise, and accurate.

Finally, the Exchange believes that it is consistent with the Act to correct the cross-reference typographical error in paragraph (d) of Rule 11.152 to promote clarity and consistency among market participants thereby facilitating investor protection and the public interest. The

[17] Securities Exchange Act Release No. 34–38067 (January 3, 1997), 62 FR 520 (File No. S7–11–96).

corrected cross-reference is substantially identical to the cross reference in Nasdaq Rule 4619(d) to Nasdaq Rule 4620, which in turn is substantially identical to IEX Rule 11.153.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to provide appropriate, objective and transparent criteria for Market Maker excused withdrawals in securities listed on IEX. The Exchange does not believe that the proposed rule change will result in any burden on intramarket competition because all Market Makers will be subject to the same criteria. The Exchange also does not believe that the proposed rule change will result in any burden on intermarket competition, since Nasdaq has substantially similar criteria for excused withdrawals and other exchanges are free to adopt comparable criteria. The Exchange also believes that the proposed rule change will serve to promote clarity and consistency, as noted in the Statutory Basis section, thereby reducing burdens on competition and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Exchange's proposed rule change will conform IEX's rules to a substantially similar provision in the rules of Nasdaq, and the Exchange's proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2017–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2017–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2017–37, and should be submitted on or before November 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23375 Filed 10–26–17; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2017–0010]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/the Department of Labor (DOL)—Match Number 1003)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on May 24, 2017.

SUMMARY: In accordance with the provisions of the Privacy Act, as

amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with DOL.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice. The matching program will be effective on May 25, 2017, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will expire on November 24, 2018.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Department of Labor (DOL)

A. PARTICIPATING AGENCIES:

SSA and DOL

B. PURPOSE OF THE MATCHING PROGRAM:

The purpose of this matching program is to establish the terms, conditions, and safeguards under which the Department of Labor (DOL) will disclose the DOL administered Part C Black Lung (BL) benefit data to us. We will match DOL's Part C BL data with our records of persons receiving Social Security disability benefits to verify that Part C BL beneficiaries are receiving the correct amount of Social Security disability benefits.

C. AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

The legal authority for this agreement is executed in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, and the regulations promulgated thereunder.

The legal authority for this agreement is section 224(h)(1) of the Social Security Act (Act), 42 U.S.C. 424a(h)(1). This legal authority requires any Federal agency to provide us with information in its possession that we may require for making a timely determination of the amount of reduction required under section 224 of the Act for workers' compensation offset.

D. CATEGORIES OF RECORDS AND PERSONS COVERED BY THE MATCHING PROGRAM:

SYSTEMS OF RECORDS:

SSA will match the DOL extract file against the MBR, SSA/ORSIS (60–0090), last fully published at 71 FR 1826 on January 11, 2006, as amended at 72 FR 69723 (December 10, 2007) and 78 FR 40542 (July 5, 2013). DOL's extract file is from DOL's OWCP, BL Benefit Payments file, DOL/OWCP–9, last fully published at 81 FR 25765 on April 29, 2016. Both agencies have published the appropriate routine uses to permit the disclosures necessary to conduct this match.

NUMBER OF RECORDS:

DOL's monthly extract file will contain the necessary identifying and payment information for approximately 23,000 beneficiaries, all miners under age 65 entitled to receive Part C BL payments. We will match these DOL records against the MBR.

SPECIFIED DATA ELEMENTS:

DOL's monthly extract file will contain each Part C BL beneficiary's Social Security number (SSN), name, date of birth, date of entitlement, payment status, current benefit amount, and effective date of the current benefit amount. We will determine which of the beneficiaries are receiving Social Security disability benefits and match the DOL data against the SSN, type of action code, and offset type for those beneficiaries in our MBR.

E. INCLUSIVE DATES OF THE MATCHING PROGRAM:

The effective date of this matching program is May 25, 2017, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will expire on November 24, 2018.

[FR Doc. 2017–23385 Filed 10–26–17; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2016–0058]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new computer matching program that we are currently conducting with DOL.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice. The matching program will be effective on May 25, 2017, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will expire on November 24, 2018.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security

Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, or email at *Mary.Ann.Zimmerman@ssa.gov*. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, by any of the means shown above.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and DOL.

Authority for Conducting the Matching Program: This agreement is executed in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, and the regulations promulgated thereunder.

The legal authority for this agreement is section 1631(f) of the Social Security Act, 42 U.S.C. 1383(f). This legal authority requires any Federal agency to provide SSA with information in its possession that SSA may require for making a determination of eligibility for or the proper amount of Supplemental Security Income (SSI) payments.

Purpose: The purpose of this computer matching agreement is to establish the terms, conditions, and safeguards under which DOL will disclose the DOL administered Part B Black Lung (BL) benefit data to us. We will match DOL's Part B BL data with our records of persons receiving SSI to verify that Part B BL beneficiaries are receiving the correct amount of SSI payments.

Categories of Individuals: The individuals whose information is involved in the matching program are those individuals who are receiving Part B BL benefits and SSI benefits.

Categories of Records: DOL's monthly extract file will contain necessary identifying and payment information for approximately 19,000 individuals, all miners, receiving Part B BL benefit payments. Additionally, once every year, DOL will send an additional file representing all Part B BL benefit records, referred to as the saturation file, regardless of any changes.

DOL's monthly extract file will contain each Part B BL beneficiary's Social Security number (SSN), name, date of birth, date of entitlement, payment status, current benefit amount, and effective date of the current benefit amount. We will determine which of the recipients are receiving SSI payments and match the DOL data against the SSN, type of action code, and income type for those recipients in our Supplemental Security Record (SSR).

Systems of Records: We will match the SSR/SVB SSA/ODSSIS (60–0103) system of records, last fully published on January 11, 2006 (71 FR 1830), and amended on December 10, 2007 (72 FR 69723), which contains all data pertinent to payments made to Title XVI recipients, with an extract from DOL's Office of Workers' Compensation Programs, BL Benefit Payments file (OWCP–9), published on April 29, 2016 (81 FR 25765).

[FR Doc. 2017–23386 Filed 10–26–17; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2017–0027]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA)

ACTION: Notice of a New Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new computer matching program that we are currently conducting with the Department of Homeland Security (DHS).

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice. The matching program will be effective on July 19, 2017, or once a minimum of 30 days after the publication of this notice has elapsed, whichever is later. The matching program will expire on January 18, 2019.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing to *Mary.Ann.Zimmerman@ssa.gov*. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, by any of the means shown above.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with

other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and DHS

Authority for Conducting the Matching Program: The legal authority for this agreement is executed under the Privacy Act of 1974, 5 United States Code (U.S.C.) 552(a), as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988, and the regulations and guidance promulgated thereunder.

Legal authorities for the disclosures under this agreement are 42 U.S.C. 402(n), 1382(f), 1382c(a)(1), and 1383(e)(1)(B) and (f); and 8 U.S.C. 1611 and 1612.

Section 1631(e)(1)(B) of the Social Security Act (hereafter the ''Act'') (42 U.S.C. 1383(e)(1)(B)) requires SSA to verify declarations of applicants for and recipients of Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act (42 U.S.C. 1383(f)) requires Federal agencies to provide SSA with information necessary to verify SSI eligibility or benefit amounts or to verify other information related to these determinations. Section 202(n)(2) of the Act (42 U.S.C. 402(n)(2)) requires the Secretary of Homeland Security to notify the Commissioner of Social Security when certain individuals are removed from the United States under sections 212(a)(6)(A) and 237(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(6)(A) or 1227(a)).

A. Aliens Who Leave the United States Voluntarily

Resident aliens eligible for SSI may receive payments for any month in which they reside in the United States. Under section 1611(f) of the Act, an individual is ineligible for SSI benefits for any month during all of which he or she is outside the United States. The Act provides for limited exceptions to the general rule. See, *e.g.,* 42 U.S.C. 1382(f)(1) (providing an exception for United States citizen children living with a parent who is a member of the military assigned to permanent duty outside the United States). 42 U.S.C. 1382(f) and 20 Code of Federal Regulations (CFR) 416.1327. Section 1611(f) further states that if an individual is absent from the United States for 30 consecutive days, SSA will treat the individual as remaining outside the United States until he or she has been in the United States for a period of 30 consecutive days.

B. Aliens Who Are Removed From the United States

The Social Security Protection Act of 2004, Pub. L. 108–203, amended the Act to expand the number of individuals who are subject to nonpayment of Social Security benefits. Thus, section 202(n)(1)(A) of the Act (42 U.S.C. 402(n)(1)(A)) prohibits payment of retirement or disability insurance benefits to number holders (NH) who have been removed from the United States on certain grounds specified under section 237(a) or section 212(a)(6)(A) of the INA (8 U.S.C. 1182(a)(6)(A), 1227(a)). SSA will not pay monthly retirement or disability benefits to such NHs for the month after the month in which the Secretary of Homeland Security notifies SSA of the NH's removal or before the month in which the NH is subsequently lawfully admitted to the United States for permanent residence.

Section 202(n)(1)(B) of the Act (42 U.S.C. 402(n)(1)(B)) prohibits payment of auxiliary or survivors benefits to certain individuals who are entitled to such benefits on the record of a NH who has been removed from the United States on certain grounds as specified in the above paragraph. Nonpayment of benefits is applicable for any month such auxiliary or survivor beneficiary is not a citizen of the United States and is outside the United States for any part of the month. Benefits cannot be initiated (or resumed) to such auxiliary or survivor beneficiaries who are otherwise subject to nonpayment under these provisions until the removed NH has been subsequently lawfully admitted for permanent residence to the United States.

In addition, certain individuals may be subject to suspension of their SSI payments under section 1614(a)(1)(B)(i) of the Act (42 U.S.C. 1382c(a)(1)(B)(i)), which provides, in part, that an SSI recipient must be a resident of the United States. Further, if an SSI recipient is not a United States citizen, 8 U.S.C. 1611 and 1612 provide that an alien who is not a qualified alien within the statutory definitions applicable to those sections is ineligible for SSI benefits, and an alien who is a qualified alien will have limited eligibility.

Purpose(s): The purpose of this matching program is to set forth the terms, conditions, and safeguards under which DHS will disclose information to us identifying aliens who leave the United States voluntarily and aliens who are removed from the United States. These aliens may be subject to suspension of payments or nonpayment of benefits or both, and recovery of overpayments. We will use DHS data to determine if suspension of payments, nonpayment of benefits, and/or recovery of overpayments, is applicable.

Categories of Individuals: The individuals whose information is involved in this matching program are:

Aliens who leave the United States voluntarily and are subject to suspension or non-payment of SSI.

Aliens who are removed from the United States and subject to suspension or non-payment of retirement, survivors, and disability insurance benefits and SSI payments. In certain situations, payment of auxiliary or survivors benefits to certain individuals who are entitled to such benefits on the record of a number holder who has been removed from the United States on certain grounds is prohibited.

Categories of Records:

Aliens Who Leave the United States Voluntarily

The data elements furnished by the DHS BIS System are the alien's name, SSN, date of birth (DOB), Alien Registration Number (''A'' number), date of departure, and expected length of stay. To verify the SSN, SSA will match BIS data against the name, DOB, and SSN in SSA's Enumeration System. SSA will store and match verified SSNs against the same elements in the SSR files.

Aliens Who Are Removed From the United States

The data elements furnished from EID are the individual's name and alias (if any), SSN (if available), DOB, country of birth, country to which removed, date of

removal, the final removal charge code, and DHS Alien Registration Number (''A'' number).

To verify the SSN, SSA will match EID data against records in its Enumeration System. SSA matches the verified SSNs against the existing MBR and SSR records to locate removals (and their dependents or survivors, if any) who have already claimed and are currently receiving RSDI or SSI benefits, or both. SSA will retain the data verified through this matching program on the MBR and SSR, to be associated with future claims activity

System(s) of Records:

Aliens Who Leave the United States Voluntarily (SSI)

DHS will disclose to SSA information from the BIS system of records, DHS/USCIS–007, 73 FR 56596 (September 29, 2008). DHS will electronically format the BIS data for transmission to SSA. BIS data is comprised of data collected from USCIS immigration systems. USCIS data used to accomplish this matching agreement currently comes from the CLAIMS 3 database.

SSA will match the DHS information with SSA's systems of records: Master Files of Social Security Number (SSN) Holders and SSN Applications (the Enumeration System), 60–0058, 75 FR 82121 (December 29, 2010), and the Supplemental Security Income Record and Special Veterans Benefits (SSR), 60–0103, 71 FR 1830 (January 11, 2006).

Aliens Who Are Removed From the United States (RSDI and SSI)

DHS will retrieve information on removed aliens from the DHS database known as the EID and electronically format it for transmission to SSA. These individuals are not U.S. citizens or Legally Permanent Residents and thus not covered by the Privacy Act or DHS system of records.

The SSA systems of records used in the match are the Master Files of Social Security Number (SSN) Holders and SSN Applications (the Enumeration System), SSA/OEEAS, 60–0058, 75 FR 82121 (December 29, 2010), the Supplemental Security Income Record and Special Veterans Benefits (SSR), 60–0103, 71 FR 1830 (January 11, 2006), the Master Beneficiary Record (MBR), 60–0090, 71 FR 1826 (January 11, 2006) and the Prisoner Update Processing System (PUPS), 60–0269, 64 FR 11076 (March 8, 1999). The Unverified Prisoner System (UPS) is a subsystem of PUPS. UPS users perform a manual search of fallout cases where the Enumeration and Verification System is unable to locate an SSN for an alien who has been removed.

Under an existing Interagency Agreement (IAA) between SSA and DHS, SSA has automated access to the DHS Systematic Alien Verification for Entitlements (SAVE) program, DHS–USCIS–004, 81 FR 78619 (November 8, 2016) that utilizes the Verification Information System. This system provides information on the current immigration status of aliens who have Alien Registration Numbers (''A'' numbers). SSA will use the automated access to the SAVE program to verify current immigration status of aliens where the immediate EID match or any future claims activity indicate an alien has been removed. The parties do not consider this verification as a separate match subject to the provisions of the CMPPA; the parties will conduct such verifications in compliance with the terms of the aforementioned IAA.

The systems of records involved in this computer matching program have routine uses permitting the disclosures needed to conduct this match.

[FR Doc. 2017–23389 Filed 10–26–17; 8:45 am]

BILLING CODE 4191–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–31, 2017.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, 717–238–0423, ext. 1312, *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, LLC, Pad ID: Alvarez, ABR–201301012.R1, Wilmot Township, Bradford County and Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 7, 2017.
2. Range Resources—Appalachia, LLC, Pad ID: McWilliams Unit #6H—#10H Well Pad, ABR–201208015.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: August 7, 2017.
3. Range Resources—Appalachia, LLC, Pad ID: Null—Bobst Unit 1H—5H, ABR–201208018.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: August 7, 2017.
4. Endless Mountain Energy Partners, LLC, Pad ID: SGL Tract 268–Pad B, ABR–201206010.R1, Morris Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 8, 2017.
5. SWEPI, LP, Pad ID: Lynn 719, ABR–201207012.R1, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 11, 2017.
6. SWN Production Company, LLC, Pad ID: TI–09 BROWN, ABR–201708001, Jackson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: August 14, 2017.
7. ARD Operating, LLC, Pad ID: Salt Run HC Pad A, ABR–201208007.R1, Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 18, 2017.
8. ARD Operating, LLC, Pad ID: Kenneth L Martin Pad A, ABR–201208008.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 18, 2017.
9. ARD Operating, LLC, Pad ID: Ann C Good Pad A, ABR–201208009.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 18, 2017.
10. ARD Operating, LLC, Pad ID: Red Fox H&FC Pad B, ABR–201208010.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 18, 2017.
11. ARD Operating, LLC, Pad ID: Terry D. Litzelman Pad A, ABR–20121105.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 18, 2017.

12. ARD Operating, LLC, Pad ID: Larry's Creek F&G Pad F, ABR–20121106.R1, Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 18, 2017.
13. Chesapeake Appalachia, LLC, Pad ID: Finan, ABR–201301014.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 18, 2017.
14. Chief Oil & Gas, LLC, Pad ID: Lathrop Farm Trust Drilling Pad, ABR–201302004.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 22, 2017.
15. Cabot Oil & Gas Corporation, LLC, Pad ID: SalanskyT P1, ABR–201208022.R1, Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 29, 2017.
16. Repsol Oil & Gas USA, LLC, Pad ID: ABELL (05 112) G, ABR–201209002.R1, Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 29, 2017.
17. Repsol Oil & Gas USA, LLC, Pad ID: STORCH (01 099) S, ABR–201209016.R1, Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 29, 2017.
18. SWN Production Company, LLC, Pad ID: Cooley (Pad 2), ABR–201209017.R1, Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: August 29, 2017.
19. SWN Production Company, LLC, Pad ID: Gypsy Hill-Eastabrook (Pad 5), ABR–201209018.R1, Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: August 29, 2017.
20. SWN Production Company, LLC, Pad ID: Rabago Birk (Pad 10), ABR–201209019.R1, Herrick and Standing Stone Townships, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: August 29, 2017.
21. Chief Oil & Gas, LLC, Pad ID: J. Brown Drilling Pad, ABR–201303001.R1, Troy Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 30, 2017.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR parts 806, 807, and 808.

Dated: October 23, 2017.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2017–23354 Filed 10–26–17; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the approved by rule projects rescinded by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–31, 2017.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 806.22(f) for the time period specified above:

Rescinded Approvals By Rule Issued:

1. XTO Energy, Inc., Pad ID: Hazlak 8504, ABR–20100211.R1, Shrewsbury Township, Lycoming County, Pa.; Rescind Date: August 29, 2017.

2. Atlas Resources, LLC, Pad ID: Logue Pad B, ABR–201209003, Gamble Township, Lycoming County, Pa.; Rescind Date: August 31, 2017.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 23, 2017.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2017–23355 Filed 10–26–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0175]

Hours of Service of Drivers: Application for Exemption; Pipe Line Contractors Association (PLCA)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application of the Pipe Line Contractors Association (PLCA) from the requirement that a motor carrier install and require each of its drivers to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS) no later than December 18, 2017. PLCA had requested the exemption for all pipeline contractor vehicle drivers who typically use the short-haul exception to the logging requirement, which also exempts them from using ELDs. Sometimes, however, they may exceed the conditions of the short-haul exception more than 8 days in a 30-day period, which would subject them to the ELD rule. FMCSA has analyzed the exemption application and public comments, and has determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA therefore denies PLCA's application for exemption.

DATES: FMCSA denied the application for exemption by letter dated October 16, 2017, after notice and opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application,

including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The PLCA is an industry trade association that negotiates labor agreements, encourages safe practices in pipeline construction, and seeks the resolution of problems common to those in the pipeline construction industry. PLCA has been in existence since 1948 and currently has 77 members who collectively employ approximately 30,000 to 40,000 workers depending upon the level of pipeline work in any year. The drivers who would be covered under the exemption operate flatbed trucks that haul heavy equipment, dump trucks, skid trucks, water trucks, pilot cars and buses that transport workers from the assembly point to the pipeline right-of-way. These drivers possess CDLs and almost always operate within 100 miles of their assembly point, and meet the other requirements of the short haul exception in 49 CFR 395.1(e)(1). However, the drivers may not return within the 12 hours required for use of the short-haul exception.

According to PLCA, exempting pipeline contractors from the ELD requirement would have no impact on safety for several reasons. First, drivers would continue to maintain written RODS on any day that they exceed the requirements of the short-haul exemption. Second, pipeline contractor drivers typically spend very little time operating on public roads. Third, pipeline contractors are required to maintain time records for their drivers. Finally, pipeline contractors and drivers otherwise must comply with all the HOS regulations. PLCA stated that granting this exemption would result in a level of safety that is equal to or greater than the level of safety achieved by complying with the ELD rule. A copy of the PLCA application for exemption is available in the docket for this notice.

Public Comments

On July 10, 2017, FMCSA published notice of PLCA's application for exemption and requested public comment (82 FR 31796). The Agency received 156 comments to the docket. The predominance of the commenters—over 96%—supported the granting of the PLCA request; most of these were ''form letter'' comments. Primary groups filing in support included the Power and Communication Contractors Associations (PCCA), American Pipeline Contractors Association, U.S. Pipeline, Inc., and the American Road and Transport Builders Association (ARTBA). The two primary groups filing in opposition were the Advocates for Highway and Auto Safety (Advocates) and the Owner-Operator Independent Driver's Association (OOIDA).

The Advocates expressed concern that the success of the ELD mandate lies in its applicability to all CMVs operated by drivers subject to the HOS and RODS. Despite this, the FMCSA has made great efforts to accommodate various aspects of the industry while maintaining safety. In the present case, despite having an existing exemption in the regulation, PLCA claims that to even comply with the exemption is onerous. The Agency has established a limit on the extent of the exemption which must be enforced, lest the final rule is rendered meaningless.

Advocates further added that PLCA had provided no proof that the requested exemption would ensure safety or address the Agency's concerns regarding noncompliance with the HOS regulations when using paper RODS.

All comments are available for review in the docket for this notice.

FMCSA Decision

When FMCSA published the rule mandating ELDs it relied upon research indicating that the rule improves CMV safety by improving compliance with the HOS rules. The rule also reduces the overall paperwork burden for both motor carriers and drivers. The primary reason for denying this exemption is that PLCA did not demonstrate how, without using ELDs, they would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

For these reasons, FMCSA denies the applicant's request for exemption.

Issued on: October 16, 2017.

Daphne Y. Jefferson,

Deputy Administrator.

[FR Doc. 2017–23348 Filed 10–26–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0394]

Agency Information Collection Activities; Approval of a New Information Collection Request: Flexible Sleeper Berth Pilot Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow for 30 days of public comment.

FMCSA proposes a pilot program to allow temporary regulatory relief from the Agency's sleeper berth regulation for a limited number of commercial drivers who have a valid commercial driver's license (CDL), and who regularly use a sleeper berth to accumulate their required 10 hours of non-duty work status. During the pilot program, participating drivers would have the option to split their sleeper berth time within parameters specified by FMCSA. Driver metrics would be collected for the duration of the study, and participants' safety performance and fatigue levels would be analyzed. This pilot program seeks to produce statistically reliable evidence on the question as to whether split sleeper berth time affects driver safety performance and fatigue levels.

DATES: Please send your comments by November 27, 2017. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0394. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of

Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nicole Michel, Research Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by email at *nicole.michel@dot.gov,* or by telephone at (202) 366–4354. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: *Title:* Flexible Sleeper Berth Pilot Program.

OMB Control Number: 2126–00XX.

Type of Request: New information collection.

Respondents: Large, medium, and small motor carriers; independent owner-operators; and commercial motor vehicle (CMV) drivers who regularly use a sleeper berth.

Estimated Number of Respondents: 10 motor carrier responses; 1,000 CMV driver applications, with 240 drivers being accepted for participation in the pilot program.

Estimated Time per Response: Motor carriers: 1 hour (one-time response). Drivers: Online application—15 minutes (one-time response); background questionnaire and tax form—30 minutes (one-time response); daily field study data collection—30 minutes (daily, for a maximum of 90 days); weekly phone briefings—10 minutes (once weekly, for a maximum of 13 weeks); debriefing questionnaire—15 minutes (one-time response).

Expiration Date: N/A. This is a new information collection.

Frequency of Response: Motor carriers: One-time response. Drivers: One-time application; during the study, data collection occurs 3 to 4 times per day for a maximum of 90 days (see ''Estimated Time per Response'' for more details).

Estimated Total Annual Burden: 4,423 hours (7 hours for carrier tasks and 4,416 hours for driver tasks). The total annual number of carrier responses is seven. Reviewing the study materials and granting permission for drivers to participate is estimated to take 1 hour per carrier. Participating driver burden is associated with completing the online application, background questionnaire, daily data collection during the field study period, weekly phone briefings, and debriefing questionnaire. The online application is estimated to take 15 minutes, the background questionnaire and tax form (completed together) is estimated to take 30 minutes, and the debriefing questionnaire is estimated to take 15 minutes. Daily data collection during the field study is estimated to take 30 minutes per day, for up to 90 days. Weekly phone briefings are estimated to take 10 minutes per week. It is estimated that 40 drivers will participate for 14 days, 75 drivers will participate for 30 days, 75 drivers will participate for 60 days, and 50 drivers will participate for the maximum 90 days.

Background

I. Project Summary

As described in 49 CFR 395.1(g)(1), a driver who operates a property-carrying CMV equipped with a sleeper berth [1] and who uses the sleeper berth provision must take at least 8 consecutive hours in the sleeper berth, plus a separate 2 consecutive hours either in the sleeper berth, off duty, or any combination of the two, before returning to on-duty status.

During listening sessions for the hours-of-service (HOS) rulemaking, the Agency heard from many drivers that they would like some regulatory flexibility to be able to sleep when they get tired or as a countermeasure to traffic congestion (*i.e.,* an exemption from the requirement for consolidated sleeper berth time). FMCSA has reviewed the literature and conducted its own laboratory studies on the subject. The majority of sleep studies to date demonstrate that well-timed split sleep has either a positive or no effect on subsequent neurobehavioral performance. To determine whether split sleeper berth time affects driver safety performance and fatigue levels, FMCSA is introducing a pilot program to allow temporary regulatory relief from 49 CFR 395.1(g)(1) (the sleeper berth provision) for a limited number of commercial drivers who have valid commercial driver's licenses (CDLs) and who regularly use sleeper berths.

The Flexible Sleeper Berth Pilot Program requires that participating drivers be provided relief from Part 395 concerning consolidated sleeper berth time requirements. Participating drivers will be asked if they have completed the Driver Education Module of the North American Fatigue Management Program (NAFMP) prior to study enrollment. If drivers have not completed the program, they will be given information on the program and encouraged, but not required, to complete these modules prior to participation in the study. During the pilot program, participating drivers will have the option to split their sleeper berth time, within parameters specified by FMCSA (*i.e.,* participants will have exemption from the requirement for consolidated sleeper berth time). Driver metrics will be collected for the duration of the study, as discussed in Section III of this notice. Upon completion of the program, participants' safety performance and fatigue levels will be analyzed, according to provision use, using a ''within-subject and between-subject'' study design. In this analysis, drivers will be compared among themselves and against other participating drivers. This pilot program seeks to produce statistically reliable evidence of the relationship between the degree of HOS flexibility and safety outcomes.

II. Data Collection Plan

Details of the data collection plan for this pilot program are subject to change based on comments to the docket and further review by analysts. Participating drivers will drive an instrumented vehicle for up to 3 consecutive months. At a minimum, FMCSA will gather the following data during the study:

- Electronic logging device (ELD) data, to evaluate duty hours and timing, driving hours and timing, rest breaks, off-duty time, and restart breaks.
- Onboard monitoring system (OBMS) data, to evaluate driving behaviors, safety-critical events (or SCEs, which include crashes, near-crashes, and other safety-related events), reaction time, fatigue, lane deviations, and traffic density, road curvature, and speed variability.
- Roadside violation data (from carriers and drivers), including vehicle, duty status, hazardous materials, and cargo-related violations (contingent upon inspections).
- Wrist actigraphy data,[2] to evaluate total sleep time, time of day sleep was taken, sleep latency, and intermittent wakefulness.
- Psychomotor Vigilance Test (PVT) [3] data, to evaluate drivers' behavioral alertness based on reaction times.

[1] A ''sleeper berth'' is a sleeping compartment installed on a CMV that complies with the specifications in 49 CFR 393.76.

[2] Participants will wear wrist actigraphy devices (similar to commercially available smart fitness watches) throughout their time in the study. Actigraphy is a minimally obtrusive, validated approach to assessing sleep/wake patterns.

[3] For this study, drivers will be required to complete daily iterations of a brief PVT, a 3-minute behavioral alertness test which measures drivers' alertness levels by timing their reactions to visual stimuli.

• Subjective sleepiness ratings, using the Karolinska Sleepiness Scale (KSS),[4] to measure drivers' perceptions of their fatigue levels.

• Sleep logs, in which drivers will document when they are going to sleep, when they wake up, and whether they are using the sleeper berth. For split-sleep days, drivers will record how and why they chose to split their sleep.

Other information that may be needed, such as vehicle miles traveled (VMT), will also be collected through the participating carrier. Every effort will be made to reduce the burden on the carrier in collecting and reporting this data.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) prohibits agencies from conducting information collection (IC) activities until they analyze the need for the collection of information and how the collected data will be managed. Agencies must also analyze whether technology could be used to reduce the burden imposed on those providing the data. The Agency must estimate the time burden required to respond to the IC requirements, such as the time required to complete a particular form. The Agency submits its IC analysis and burden estimate to OMB as a formal ICR; the Agency cannot conduct the information collection until OMB approves the ICR.

IV. Summary of Public Comments Received

On June 27, 2017, FMCSA published a notice in the **Federal Register** (82 FR 29145) with a 60-day public comment period to announce this proposed information collection. As of the closing date of August 28, 2017, the agency received five comments in response to this notice.

One comment questioned the need for a pilot program given that the proposal is similar to the HOS rules prior to 2003. This commenter expressed an opinion that the HOS rules should just be reverted to the prior to 2003 HOS rules. While FMCSA understands the commenter's frustration with the process, our commitment to public safety requires us to conduct a pilot program to collect scientific data and achieve statistically significant findings before considering any revision to our current regulations.

Another commenter expressed a similar opinion regarding the HOS rules, which he felt should never have been changed in 2003. He felt that the HOS needed to be changed and re-evaluated for every different division of CMVs, but did express support of flexibility in sleeper berth times. FMCSA appreciates this commenter taking the time to provide feedback on the HOS rules, but felt that this comment went beyond the scope of this pilot program; however, the Agency appreciates his support of allowing a flexible sleeper berth pilot program to move forward.

The remaining three commenters were supportive of the proposed Pilot Program and proposed information collection, and expressed an opinion that this would make the roads safer and allow drivers to manage their duty hours more efficiently and use common sense to not drive when tired. FMCSA appreciates this support for the program, and has not made any changes or revisions to the design of the study based on these comments.

Additionally, a **Federal Register** notice announcing the Pilot Program was published on June 6, 2017, to allow for 60-days of public comment regarding the proposed program. The comment period closed on August 7, 2017, and has received 232 unique (233 total, one duplicate) public comments to date. The vast majority (over 175) of these comments were positive in nature. Several commenters expressed a desire to participate in the study, and several wanted the study expanded to incorporate other exemptions. While FMCSA understands the desire from drivers to re-open the HOS rules, specifically the 14-hour rule, the Pilot Program is designed to look at only Flexible Sleeper Berth times in order to achieve statistically significant results without the potential for introducing confounding variables into the study.

Approximately 40 commenters responded in a negative manner to the 14-hour rule, or having too many regulations in place, but were not specific to the Flexible Sleeper Berth Program. The majority of commenters who responded agreed that the NAFMP should be recommended, not mandatory. One commenter felt the NAFMP should be mandatory; however, FMCSA felt that the majority of commenters agreeing with the current study design showed that we should move forward without changing the design. One commenter felt that the cameras in the vehicle were too burdensome, however, several others expressed that the data collection was reasonable for the scope of the study.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on October 20, 2017.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2017–23350 Filed 10–26–17; 8:45 am]

BILLING CODE 4910–EX–P

[4] The KSS is a 9-point Likert-type scale ranging from ''extremely alert'' to ''extremely sleepy'' and has been widely used in the literature as a subjective assessment of alertness.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2017–0039]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 89 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 12, 2017. The exemptions expire on September 12, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or

comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On August 10, 2017, FMCSA published a notice announcing receipt of applications from 89 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 37486). The public comment period ended on September 11, 2017, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person:

Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

III. Discussion of Comments

FMCSA received three comments in this proceeding. An anonymous commenter stated that they are in favor of granting ''Greg'' an exemption because he properly manages his diabetes. There are four Gregory's listed in this **Federal Register** and there was no distinction of which Gregory this comment supported. An anonymous commenter stated that they believe hypoglycemia is a risk and they are against allowing Diabetic CDL drivers an exemption without the use of a glucose sensing pump. Currently, the insulin method of delivery is a decision between the driver and their treating physician. Vicky Johnson stated that Minnesota DVS is in favor of granting exemptions to Bruce A. Freiermuth and Edward R. Gitz, both of whom are drivers from Minnesota.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 10, 2017 **Federal Register** notice (82 FR 37486) and will not be repeated in this notice.

These 89 applicants have had ITDM over a range of one to 34 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

IV. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keeping a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 89 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

James W. Ackerson (AZ)
Harry R. Albright (PA)
Pablo Alduende (NJ)
Abe C. Applewhite (VA)
William L. Bacon (WA)
Eric M. Ballard (IN)
Thomas R. Bingham (MT)
Harley E. Boone (ID)
Raymond P. Boskat, Sr. (NY)
Kevin M. Bruton, Jr. (NY)
Dylan J. Bryan (IL)
Vincente Burciaga (TX)
Roger E. Burkholder (IL)
James M. Butcher (IA)
Dino Chapman (TN)
Glen C. Davis (TN)
Glenn W. Davis (VA)
Jimmy D. Davis (MO)
Michael J. Dunnuck (CA)
Billy R. Edge (AL)
Craig Elgard (NJ)
Filiberto Espinoza (CA)
Julieanne Estes (NH)
Burl W. Fant (TX)
Grant E. Featherly (NY)
Ross G. Fogg, Jr. (NJ)
Damon M. Free (GA)
Raymond J. Freeman (TX)
Bruce A. Freiermuth (MN)
Alvin Frith (PA)
Eric T. George (TX)
Edward R. Gitz (MN)
William E. Glaster (NM)
Gregory C. Habel (ID)
Kevin O. Hansen (ID)
Richard A. Hanson (NJ)
John J. Hoeke (SD)
Howard R. Hudson (IL)

Michael T. Ilk (IN)
Ronald A. Jessop (RI)
Patrick A. Kelly (NC)
Vera M. Kipper (MO)
William A. Kitchens (GA)
Jerry R. Knight (WY)
Dick R. Kobayashi, Jr. (OR)
Roger P. Kukowski (WI)
Robert E. Lay (WA)
Gregory N. Lorenzi (WA)
Jake P. Mahoney (NY)
Ignatius Martin (NJ)
Ricky L. McCloskey (NE)
Carroll L. McCraw (NC)
Micah L. McDowell (NC)
Lonnell K. McKee (MO)
Kevin M. McKenna (MA)
Timothy S. Miller (WI)
Sammy Mouzone, Jr. (MI)
Timothy J. Mulvihill (SD)
Gregory J. Nixon (IN)
Anthony J. Njoroge (GA)
Robert N. Oakliff (CT)
Radame Perez (NY)
Gordon M. Peterson (IA)
Larry R. Predmore (PA)
Eric E. Ray (RI)
Angelo A. Reynoso (NJ)
Donald V. Rhoten, Jr. (MD)
William Rosado (NY)
Ryan M. Rosane (NE)
Solomon Rosenberg (NY)
James M. Roth (IN)
Robert J. Schlachter (IN)
D.S. Schneeberger (NY)
Robert F. Seiple (PA)
David M. Sheeran (NY)
John F. Smith (RI)
Mark E. Smith (PA)
Harley T. Steck (MO)
Ross M. Stirling (NV)
Dennis W. Thompson (WI)
Jose F. Toledo (OR)
Wayne A. Toms, Sr. (PA)
Gregory D. Vang (NE)
Charles H. Wainwright (NC)
Wayne G. Warren, Jr. (PA)
John G. Weinhofer (PA)
Grant E. Whetzel (SD)
Roger W. Yellow Boy (SD)
Richard L. Zelesket (MI)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Issued on: October 18, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–23345 Filed 10–26–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2016–0383]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 41 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on April 8, 2017. The exemptions expire on April 8, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On March 8, 2017, FMCSA published a notice announcing receipt of applications from 41 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 13050). The public comment period ended on April 7, 2017, and four comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person:

Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

III. Discussion of Comments

FMCSA received four comments in this proceeding. Janet Sandoval and two anonymous commenters stated that they are against granting Mr. Ta Canunpa W. Banks the exemption. Ms. Sandoval stated that she does not believe Mr. Banks is under sufficient medical care for diabetes and that all drivers should be required to regularly see an endocrinologist to ensure their diabetes is under control. Quarterly and annual monitoring by an endocrinologist and eye doctor is a stipulation of the exemption. Drivers are required to submit these reports to the Agency on a continuing basis while they hold an exemption. The first anonymous commenter stated that Mr. Banks provided falsified information in order to obtain a medical card. The second anonymous commenter did not provide a reason for their objection to granting Mr. Banks an exemption. A third anonymous commenter stated that they were in favor of granting the exemptions to all drivers listed in this notice, and that the previous three comments appear to be a ''smear campaign'' directed towards Mr. Banks as they have no documentation to support their claims. FMCSA investigated the claim that Mr. Banks provided falsified information in order to obtain a medical card. Mr. Banks did not disclose insulin use to his Medical Examiners on exams dated January 27, 2017 and February 14, 2017 based on his fear of losing his livelihood. However, he did disclose it in the exam submitted as part of his exemption application on November 11,

2016. FMCSA evaluated the medical records provided by Mr. Banks and determined that granting him an exemption would achieve an equivalent or greater level of safety than would be achieved without granting him an exemption.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant.

These 41 applicants have had ITDM over a range of 1 to 27 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 8, 2017 **Federal Register** notice (82 FR 13050) and will not be repeated in this notice.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keeping a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 41 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

Joseph A. Akers (WV)
Leslie R. Auger (MO)
Ta Canunpa W. Banks (SD)
Ralph E. Beard (MI)
Darrell W. Britnell (NC)
Paul M. Capeder (MN)
Robert D. Carnazzo (MA)
Randall C. Coleman (WA)
Thomas K. Coleman (NC)
Mark A. Cologne (LA)
Christopher J. Comstock (TX)
Alexander H. Cromartie (PA)
Michael R. Dark (TX)
Joseph P. Dellavolpe (NJ)
Shea E. Durand (NY)
David L. Farris (KS)
Donald D. Fown (OH)
Michael L. Gamache (NH)
David P. Glaeser (CO)
Donald J. Gray (CA)
James E. Guthrie, IV (KY)
James F. Hamilton (SD)
Paul R. Hanson (MN)
Jaculyn E. Heck (DE)
Greg J. Isom (GA)
Mark J. Johnson (WA)
Tyson C. Johnson (PA)
Darrell W. Luck (NC)
Gregory L. Markin (WI)
Patrick May (MD)
Elbert J. Means (SC)
Peter R. Meyer (WA)
Andrew R. Morris (WA)
Timothy A. Parks, Jr. (MD)
Dennis Pitt (NY)
Antonio R. Ragin (CT)
Matthew Reynolds (PA)
Robert G. Smith (MA)
Patricia M. Spurgeon (NY)
Robert M. Sypolt (WV)
Brandon R. Wedding (OR)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Issued on: October 18, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–23347 Filed 10–26–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2017–0010]

National Transit Database Reporting Changes and Clarifications

AGENCY: Federal Transit Administration, DOT.

ACTION: Request for Comments.

SUMMARY: This notice provides information on proposed changes and clarifications to the National Transit Database (NTD) reporting requirements. All proposed changes and clarifications are proposed to be effective for report year 2017 (beginning in September 2017).

DATES: Comments are due by December 26, 2017. FTA will consider late comments to the extent practicable.

ADDRESSES: Please identify your submission by Docket Number (FTA–2017–0010) through one of the following methods:

- *Federal eRulemaking Portal:* Submit electronic comments and other data to *http://www.regulations.gov*.
- *U.S. Mail:* Send comments to Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Room W12–140, 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 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations, U.S. Department of Transportation, at (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket Number (FTA–2017–0010) for this notice, at the beginning of your comments. If sent by mail, submit two copies of your comments. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure their prompt filing of any submissions not filed electronically or by hand. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may review U.S. DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8 or *http://DocketsInfo.dot.gov*.

Electronic Access and Filing: This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov*. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days a year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at *https://www.federalregister.gov*.

FOR FURTHER INFORMATION CONTACT: Maggie Schilling, National Transit Database Program Manager, FTA Office of Budget and Policy, (202) 366–2054 or *margaret.schilling@dot.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Background and Overview

The National Transit Database (NTD) was established by Congress to be the Nation's primary source for information and statistics on the transit systems of the United States. Recipients and beneficiaries of grants from the Federal Transit Administration (FTA) under the Urbanized Area Formula Grants Program (§ 5307) or Other than Urbanized Area (Rural) Formula Program (§ 5311) are required to submit data to the NTD. Additionally, all other recipients of grants from FTA that own, operate, or manage assets used in public transportation are required to report data related to their asset inventory, condition assessments, and state of good repair performance targets data to the NTD.

In July 2012, the Moving Ahead for Progress in the 21st Century Act (MAP–21) amended § 5335 authorizing the collection of an expanded asset inventory and condition information through the NTD. The updated asset inventory and condition reporting requirements were published in the **Federal Register** in July 2016.

The final NTD asset inventory reporting guidance specifies that service vehicles and administrative or maintenance facilities are reportable if the agency has full or partial capital responsibility for the asset; however, the updated guidance did not define *capital responsibility* as it relates to the NTD reporting requirements. This notice corrects that oversight and clarifies the term *capital responsibility*. It also provides clarification on when a new asset is reportable to the NTD and proposes additional granularity to track reporting.

In addition, FTA is seeking comment on five additional pieces of proposed guidance for inclusion in the NTD Reporting Manual. First is an update to the definition of a *reportable event* for monthly safety reporting. Second is a clarification on reporting requirements for recipients of JARC funds. Third is additional guidance on distinguishing between commuter and intercity service. Fourth is an adjustment to the reporting requirements for non-rail, for-profit providers of public transportation. Fifth is a proposed update to the definition of *major mechanical system failures* and *other mechanical system failures* and solicits comment on improvements to these data points. The solicitation for comment on improvements to the mechanical system failures data points are for information only purposes, but may be used to inform a future notice. These changes are discussed in greater detail in the sections following.

All proposed changes and clarifications will be effective for report year 2017, that begins in September 2017.

B. Clarifications on Reporting Requirements Related to the Transit Asset Management Program Rule Published in July 2016

(a) Beginning in report year 2018, all NTD reporters are required to report additional asset inventory information with their annual report. The guidance published with the final asset inventory reporting requirements specified that service vehicles and administrative or maintenance facilities are reportable if the agency has full or partial capital responsibility for the asset; however, the guidance did not specifically define *capital responsibility*.

FTA is proposing that for purposes of the NTD Report, an agency has direct capital responsibility for an asset if any of the following are true:

1. The agency owns the asset,

2. the agency jointly owns the asset with another entity, or

3. The agency is responsible for replacing, overhauling, refurbishing or conducting major repairs on an asset, or the cost of those activities are itemized as a capital line item in their budget.

Performing minimal preventive maintenance work on an asset, like cleaning, does not in itself indicate direct capital responsibility for the asset. An infrastructure asset itemized as a capital line item in the budget does not necessarily mean an agency has direct capital responsibility; an agency must also have management or oversight responsibilities for the line item project.

(b) The guidance published with the final asset inventory reporting requirements did not clearly state when an asset that is under construction or final assembly becomes reportable to the NTD. FTA is proposing that an agency is required to report a new asset to the NTD asset inventory in the fiscal year that the agency begins using the asset for public transportation service. Agencies would not be required to report assets that are being assembled, nor those assets under construction, nor assets that are in testing.

(c) The new track inventory form, which will be implemented in report year 2018, includes two track types: Tangent and curve. Agencies are asked to report a sum of all track in these two categories. The guidance does not indicate whether non-revenue or yard track should be included in these two categories. It also does not allow agencies to separate out the total track without capital replacement responsibility. To clarify the reporting requirement and ensure that the Transit Asset Management (TAM) Program infrastructure performance restrictions metric (% of track segments under performance restriction) only includes track used in revenue service for which an agency has capital replacement responsibility, FTA is proposing the addition of two additional track categories. Under this proposal, agencies would report: (1) Total in-service tangent track, (2) total in-service curved track and (3) total non-revenue/yard track (includes all non-revenue/yard track regardless of capital replacement responsibility) and (4) total in-service track with no capital replacement responsibility. The TAM performance restriction calculation would exclude all track in the third and fourth categories. In addition to these four categories, agencies would also report total track under performance restriction. This number would be used with the total in-service track minus the total in-service track with no capital replacement responsibility to calculate the percent of track segments under performance restriction.

C. Additional Guidance on Reportable Safety Events

FTA is proposing the following update to a reportable *safety event*. Although FTA is not changing the thresholds for a reportable event, FTA is clarifying the sorts of locations where a reportable event may occur. The primary change is the addition of safety reporting for events occurring on transit infrastructure. For example, a substation may not be part of the transit right-of-way, but FTA has always intended that a safety event occurring at a substation outside the right-of-way should be reportable. The current definition can be found in the 2016 NTD Safety Reporting Manual found on the NTD Web site: *www.transit.dot.gov/ntd*.

The proposed definition of a reportable *safety event* is below:

A safety or security event occurring:

—On transit right-of-way or infrastructure
—at a transit revenue facility
—at a maintenance facility or rail yard
—during a transit-related maintenance activity, or
—involving a transit revenue vehicle

Excluded from this event reporting requirement are:

—Events that occur off transit property where affected persons, vehicles, or objects come to rest on transit property after the event
—occupational safety events occurring in administrative buildings
—deaths that are a result of illness or other natural causes, outside of a reportable event
—other events (assault, robbery, non-transit vehicle collisions etc.) occurring at bus stops or shelters that are not on transit-controlled property
—collisions that occur while travelling to or from a transit-related maintenance activity
—collisions involving a supervisor car, or other transit service vehicle operating on public roads

D. Clarifications on Reporting Requirements for JARC Recipients

Prior to 2012, the JARC Program was a stand-alone grant program which did not carry an NTD reporting requirement. MAP–21, however, repealed the JARC Program as a stand-alone program, and instead made JARC projects eligible activities under the Urbanized Area Formula Program and the Rural Areas Formula Program. All recipients and beneficiaries of these programs are required to report to the NTD, however, FTA does not currently provide any guidance on reporting requirements for recipients and subrecipients of the programs that only support JARC projects, and which do not provide any public transportation services.

FTA is proposing to exempt from NTD reporting any subrecipient that only receives FTA money for 5307 or 5311 funded JARC projects, and does not have any transit operating or capital expenses from any funding source.

E. Guidance on Distinguishing Between Commuter and Intercity Service

The definition of *public transportation* at 49 U.S.C 5302 excludes intercity passenger rail operated by Amtrak and intercity bus service. In a **Federal Register** Notice published on Tuesday, August 19, 2014 (FTA–2014–0006), FTA provided additional guidance on the definitions of commuter rail and commuter bus and established that service provided by these modes could be considered public transportation, and not intercity transportation, if at least 50% of passengers make a return trip on the same day across all service runs for one year.

FTA reviews all requests to report new service to the NTD, as services excluded from the definition of public transportation are not permitted to report to the NTD on a voluntary basis. When FTA deems it necessary, it will require the agency to conduct a passenger survey test of whether 50% of passengers are making a return trip on the same day. However, FTA proposes that such a survey must meet the following requirements:

1. The agency must conduct the survey over a 12-month period, to account for seasonal variations in passenger behavior.

2. The agency must include the entire length of each route in the survey.

3. The survey must determine that at least 50% of passengers on each route make a return trip on the same day, with 95% confidence.

4. A qualified statistician must approve the survey/sampling methodology and certify that the results give the required level of confidence.

If at least 50% of all passengers surveyed on a route made a return trip on the same day, or reported their intention to do so, then FTA will permit the agency to report that route to the NTD.

Current NTD reporting guidance does not address the questions of commuter vs intercity service for ferryboats. Although all ferryboats that permit walk-on passengers are included in the definition of public transportation, the NTD Reporting Manual only allows ferryboat service outside the boundaries of an urbanized area to be deemed ''attributable'' to that urbanized area for commuter ferryboat services. Intercity ferryboat services are not permitted to deem their service outside the boundaries of an urbanized area as attributable to that area. Thus, FTA is proposing a uniform use of the 50% same day return trip policy to determine whether Ferryboat (FB) service is commuter or intercity for the purposes of inclusion in NTD. In addition, FTA is proposing a requirement for all new commuter rail, commuter bus or ferryboat service to survey for routes with a maximum one-way trip time exceeding 90 minutes to establish that at least 50% of all passengers on the route made a return trip on the same day. For new commuter rail, commuter bus, or ferryboat routes being proposed for reporting to the NTD, FTA may, at its discretion, presume that those with 100% one-way trip times of 90 minutes or less are commuter services, without requiring a passenger survey.

F. Change to Reporting Requirements for Non-Rail For-Profit Providers of Public Transportation

FTA currently has 18 non-rail, for-profit providers of public transportation that report directly to the NTD. One of these reporters raised the concern that providing the detailed financial information required of full reporters to the NTD may compromise their ability to successfully compete for business. They requested that FTA consider reducing the financial reporting requirements for for-profit providers to mirror those of reduced reporters to address their concern. FTA is seeking comment on the proposal to allow non-rail, for-profit providers of public transportation the option to report to the NTD as a reduced reporter. Of the 18 non-rail, for-profit providers referenced above, ten already meet the current reduced reporting threshold. This proposal would provide the flexibility to report as a reduced reporter for the remaining 8 agencies.

As a reduced reporter, these agencies would no longer be required to report passenger miles traveled (PMT). Such data previously reported by these agencies would not be available for use in the Urbanized Area Formula (UAF) apportionment. If the local urbanized area has more than 200,000 in population, this may reduce their local urbanized area's UAF apportionment. If the local urbanized area has fewer than 200,000 in population, this may impact the local urbanized area's eligibility for Small Transit Intensive Cities (STIC) funds in the UAF apportionment.

FTA would amend current reporting forms to allow ferry providers to continue to report fixed guideway directional route miles (DRM) or fixed guideway vehicle revenue miles (VRM) for continued use in the State of Good Repair Formula Apportionment.

G. Clarification of Mechanical System Failures Definitions

FTA has received feedback from the transit industry that the current definitions of *major mechanical system failures* and *other mechanical system failures* do not provide sufficient detail or clarity to allow for a useful analysis of the data. This information is currently collected from each agency by mode. The current definitions can be found in the 2017 NTD Policy Manual or the glossary on the NTD Web site: *www.transit.dot.gov/ntd. Major mechanical system failures* and *other mechanical system failures* are only reported by full reporters to the NTD; reduced reporters and capital asset-only reporters do not currently report these data.

To improve current reporting guidance, FTA proposes adding language specifically excluding failures caused by collision, natural disaster, or vandalism to the current definitions. FTA seeks comment on this proposed change. The amended definitions are below:

Proposed definition of *major mechanical system failure*:

A failure of some mechanical element of the revenue vehicle that is not caused by a collision, natural disaster, or vandalism and prevents the vehicle from completing a scheduled revenue trip or from starting the next scheduled revenue trip because actual movement is limited or the vehicle is unsafe.

Proposed definition of *other mechanical system failure*:

A failure of some other mechanical element of the revenue vehicle that is not caused by a collision, natural disaster, or vandalism, but, because of local agency policy, prevents the revenue vehicle from completing a scheduled revenue trip or from starting the next scheduled revenue trip even though the vehicle is physically able to continue in revenue service.

In addition to the proposed definition changes, FTA seeks additional feedback on the current utility of the *major mechanical system failures* and *other mechanical system failures* data points. As an example, one of the primary concerns expressed to FTA by stakeholders is that the current definition of *other mechanical system failures* cannot be used for comparative purposes because it is heavily dependent on local policy decisions. FTA would like to improve the utility of these data points to: (1) Inform transit stakeholders on mechanical performance; (2) allow for better comparative analysis of the data; and, (3) provide better insight on transit state of good repair. At this time, FTA is not formally proposing changes to these data points beyond the definition adjustments addressed above; however, two scenarios are outlined below. FTA welcomes input from stakeholders on these scenarios and welcomes additional direction on how these data points may be adjusted to best accomplish the stated goals.

Input received from this notice may be used to inform a future proposal to adjust the definition or collection method of these data points.

The scenarios described below are for public comment only. At this time, FTA is not formally proposing these changes.

FTA seeks feedback on the following scenarios:

(1) Collection of the *major mechanical system failures* by fleet rather than by mode. This would improve the granularity of the *major mechanical systems failure* data by collecting the information at the vehicle fleet level. It would provide a more robust and granular data set for *major mechanical system failures* and allow stakeholders to look at mechanical failure data by vehicle type. However, improving the granularity of the data could also increase the reporting burden for some agencies. To help offset this increase, FTA asks stakeholders to consider discontinuing the collection of *other mechanical system failures.*

(2) Adjust the definition of *other mechanical system failure* to the following: All non-major failures of a mechanical element of the revenue vehicle requiring a work order that are not caused by a collision, natural disaster, or vandalism.

This adjustment would provide a more standard and comprehensive look at the *other mechanical system failures* data. The new definition would allow for better comparison across transit agencies by focusing the outcome of this data point on a system failure rather than a local policy decision to remove the vehicle from service.

In addition to the scenarios discussed above, FTA welcomes additional comment and input on how these data points may be adjusted to benefit the transit industry and transit stakeholders. FTA specifically requests that agencies provide comment on the anticipated impact on reporting burden for the scenarios above as well as the anticipated reporting burden for any additional suggestions provided to improve the utility of these data points.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2017–23380 Filed 10–26–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2017–0014]

Notice of Proposed Buy America Waiver for Motor Brakes and Machinery Brakes for the SE 3rd Avenue Bascule Bridge Modification in Fort Lauderdale, Florida

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request

from the Florida Department of Transportation (FDOT) for a Buy America non-availability waiver for the procurement of motor brakes and machinery brakes (collectively, ''the brake units'') for the SE 3rd Avenue Bascule Bridge Modification in Fort Lauderdale, Florida, as part of the Wave Streetcar project because there are no domestic manufacturers of the brake units. FTA is providing notice of the non-availability waiver request and seeks public comment before deciding whether to grant FDOT's request. The size of the disc and drum brakes required for this bridge are not domestically available, and the Federal Highway Administration (FHWA) granted FDOT waivers for this equipment for another project. FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request.

DATES: Comments must be received by November 13, 2017. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please identify your submission by Docket Number (FTA–2017–0008) through one of the following methods:

- *Federal eRulemaking Portal:* Submit electronic comments and other data to *http://www.regulations.gov*.
- *U.S. Mail:* Send comments to Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Room W12–140, 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 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations, U.S. Department of Transportation, at (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket Number (FTA–2017–0014) for this notice, at the beginning of your comments. If sent by mail, submit two copies of your comments. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure their prompt filing of any submissions not filed electronically or by hand. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may review U.S. DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477–8 or *http://DocketsInfo.dot.gov*.

Electronic Access and Filing: This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov*. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days a year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at *https://www.federalregister.gov*.

FOR FURTHER INFORMATION CONTACT: Laura Ames, Attorney Advisor, at (202) 366–2743 or *Laura.Ames@dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek comment on whether the FTA should grant a non-availability waiver for FDOT's purchase of motor brakes and machinery brakes for the SE 3rd Avenue Bascule Bridge Modification in Fort Lauderdale, Florida, as part of the Wave Streetcar project. The proposed Wave Streetcar project will serve downtown Fort Lauderdale, spanning the New River to connect the hospital and courthouse districts on the south side with the downtown business core and government, education, shopping, recreation and entertainment centers on the north side. The design of the 2.8-mile route was expanded in October 2015 to include a loop on the north end in Flagler Village to capture recent and future residential and retail development in that area. The construction of the Wave Streetcar is currently scheduled to begin in mid-2017.

Mechanical drive systems have inherent braking requirements. AASHTO Movable Highway Bridge Design Specifications (MHBDS) require disc or drum brakes. The intent of AASHTO MHBDS 5.5, 5.6, 6.7.13 and the FOOT Structures Design Guidelines (SDG) Section 8.6.7 is to provide two sets of brakes—motor brakes and machinery brakes. This requirement provides stopping and holding as well as a failsafe within the gear train of the operating machinery. FDOT's research indicates that the size of the disc and drum brakes required for this bridge are not domestically available. All recent new construction and rehabilitation of various moveable bridges in Florida have required Buy America waivers, including a Buy America waiver granted by FHWA on May 2, 2016 for the same items. 81 FR 26305 (May 2, 2016).

Specific requirements for the brakes are as follows: All brakes shall be spring actuated, thruster released, stainless steel, drum type brakes with adjustable torque setting and set time delay settings. Span drive brakes shall be sized per Movable Highway Bridge Design Specifications (MHBDS) with the exception that ice accretion loads may be ignored. Brakes shall be mill duty brakes meeting Association of Iron and Steel Engineers—National Electrical Manufacturers Association (AISE—NEMA) Standards. The brake setting shall be no more than 90% and no less than 40% of the continuous rated capacity. The delay setting for each set of brakes shall be staggered to prevent all brakes from setting simultaneously and shock loading the machinery.

There are no options other than the correct type of machinery brakes for failsafe and timed gradual setting. Brakes are an integral part of the movable bridge design. Brakes provide stopping and parking of the bascule leaves and are MHBDS required devices for the safety of the traveling public, both vehicular and navigation gradual setting. The brake application must be gradual as per the specified thruster to prevent damage to the bridge, loss of power or E-stop. Brakes are an integral part of the movable bridge design. Brakes provide stopping and parking of the bascule leaves and are MHBDS required devices for the safety of the traveling public, both vehicular and navigation.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

Throughout the brake manufacturing industry, it is well documented that there are no brakes made in the United States that satisfy both the project requirements and the Buy America requirements. FDOT engaged in extensive efforts to identify and locate qualified domestically manufactured brake products, including contacting numerous known bridge brake manufacturers. FDOT's recent experience on similar projects has shown that contractors have been unable to locate qualified bridge brakes of either the shoe or disc type that have all components made in the United States. FDOT also has made an extensive effort to locate qualified domestically made brake products, including contacting known bridge brake manufacturers including the following manufactures: Johnson Industries, Mondel (made by Magnetek), Gemco (made by Ametek), Link Controls, Bubenzer, and Hiden. The manufacturers confirmed that they do not produce a product that meets both the Buy America provisions in accordance 49 CFR 661.7(c) and 49 U.S.C. 5323(j), and the requirements of AASHTO MHBDS Articles 5.5, 5.6 and 6. 7 .13. FDOT also conducted an internet search, which revealed several other brake manufacturers, but none make a qualified brake in the United States. Additionally, FDOT's program management consultant contacted several contractors that supply machinery and brakes for movable bridges but had no success in locating a qualified brake made entirely in the United States. FDOT's Program Management Consultant also has discussed this issue with other design engineers experienced in movable bridge machinery design and confirmed that they too have not been able to locate qualified brake products which are made in the United States.

Finally, under 49 U.S.C. 5323(j)(6), FTA cannot deny an application for a waiver based on non-availability unless FTA can certify that (i) the steel, iron, or manufactured good (the ''item'') is produced in the United States in a sufficient and reasonably available amount; and (ii) the item produced in the United States is of a satisfactory quality. Additionally, FTA must provide a list of known manufacturers in the United States from which the item can be obtained. FTA is not aware of any United States manufacturers who produce the motor brakes and machinery brakes required for the SE 3rd Avenue Bascule Bridge Modification project.

FDOT's efforts to identify domestic manufacturers for the motor brakes and machinery brakes required for the SE 3rd Avenue Bascule Bridge Modification project were unsuccessful. FTA proposes to grant FDOT a non-availability waiver of the Buy America requirements for the motor brakes and machinery brakes required for the SE 3rd Avenue Bascule Bridge Modification project.

FTA is publishing this Notice to seek public and industry comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Such information and comments will help FTA understand completely the facts surrounding the request, including the merits of the request. After consideration of the comments, FTA will publish a second notice in the **Federal Register** with a response to comments and noting any changes made to the proposed waiver because of the comments received. A full copy of the request has been placed in docket number FTA–2017–0014.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2017–23381 Filed 10–26–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Fiscal Service

Notice of Rate To Be Used for Federal Debt Collection, and Discount and Rebate Evaluation

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Notice of rate to be used for Federal debt collection, and discount and rebate evaluation.

SUMMARY: The Secretary of the Treasury is responsible for computing and publishing the percentage rate that is used in assessing interest charges for outstanding debts owed to the Government. This rate is also used by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, this rate is used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate. Notice is hereby given that the applicable rate for calendar year 2018 is 1.00 percent.

DATES: January 1, 2018 through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Denice M. Wilson, E-Commerce Division, Bureau of the Fiscal Service, Department of the Treasury, 401 14th Street SW., Washington, DC 20227 (Telephone: 202–874–9428).

SUPPLEMENTARY INFORMATION: This rate is used in assessing interest charges for outstanding debts owed to the Government (The Debt Collection Act of 1982, as amended (codified at 31 U.S.C. Section 3717)). This rate is also used by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, this rate is used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate (5 CFR 1315.8).

The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95–147, 91 Stat. 1227 (October 28, 1977). Computed each year by averaging Treasury Tax and Loan (TT&L) investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective each January 1. Quarterly revisions are made if the annual average, on a moving basis, changes by 2 percentage points. The rate for calendar year 2018 reflects the average investment rates for the 12-month period that ended September 30, 2017.

Authority: 31 U.S.C. Section 3717.

Dated: October 16, 2017.

Ronda L. Kent,

Assistant Commissioner, Payment Management, and Chief Disbursing Officer.

[FR Doc. 2017–23419 Filed 10–26–17; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Meeting; National Research Advisory Council

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA) that the National Research Advisory Council will hold a meeting on Wednesday, December 6, 2017, at the Atlanta Veterans Affairs Medical Center, Conference Room 5a110 at 1670 Clairmont Rd., Decatur, Georgia 30033. The meeting will convene at 9:00 a.m. and end at 4:30 p.m. This meeting is open to the public.

The agenda will include scientific presentations on animal research, mental health, rehabilitation and a facility tour. Additional presentations will include: Balancing research challenges, an overview of the animal research program from the Chief

Veterinary Medical Officer, a review of the Centers for Disease Control and Prevention partnership with the Atlanta Medical Center and positive impacts of research. The Chair will provide a synthesis of his cross-committee collaborative meeting attendance at the Geriatrics and Gerontology Advisory Committee and National Academic Affiliations Council FACA meetings. The annual report will be reviewed. No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend may contact Melissa Cooper, Designated Federal Officer, Office of Research and Development (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 461–6044, or by email at *Melissa.Cooper@va.gov* no later than close of business on November 29, 2017. Because the meeting is being held in a government building, a photo I.D. must be presented at the protocols, and in order to prevent delays in clearance processing, you should allow an additional 30 minutes before the meeting begins. Any member of the public seeking additional information should contact Melissa Cooper at the phone number or email address noted above.

Dated: October 24, 2017.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–23407 Filed 10–26–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 82 Friday,
No. 207 October 27, 2017

Part II

Consumer Product Safety Commission

16 CFR Part 1307
Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

[Docket No. CPSC–2014–0033]

Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The United States Consumer Product Safety Commission (Commission or CPSC) issues this final rule prohibiting children's toys and child care articles that contain concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisobutyl phthalate (DIBP), di-*n-pentyl phthalate (DPENP), di-n-hexyl phthalate* (DHEXP), and dicyclohexyl phthalate (DCHP). Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) established permanent and interim prohibitions on the sale of certain consumer products containing specific phthalates. That provision also directed the CPSC to convene a Chronic Hazard Advisory Panel (CHAP) to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles and to provide recommendations to the Commission regarding whether any phthalates or phthalate alternatives, other than those already permanently prohibited, should be prohibited. The CPSIA requires the Commission to promulgate a final rule after receiving the final CHAP report. This rule fulfills that requirement.

DATES: The rule will become effective on April 25, 2018.

FOR FURTHER INFORMATION CONTACT: For information related to the phthalates prohibitions, contact: Carol L. Afflerbach, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408; telephone: 301–504–7529; email: *cafflerbach@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. Background

A. Consumer Product Safety Improvement Act

In accordance with the Consumer Product Safety Improvement Act of 2008 (CPSIA), the Commission issues this final rule prohibiting children's toys and child care articles containing concentrations of more than 0.1 percent of certain phthalates.[1]

[1] The Commission voted 3–2 to publish this final rule in the **Federal Register**. Commissioners Robert S. Adler, Marietta S. Robinson, and Elliot F. Kaye voted to publish this final rule. Acting Chairman Anne Marie Buerkle and Commissioner Joseph Mohorovic voted against publication of this final rule.

1. Statutory Prohibitions

Section 108 of the CPSIA establishes requirements concerning phthalates. Section 108(a) of the CPSIA permanently prohibits the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any ''children's toy or child care article'' that contains concentrations of more than 0.1 percent of di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or butyl benzyl phthalate (BBP). 15 U.S.C. 2057c(a). In addition, section 108(b)(1) prohibits on an interim basis (*i.e.,* until the Commission promulgates a final rule), the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of ''any children's toy that can be placed in a child's mouth'' or ''child care article'' containing concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-*n*-octyl phthalate (DNOP). *Id.* 2057c(b)(1). The CPSIA provides the following definitions:

- ''Children's toy'' is ''a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.''
- ''child care article'' is ''a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.''
- A ''toy can be place in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.''

Id. 2057c(g). These statutory prohibitions became effective in February 2009. The interim prohibitions remain in effect until the Commission issues a final rule determining whether to make the interim prohibitions permanent. *Id.* 2057c(b)(1).

2. Chronic Hazard Advisory Panel

The CPSIA directs the CPSC to convene a Chronic Hazard Advisory Panel (CHAP) ''to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.'' *Id.* 2057c(b)(2). A ''phthalate alternative'' is ''any common substitute to a phthalate, alternative material to a phthalate, or alternative plasticizer.'' *Id.* 2057c(g). The CHAP is to recommend to

the Commission whether any phthalates or phthalate alternatives other than those permanently prohibited should be declared banned hazardous substances. *Id.* 2057c(b)(2)(C).

3. Rulemaking

The CPSIA requires the Commission to promulgate a final rule, pursuant to section 553 of the Administrative Procedure Act (APA), not later than 180 days after the Commission receives the final CHAP report. The Commission must ''determine, based on such report, whether to continue in effect the [interim] prohibition . . . , in order to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety. . . .'' 15 U.S.C. 2057c(b)(3)(A). Additionally, the Commission must ''evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.'' *Id.* (b)(3)(B).

B. The Proposed Rule

On December 30, 2014, the Commission published a notice of proposed rulemaking (NPR) in the **Federal Register**. 79 FR 78324. The preamble to the NPR summarized the CHAP report, explaining the CHAP's review of potential health effects of phthalates in animals and humans, the CHAP's assessment of human exposure to phthalates, the CHAP's assessment of risk (both cumulative and in isolation) of various phthalates, and the CHAP's recommendations to the Commission. The preamble to the NPR then provided CPSC staff's assessment of the CHAP report and stated the Commission's description of the proposed rule and its explanation of the rationale for the proposal.

The NPR generally followed the recommendations of the CHAP report. As explained further in section III of this preamble, the CHAP focused on certain phthalates' effect on male reproductive development. After reviewing relevant studies, the CHAP found that certain phthalates (which the CHAP called active or antiandrogenic) cause adverse effects on the developing male reproductive tract. The CHAP determined that these phthalates act in a cumulative fashion. The CHAP concluded that DINP is an active (antiandrogenic) phthalate. Based on the cumulative risk assessment conducted by the CHAP, the Commission determined that ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety,'' the Commission proposed to permanently prohibit children's toys and child care articles containing concentrations of more than 0.1 percent of DINP. The Commission proposed making the interim prohibition concerning DINP permanent because the Commission concluded that allowing the use of DINP in children's toys and child care articles would further increase the cumulative risk to male reproductive development. Although the interim prohibition applies to children's toys that can be placed in a child's mouth and child care articles, the NPR proposed permanently prohibiting DINP in all children's toys and child care articles. 79 FR at 78334–35.

The Commission proposed lifting the interim prohibitions regarding DIDP and DNOP. The Commission agreed with the CHAP that DIDP and DNOP are not antiandrogenic, and therefore, they do not contribute to the cumulative risk from antiandrogenic phthalates. The CHAP determined that neither phthalate poses a risk in isolation. Therefore, the Commission concluded that continuing the prohibitions regarding DIDP and DNOP is not necessary to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety. *Id.* at 78334–78336.

In addition, the Commission determined that DIBP, DPENP, DHEXP, and DCHP are associated with adverse effects on male reproductive development and contribute to the cumulative risk from antiandrogenic phthalates. The Commission agreed with the CHAP's recommendation and proposed to prohibit children's toys and child care articles containing concentrations of more than 0.1 percent of DIBP, DPENP, DHEXP, and DCHP. 79 FR at 78326–38. The Commission proposed that the rule would take effect 180 days after publication of a final rule in the **Federal Register**. *Id.* at 78339.

C. Additional NHANES Analysis

As explained further in section III.C.2 of this preamble, the CHAP based its analysis, in part, on human biomonitoring data from the Centers for Disease Control and Prevention's (CDC) National Health and Nutrition Examination Survey (NHANES). The CHAP analyzed data from NHANES' 2005/2006 data cycle. That data set had a larger number of pregnant women than is usual for NHANES data sets. Since publication of the NPR, CPSC staff has reviewed and analyzed the NHANES data cycles released by the CDC after the 2005/2006 data cycle. CPSC staff issued a report in June 2015 concerning the NHANES data sets that had been released up to that point: ''Estimated Phthalate Exposure and Risk to Pregnant Women and Women of Reproductive Age as Assessed Using Four NHANES Biomonitoring Data Sets (2005/2006, 2007/2008, 2009/2010, 2011/2012).'' *See https://www.cpsc.gov/s3fs-public/NHANES-Biomonitoring-analysis-for-Commission.pdf* . The June 2015 staff analysis reviewed the 2005/2006 NHANES data set to replicate the CHAP's methodology and reviewed the subsequent NHANES data sets through 2011/2012. Staff's analysis used women of reproductive age (WORA; 15–45 year of age) as the population of interest, because NHANES data sets after 2005/2006 did not have sufficient numbers of pregnant women to be statistically relevant. The Commission published a notice of availability in the **Federal Register** seeking comment on the CPSC staff document. 80 FR 35939 (June 23, 2015).

In December 2016, the CDC released the NHANES 2013/14 data cycle. CPSC staff prepared a document with staff's analysis of the NHANES 2013/14 data cycle titled, ''Estimated Phthalate Exposure and Risk to Women of Reproductive Age as Assessed Using 2013/2014 NHANES Biomonitoring Data.'' *See https://www.cpsc.gov/s3fs-public/Estimated%20Phthalate%20Exposure%20and%20Risk%20to%20Women%20of%20Reproductive%20Age%20as%20Assessed%20Using%202013%202014%20NHANES%20Biomonitoring%20Data.pdf.* The Commission published a notice of availability in the **Federal Register** seeking comments on CPSC staff's February 2017 analysis of the NHANES 2013/14 data cycle. 82 FR 11348 (February 22, 2017).

D. Public Comments

The NPR, which published in the **Federal Register** on December 30, 2014, requested comments by March 16, 2015. 79 FR 78324 (Dec. 30, 2014). The Commission extended the comment period for an additional 30 days to April 15, 2015. 80 FR 14880 (March 20, 2015). Additionally, the Commission requested comments on each of the staff's analyses of more recent NHANES data. 80 FR 35939 (June 23, 2015); 82 FR 11348 (February 22, 2017). The Commission received 91 comments on the NPR and an additional 18 comments on CPSC

staff's reports on more recent NHANES data cycles. The comments are available on *regulations.gov* under the docket: CPSC–2014–0033. Throughout this preamble, we discuss significant issues raised by these comments and CPSC's responses to those issues. As part of the briefing package that CPSC staff prepared for the Commission's consideration of this final rule, staff developed a more detailed summary of the public comments and staff's responses. These may be found at Tab B of the staff's briefing package: *https://www.cpsc.gov/s3fs-public/Final%20Rule%20-%20Phthalates%20-%20September%2013%202017.pdf* At the end of each comment summary in this preamble, we provide, in parentheses, the number of the relevant and more detailed comment/response in Tab B of the staff's briefing package.

E. Final Rule

The Commission has considered the CHAP report, CPSC staff's analyses, and comments submitted on the NPR and staff's reports concerning later NHANES data cycles. CPSC staff prepared a briefing package for the Commission that provides staff's analysis of these materials and gives staff's recommendations for the final rule. Staff's briefing package is available at: *https://www.cpsc.gov/s3fs-public/Final%20Rule%20-%20Phthalates%20-%20September%2013%202017.pdf* Based on consideration of these materials, the Commission issues this final rule, which is substantially the same as the proposed rule.

In the interest of clarity, the final rule restates the CPSIA's permanent prohibition on the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any children's toys and child care articles that contain concentrations of more than 0.1 percent of DEHP, DIBP, or BBP.

The final rule continues the interim prohibition concerning DINP and expands that restriction to prohibit all children's toys (not just those that can be place in a child's mouth) and child care articles that contain concentrations of more than 0.1 percent of DINP. After reviewing the information presented by the CHAP, CPSC staff, and commenters, the Commission concludes that continuing the interim prohibition regarding DINP will ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety. The Commission also determines that expanding the prohibition regarding DINP to cover all children's toys, not just those that can be placed in a child's mouth, is necessary to protect the health of children.

The final rule also prohibits children's toys and child care articles that contain concentrations of more than 0.1 percent of DIBP, DPENP, DHEXP, and DCHP. After reviewing the information presented by the CHAP, CPSC staff, and commenters, the Commission concludes that this restriction on the four additional phthalates is necessary to protect the health of children.

The final rule adds a paragraph, not in the proposed rule, that repeats the statutory provision stating that the phthalates prohibitions apply to plasticized component parts of children's toys and child care articles, or other component parts of those products that are made of materials that may contain phthalates. *See* 15 U.S.C. 2057c(c). This addition does not make any substantive change, but it provides clarity by placing this statutory language in the regulation.

As was proposed, the final rule will take effect 180 days after publication in the **Federal Register** and will apply to products manufactured or imported on or after that date. The Commission's rationale for the final rule is explained in the following sections of this preamble.

II. Legal Authority

A. Summary of Legal Authority

Section 108 of the CPSIA provides the legal authority for this rule. As directed by section 108(b)(2), the Commission convened a CHAP to study the effects on children's health of phthalates and phthalate alternatives. The CPSIA directs the CHAP to examine ''the full range of phthalates that are used in products for children,'' and to consider numerous issues specified in the statute (discussed further in section III.A of this preamble). As required by section 108(b)(2)(C), the CHAP prepared a report for the Commission that included recommendations to the Commission concerning any phthalates not already subject to the permanent prohibition or phthalate alternatives that should be prohibited. 15 U.S.C. 2057c(b)(2)(C).

The CPSIA further directs that, within 180 days of receiving the CHAP's report, the Commission shall promulgate a final rule in accordance with section 553 of the APA. The Commission must ''determine, based on such report, whether to continue in effect the [interim] prohibition . . ., in order to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.'' *Id.* 2057c(b)(3)(A). Additionally, the Commission must ''evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.'' *Id.* 2057c(b)(3)(B).

A violation of the permanent or interim prohibitions or any rule the Commission subsequently issues under section 108(b)(3) ''shall be treated as a violation of section 19(a)(1) of the Consumer Product Safety Act.'' *Id.* 2057c(e). Additionally, section 108(f), concerning preemption, states that the permanent and interim prohibitions and the Commission's phthalates rule ''shall be considered consumer product safety standards under the Consumer Product Safety Act.'' *Id.* 2057c(f).

Section 108 of the CPSIA sets out the criteria for the Commission's determinations in this rulemaking. Regarding phthalates subject to the interim prohibition, the Commission is to determine, based on the CHAP report, whether their continued regulation is needed ''to ensure a reasonable certainty of no harm . . . with an adequate margin of safety.'' Regarding other children's products and other phthalates, the Commission is to evaluate the CHAP report and determine whether additional restrictions are ''necessary to protect the health of children.'' 15 U.S.C. 2057c(b)(3). Congress required the Commission to use these criteria for the phthalates rulemaking.

B. Comments Regarding Legal Authority

Comments raised various issues concerning the Commission's legal authority for this rulemaking. These comments focused primarily on: The CPSIA's requirements for the CHAP, the CPSIA's requirements for the rulemaking, relevance of (and compliance with) the Information Quality Act (IQA), and compliance with requirements of the Administrative Procedure Act (APA). This section summarizes and responds to key issues raised by comments related to the Commission's legal authority. Tab B of staff's briefing package provides a more detailed discussion of the comments and responses. *https://www.cpsc.gov/s3fs-public/Final%20Rule%20-%20Phthalates%20-%20September%2013%202017.pdf?nArsRDzq81e90J4Re2BFAzjdQHxq8Mh_.*

1. The Information Quality Act

Comment: IQA Applicability: Several commenters asserted that the CHAP report and the phthalates rulemaking must comply with the Office of Management and Budget's (OMB's) Guidelines issued under the IQA and CPSC's guidelines. The commenters stated that the OMB's IQA Guidelines require that agencies' disseminations meet a basic standard of quality for objectivity, utility and integrity, and that these requirements apply to the CHAP report and to CPSC's rulemaking. The commenters also asserted that the CHAP report is ''influential'' under the IQA Guidelines because it meets the OMB standard for influential, *i.e.,* has ''a clear and substantial impact on important public policies or private sector decisions.''

Response: The IQA, Public Law 106–554, required OMB to draft guidelines regarding ''the quality, objectivity, utility, and integrity of information . . . disseminated by Federal agencies'' and required each agency to issue its own guidelines. OMB issued ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integration of Information Disseminated by Federal Agencies'' (OMB Guidelines), 67 FR 8452. The CPSC issued its Information Quality Guidelines (CPSC Guidelines) in October 2002, which substantially follow OMB's Guidelines.[2] As provided in CPSC's Guidelines, we are responding to comments on the NPR to address a commenter's request for correction under the IQA.

OMB's Guidelines apply to federal agencies that are subject to the Paperwork Reduction Act (PRA), 42 U.S.C. chapter 35. 67 FR 8453. This includes the CPSC. Both OMB's and CPSC's Guidelines apply to information that the agency ''disseminates.'' OMB's Guidelines define the term ''dissemination'' to mean ''agency initiated or sponsored distribution of information to the public,'' with several exclusions. Under OMB's Guidelines, if an agency releases information prepared by an outside party, but the agency then distributes the information ''in a manner that reasonably suggests that the agency agrees with the information, this appearance of having the information represent agency views makes agency dissemination of the information subject to the guidelines.'' 67 FR 8454. As the commenters noted, the CHAP report was not prepared by CPSC but by a third party. However, in the NPR, CPSC based its recommendations on the CHAP report as required by section 108 of the CPSIA. Thus, we agree that OMB's and CPSC's Guidelines apply to the CHAP report.

As discussed in the following comments/responses, OMB's Guidelines require agencies to adopt a basic standard of information quality that includes ''objectivity, utility, and integrity.''

OMB's Guidelines define ''influential'' as:

> ''Influential'', when used in the phrase ''influential scientific, financial, or statistical information'', means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. Each agency is authorized to define ''influential'' in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.

67 FR 8460. The definition of ''influential'' places significant emphasis on the agency's discretion to determine what information is influential. The OMB Guidelines state that influential information is held to a higher standard and must have a high degree of transparency. Even if the CHAP report is considered ''influential,'' it met the OMB Guidelines' provisions for such documents. As explained throughout this document, the CHAP was transparent about its data sources and processes. See the following comments and responses. (Comments 8.1 and 8.2).

Comment: Objectivity of CHAP report. Commenters asserted that the CHAP Report (and by extension, the rulemaking) does not meet the IQA Guidelines' standard of ''objectivity.'' In addition, the commenters argued that, because the CHAP Report is influential information regarding risks to health, safety, or the environment, it ''must be based on requirements drawn from the Safe Drinking Water Act (SDWA), to use 'the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and . . . data collected by accepted methods or best available methods . . . .'" (Comment 8.3).

Response: The OMB Guidelines state: '' 'Objectivity' includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner.'' 67 FR 8459. According to the OMB Guidelines, this involves presenting the information within a proper context and identifying the sources of the information. *Id.* The OMB Guidelines further state: ''In addition, 'objectivity' involves a focus on ensuring accurate, reliable, and unbiased information.'' In a scientific context, this means ''using sound statistical and research methods.'' *Id.*

The CHAP report met the ''objectivity'' standard enunciated in the OMB Guidelines. The fact that the commenters might have conducted the analysis differently does not mean that the CHAP's analysis was not ''objective.'' The CHAP report clearly set forth its data sources and noted that to assess studies, it used the criteria of reliability, relevance, and adequacy established by the Organisation for Economic Cooperation and Development. CHAP report at pp. 13–14. The CHAP held open meetings during the process of developing its analysis, inviting experts to present their latest research findings and taking submissions of a large volume of written material. The CHAP members were selected in accordance with section 28 of the CPSA through a process to ensure their independence from bias (*e.g.,* nominated by National Academy of Sciences; free from compensation by or substantial financial interest in a manufacturer, distributor or retailer of a consumer product; not employed by the federal government, with certain scientific/research related exceptions). The CHAP explained its choices, such as the decision to focus on the effects on male reproductive development, and the CHAP noted that this approach was consistent with a National Research Council (NRC) report.[3] Similarly, the CHAP explained its decision to conduct a cumulative risk assessment and explained the methodology that it used which, again, was consistent with one of the methods discussed in the NRC report.

For an analysis of risks to human health, safety, and the environment that an agency disseminates, OMB's Guidelines direct agencies to ''adapt or adopt'' the information quality principles of the SDWA. 67 FR 8460. The SDWA directs agencies to use: '' (i) The best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).'' *Id.* at 8457. The SDWA direction is very similar to the charge to the CHAP in section 108, which states, among other things, that the CHAP is to ''review all relevant data, including the most recent best available, peer reviewed, scientific studies of these phthalates and phthalate alternatives

[2] CPSC Information Quality Guidelines. Available at: *https://www.cpsc.gov/en/Research--Statistics/Information-Quality-Guidelines/.*

[3] NRC (2008).

that employ objective data collection practices or employ other objective methods.'' 15 U.S.C. 2057c(b)(2)(B)(v). As our discussion in section III of this preamble demonstrates, the CHAP report met this direction.

Comment: IQA deficiencies as basis to invalidate rule. A commenter asserted that the CHAP report had numerous methodological flaws that violated the IQA and that these deficiencies would invalidate the phthalates rulemaking unless they are corrected because the proposed rule was premised almost entirely on the CHAP report. The commenter further asserted that OMB's IQA Guidelines are ''binding'' on agencies. (Comment 8.4).

Response: Elsewhere in this document and in Tab B of staff's briefing package, staff responds to the specific methodological ''flaws'' the commenter identifies. Regarding the legal point, we note that OMB's Guidelines are not legally enforceable requirements—guidelines, which are essentially interpretive rules, by their nature do not establish binding requirements. *See, e.g., U.S. Iowa League of Cities* v. *EPA,* 711 F.3d 844, 873 (8th Cir., 2013) (''interpretive rules do not have the force of law''). Notably, the IQA directed OMB to ''issue guidelines . . . that provide policy and procedural guidance to Federal agencies.'' The IQA did not direct OMB or agencies to undertake substantive legislative rulemaking. Consolidated Appropriations Act of 2001, Public Law 06–554, 515 (codified at 44 U.S.C. 3516 Note). OMB's Guidelines repeatedly stress their flexibility, noting that they are not intended to be ''prescriptive, 'one-size-fits-all' '' and that OMB intends for agencies to ''apply them in a common-sense and workable manner.'' 67 FR at 8452–53. The IQA established a binding requirement that OMB issue guidelines and that each agency that is subject to the PRA must issue its own guidelines, but the guidelines themselves do not bind agencies. Courts that have examined the question of the legal status of the IQA have found that the IQA (and thus necessarily, OMB's guidelines) ''creates no legal rights in any third parties.'' *Salt Inst.* v. *Leavitt,* 440 F.3d 156, 159 (4th Cir. 2006). *See Mississippi Comm. on Environmental Quality* v. *EPA,* 790 F.3d 138 (D.C. Cir. 2015) (dismissing argument that IQA created a legal requirement for EPA to use ''best available science and supporting studies'').

2. CPSIA Requirements for the CHAP

Comment: Review of all relevant data. Several commenters noted that the CPSIA directed the CHAP to ''review all relevant data, including the most recent, best available . . . scientific studies . . . that employ objective data collection practices.'' A commenter asserted that the CHAP's ''selective use and systematic mischaracterization of the data'' did not meet this requirement. Commenters argued that the CHAP's reliance on the 2005/2006 NHANES data set, rather than later data sets that were available to the CHAP before the CHAP's stopping point (2007/2008, 2009/2010 and 2011/2012 data sets), violated the CPSIA's direction to review ''all relevant data'' and to include ''the most recent'' studies. The commenters asserted that the CHAP's failure to rely on later data sets is particularly important because, due to the drop in DEHP exposures, there has been a significant decline in total risk. One commenter asserted that the CHAP had ignored 32 relevant publications on phthalates. Other commenters stated that the CHAP's analysis ''represents the cutting edge and most current and best available science,'' a significant improvement over methodologies currently used for government review of chemical risk that considered one chemical at a time. (Comments 7.8, 8.17, and 10.2).

Response: The CHAP used 2005/2006 NHANES data on pregnant women to assess phthalate exposure as part of the CHAP's cumulative risk analysis, to satisfy the CPSIA's charge to ''examine the likely levels of children's, pregnant women's, and others' exposure to phthalates . . . '' 15 U.S.C. 2057c(b)(2)(B)(iii). This data set was the most recent data on pregnant women available at the time the CHAP completed its analysis in July 2012, CHAP report at p. 31, and it was the last data set to include a larger sample of pregnant women. CPSC staff subsequently analyzed NHANES WORA data from 2007/2008 through 2013/2014 using the CHAP's analytical methodology.

The CHAP considered new scientific information published up to the end of 2012, and used standard and acceptable methods for study review, conducting an unbiased literature search and publication identification and in-depth review and reporting of the most important publications. Specifically, the CHAP included many elements of systematic review methods in its work. The CHAP used a defined literature search strategy and limited the search to studies published through 2012. The CHAP considered the quality, relevance, and weight of evidence (WOE) of individual studies. The CHAP described criteria for evaluating published studies, CHAP report at pp. 19–23, and the CHAP ensured that all studies and data were publicly available. The CHAP also described the criteria used to formulate its recommendations on individual phthalates and phthalate alternatives. *Id.* at p. 79. The CHAP criteria included review of animal and human data, weight of evidence, study replication, human exposure, hazard, and risk. *Id.* at pp. 82–142. The CHAP conducted a thorough review of a large body of literature on a complex environmental health question using appropriate methods.

All current scientific publications and NHANES data sets have been analyzed by the CHAP and CPSC staff in preparation for the final rule. This fulfills the CPSIA's directive to review ''all relevant data'' and to include ''the most recent'' studies.

Regarding the assertion that the CHAP ignored 32 relevant publications, CPSC staff reviewed this claim. The CHAP cited approximately 250 articles using a systematic approach to select the most relevant and informative articles. Five of the 32 articles the commenter identified are not relevant because they considered effects that are not relevant to the CHAP's focus on male reproductive development (*e.g.,* onset of puberty in girls, estrogenic effects); they measured exposure, but not health effects; or did not accurately reflect exposure. The other 27 articles were review articles (which are considered secondary sources), several of which covered broad topics such as environmental chemicals. Staff's more detailed assessment of these publications is provided in the response to comment 7.8 at Tab B of the staff's briefing package.

Comment: Foreseeable use and likely exposure. Several commenters noted that the CPSIA required the CHAP to ''examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products.'' Commenters asserted that the CHAP failed to meet this requirement because the CHAP ignored the more recent data that shows a significant drop in DEHP exposure and the CHAP included permanent prohibitions involving phthalates in the analysis. (Comment 8.18).

Response: As explained, the 2005/2006 NHANES dataset that the CHAP used was the most recent data on pregnant women available at the time the CHAP completed its analysis in July 2012, CHAP report at p. 31, and included a larger sample of pregnant women. CPSC staff has since analyzed more recent NHANES data using the

same methodology used by the CHAP and using WORA as a surrogate for pregnant women because an insufficient number of pregnant women were sampled in the later data sets. The final rule considers the most recent NHANES data, as well as the CHAP report.

In accordance with the CPSIA's direction to the CHAP, the CHAP's cumulative risk analysis estimated phthalate exposure from all phthalates and all sources, not only toys and child care articles. Because the CPSIA prohibition covers only children's toys and child care articles, exposures to DEHP, DBP, and BBP still occur from other sources. Thus, the CHAP and subsequent staff analyses provide a robust assessment of the ''likely levels'' of current exposures to phthalates.

Comment: CPSIA direction to CHAP to conduct a cumulative risk assessment. One commenter stated that the CPSIA did not require the CHAP to conduct a cumulative risk assessment; the CHAP could have considered cumulative effects in a more general (qualitative) way. Other commenters asserted that a cumulative risk assessment was well within the CPSIA's direction to the CHAP, noting that the CPSIA provided a clear mandate to ''review the toxicity of phthalates cumulatively'' and to consider ''the exposure to all sources of these chemicals.'' One comment from a group of commenters stated Congress specifically required the cumulative risk analysis. (Comment 8.19).

Response: Several provisions in section 108(b)(2) called on the CHAP to consider cumulative effects of phthalates. Specifically, the statute directed the CHAP to:

- ''Study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles'';
- ''consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates''; and
- ''consider the cumulative effects of total exposure to phthalates, both from children's products and from other sources, such as personal care products.''

Thus, the CPSIA required the CHAP to use some method to evaluate the health effects of multiple phthalates from multiple products. The statute did not specify that the only way to do this was through a cumulative risk assessment. However, nothing in the statute prohibited the CHAP from conducting a cumulative risk assessment. As explained in the CHAP report, and in the NPR, based on the CHAP's knowledge and expertise, the CHAP decided that a cumulative risk assessment was the most appropriate method to fulfill the direction given to the CHAP. Furthermore, the CHAP used a cumulative risk assessment approach that was consistent with recommendations from a National Academy of Sciences committee that was convened specifically to consider methods for assessing the cumulative risks from phthalates. Thus, the CHAP used its judgment and provided an explanation for its reasonable choice.

Comment: Applicability of the Federal Hazardous Substances Act. A commenter argued that the CPSIA required the CHAP to present its analysis in terms of the criteria stated in the FHSA, and the commenter asserted that the CHAP failed to do so. Similarly, a commenter asserted that the CHAP's risk assessment improperly included consideration of exposures to substances that are excluded from the FHSA's definition of ''hazardous substance,'' such as foods and drugs. 15 U.S.C. 1261(f)(2). (Comments 8.27 through 8.29).

Response: The commenter bases its argument that the CHAP should have followed FHSA criteria on a phrase in CPSIA section 108 that also appears in the FHSA. However, neither section 108 nor the legislative history of that provision mentions the FHSA. Rather, section 108(b)(2)(B) provides detailed direction to the CHAP about the criteria that the CHAP is to consider in its examination. Moreover, section 108(f) states clearly that the statutory prohibitions and the Commission's future phthalates rule ''shall be considered consumer product safety standards under the Consumer Product Safety Act.'' It is not logical that Congress would expect the CHAP to apply FHSA criteria (without mentioning that statute) to provide a report to the Commission for a rule that is to be treated as a rule under the CPSA. In fact, section 108 established a unique procedure for phthalates, making it clear that Congress did not intend for the Commission to undertake rulemaking under the FHSA. The CHAP and the Commission followed the specific process and criteria set forth in section 108. The direction to the CHAP explicitly requires the CHAP to consider phthalates that are in products outside the CPSC's jurisdiction, directing the CHAP to consider effects ''both from children's products and from other sources, such as personal care products.'' 15 U.S.C. 2057c(b)(2)(B)(iv). Many personal care products are considered cosmetics and are under the jurisdiction of the U.S. Food and Drug Administration (FDA). Congress thus intended for the CHAP's examination to be broader than just products under CPSC's authority, even though CPSC's rulemaking applies only to products under CPSC's jurisdiction.

3. CPSIA's Requirements for the Rulemaking

Comment: Commission's role regarding the CHAP report. Comments questioned the Commission's reliance on the CHAP report in the NPR. Commenters asserted that the Commission cannot merely codify or ''rigidly adhere'' to the CHAP report without applying the Commission's own judgment. To do so, they argued, would raise serious Constitutional questions by vesting government powers in a private entity and would also conflict with the CPSIA and sections 28 and 31 of the CPSA (*e.g.,* the word ''advisory'' in the CHAP). Another commenter stated that CPSC acted appropriately on the CHAP report, noting that ''CPSC made its own decision, issued its own proposed rule, and solicited public comment from industry and others on its proposed rule.'' (Comment 8.20).

Response: Section 108(b)(3) of the CPSIA requires that the Commission's rule concerning the interim prohibition be ''based on'' the CHAP report and requires the Commission to evaluate the findings and recommendations of the CHAP to determine whether to prohibit any other children's products containing any other phthalates. We agree that the statutory language does not require rigid adherence to the CHAP report and that the Commission cannot simply ''rubber-stamp'' the CHAP's recommendations. Rather, the CHAP report is advisory, and the Commission must use its judgment to decide on appropriate regulatory action in accordance with the specific criteria stated in section 108(b)(3)(A) and (B) and must consider public comments that the Commission received. This is exactly the process the Commission followed. The NPR summarized the CHAP report, including the CHAP's recommendations. 79 FR 78326–78330. The NPR presented CPSC staff's evaluation of the CHAP report and the Commission's assessment of the CHAP's recommendations. *Id.* 78330–78338. Additionally, CPSC staff reviewed more recent NHANES data and conducted an analysis of the CHAP's evaluation of exposure data. Staff reviewed and considered the comments submitted in response to the NPR and the NHANES data analysis to develop recommendations to the Commission. All of this information provides the

basis for the Commission's decision on the final rule.

Comment: Meaning of ''reasonable certainty of no harm.'' Several commenters addressed the meaning of the phrase ''reasonable certainty of no harm.'' Some commenters asserted that the standard must be interpreted in the context of CPSC's other statutes and case law. In this view, the phrase essentially means ''reasonably necessary to prevent or reduce an unreasonable risk of injury,'' as would be required for a consumer product safety rule the Commission issues under sections 7, 8 and 9 of the CPSA. Commenters also discussed the level of certainty required for a ''reasonable certainty of no harm.'' One commenter noted that the FDA uses a similar standard for food additives. One commenter stated that in the NPR, the CPSC has applied the standard essentially to require absolute certainty. In contrast, another commenter emphasized that the CPSIA calls for ensuring a '''reasonable certainty of *no* harm' (emphasis added).'' (Comments 8.14, 8.22, 8.23, and 8.25).

Response: The requirements stated in section 108(b)(3) of the CPSIA, rather than sections 7, 8 and 9 of the CPSA, apply to this rulemaking. For the Commission to issue a consumer product safety rule under sections 7, 8 and 9 of the CPSA, the Commission must determine that the product presents an unreasonable risk of injury and that a rule is necessary to reduce or prevent the unreasonable risk. The term ''unreasonable risk'' does not appear anywhere in the criteria stated in section 108(b)(3) that the Commission is to use to determine appropriate phthalate regulations. Nothing in the legislative history of section 108 indicates that Congress intended the Commission to make ''unreasonable risk'' determinations. Nor is there any indication that Congress intended that the case law related to the Commission's rules issued under sections 7, 8 and 9 of the CPSA would apply to the phthalates rulemaking.

We are aware of two other statutory schemes that use somewhat similar language. The Food Quality Protection Act (FPQA) uses a similar phrase regarding tolerance levels for pesticide residue on food. That provision requires the U.S. Environmental Protection Agency (EPA) to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.'' 21 U.S.C. 346a(b)(2)(A)(ii)(I). Under the Federal Food, Drug, and Cosmetic Act (FDCA), food additives must be ''safe.'' 21 U.S.C. 348. FDA has issued regulations that define ''safe or safety'' to mean ''that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions or use.'' In a very general sense, CPSC's approach on phthalates is consistent with FDA and EPA in that CPSC's evaluation is based on expert scientific opinion (the CHAP), takes into account the cumulative effect of the substance at issue (phthalates), and provides appropriate safety factors (*e.g.,* for inter- and intra-species uncertainties). However, because the pesticide tolerance and food additive schemes differ significantly from the CPSIA's phthalates provision, FDA's and EPA's approaches do not provide CPSC with more specific guidance on ''reasonable certainty of no harm.''

Regarding the level of certainty required, the language ''ensure a reasonable certainty of no harm . . . with an adequate margin of safety'' calls for a highly protective standard, but not 100 percent certainty of no harm. Congress required ''a reasonable certainty of no harm,'' not an absolute certainty of no harm.

4. The APA's Requirements

Comment: Data and the CPSC's obligation under the APA. Some commenters argued that the Commission's reliance on certain data violated the APA. One commenter asserted that the NPR's reliance on ''decade-old data'' is not reasonable, and therefore, violates the APA. Some commenters stated that because the NPR ''rests on outdated data,'' CPSC should withdraw the NPR, conduct a reanalysis with current exposure data, and re-propose the rule with a new comment period. In comments on CPSC staff's analysis of recent NHANES data, a commenter asserted that under the APA, ''the Commission has an obligation to disregard the CHAP's report to the extent it is incorrect, unreasonable, inconsistent with existing CPSC policy, practice, regulations or governing statutes, or is based on data that is outdated or of poor quality.'' The commenter set out the minimum requirements of informal rulemaking: Adequate notice, sufficient opportunity for public to comment, and a final rule that is not arbitrary and capricious. (Comments 8.12 and 8.13).

Response: The NPR's reliance on the CHAP report and the data the CHAP used did not violate the APA. Rather, the Commission followed the CPSIA's direction to base the rulemaking on the CHAP report. As commenters requested, staff subsequently considered updated exposure data. As the CPSIA requires, the Commission's proposal regarding the interim prohibition was ''based on the CHAP report,'' and in addition, the Commission evaluated the CHAP report to determine whether to prohibit any children's products containing any other phthalates. Additionally, as required by the CPSIA, the Commission followed the notice and comment procedures of the APA. For the final rule staff considered more recent exposure data than the CHAP used. Several commenters asked the Commission to do this additional work. Staff conducted two analyses of more recent NHANES biomonitoring data sets, posted reports of staff analyses on the CPSC Web site, and the Commission requested public comment on each analysis. 80 FR 35938 (June 23, 2015) and 82 FR 11348 (February 22, 2017). We agree that under section 553 of the APA, the Commission must evaluate the CHAP report along with comments submitted in response to the proposed rule and engage in reasoned decision making to issue a final rule. This is the approach the agency has taken. The Commission provided adequate notice in the NPR (describing the CHAP report, providing staff's evaluation of the CHAP report and explanation of, and reasons for, the proposed rule); provided sufficient opportunity for the public to comment (even extending the comment period and obtaining comment on the two staff reanalysis documents); and the Commission explains its reasoning for the final rule in this preamble and supporting documents.

Comment: Restriction involving DINP and compliance with APA: A commenter asserted that continuing the interim prohibition involving DINP is arbitrary and capricious (in violation of the APA) because:

- There is a reasonable certainty of no harm without such a prohibition (due to permanent prohibition involving DEHP);
- DINP contributes only a small fraction to overall risk;
- the endpoint of antiandrogenicity is likely inappropriate;
- it is questionable that DINP should be included in a cumulative risk assessment;
- it is questionable that a cumulative risk assessment provides a reasonable basis for a regulatory decision;
- DEHP levels have dropped so that the Hazard Index (HI) is now well below one; and
- even using the 2005/2006 NHANES data, the contribution of DINP to the overall HI is minimal and the major source of exposures is diet—children's products account for only a small fraction of overall HI.

In contrast, another commenter stated that the CHAP's recommendation and the Commission's proposal to permanently prohibit children's toys and child care articles containing more than 0.1 percent of DINP are justified. The commenter stated that data indicating that DINP is a potential health risk have gotten stronger since release of the CHAP report. (Comment 8.16).

Response: In general, the APA requires that agencies' rulemaking be based on reasoned decision making. Staff's briefing package explains the reasons for staff's recommendations, satisfying this threshold requirement. The specific issues the commenter raised about regulation of DINP and the apparent reductions over time in exposure to DEHP are addressed in detail in section IV.D.1.a. of this preamble.

III. The CHAP

A. CPSIA Direction

The CPSIA directed the Commission to convene a CHAP ''to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.'' 15 U.S.C. 2057c (b)(2). The statute provides very specific direction to the CHAP regarding its work. The CHAP must:

Complete an examination of the full range of phthalates that are used in products for children and shall—

- examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates;
- consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates;
- examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products;
- consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products;
- review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods;
- consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposure;
- consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and
- consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

Id. 2057c(b)(2)(B). In its final report, the CHAP is required to recommend to the Commission whether any ''phthalates (or combinations of phthalates)'' in addition to those permanently prohibited, including the phthalates covered by the interim prohibition or phthalate alternatives, should be declared banned hazardous substances. *Id.* 2057c(b)(2)(C).

B. The CHAP's Process

The CHAP's process was open and transparent. The CHAP met in public session (and webcast) seven times and met via teleconference (also open to the public) six times.[4] A record of the CHAP's public meetings, including video recordings and information submitted to the CHAP, as well as the final CHAP report, are available on the CPSC Web site.[5]

At a meeting on July 26–28, 2010, the CHAP heard testimony from the public, including testimony from federal agency representatives, who discussed federal activities on phthalates. The CHAP also invited experts to present their latest research findings at the meeting in July 2010 and during subsequent meetings. Members of the public who presented testimony to the CHAP at the July 2010 meeting included manufacturers of phthalates and phthalate substitutes, as well as representatives of non-governmental organizations. In addition to oral testimony, the manufacturers and other interested parties submitted an extensive volume of toxicity and other information to the CHAP and the CPSC staff. All submissions given to CPSC staff were provided to the CHAP.

Although the CPSIA did not require peer review of the CHAP's work, at the CHAP's request, four independent scientists peer reviewed the draft CHAP report. CPSC staff applied the same criteria for selecting the peer reviewers as is required for the CHAP members.[6] The CHAP report was due to the Commission on April 8, 2012. The CHAP submitted the final report to the Commission on July 18, 2014.

C. The CHAP Report

1. Health Effects

The CHAP reviewed all of the potential health effects of phthalates. The CHAP explained that, although phthalates cause a wide range of toxicities, the CHAP focused on male reproductive developmental effects (MRDE) in part because this is the most sensitive and extensively studied endpoint for phthalates. The CHAP noted that this focus was consistent with a 2008 report from the National Research Council.[7] The CHAP systematically reviewed literature on phthalate developmental and reproductive toxicology. CHAP report, at pp. 1–2 and 12–13. The CHAP found that ''[s]tudies conducted over the past 20 years have shown that phthalates produce a syndrome of abnormalities in male offspring when administered to pregnant rats during the later stages of pregnancy.'' *Id.* at p. 15. The CHAP explained its approach to selection of data so that its analysis would be based on the most appropriate and reliable toxicological data. *Id.* at pp. 19–22. The CHAP stated that this collection of interrelated abnormalities, known as the ''rat phthalate syndrome,'' is characterized by various effects on the male reproductive system: Malformations of the testes, prostate, and penis (hypospadias); undescended testes; reduced anogenital distance (AGD), and retention of nipples.[8] Male pups also have reduced fertility as adults. The CHAP noted that only certain phthalates produce these abnormalities, phthalates with certain structural characteristics (three to seven, or eight, carbon atoms in the backbone of the alkyl side chain). The CHAP referred to these phthalates as ''active'' or ''antiandrogenic'' phthalates. *Id.* at pp. 15–16.

The CHAP noted that, although there is a great deal of information on

[4] The CHAP met in one closed meeting as part of the peer review process, January 28–29, 2015.

[5] *http://www.cpsc.gov/chap.*

[6] Peer reviewers were nominated by the National Academy of Sciences. Peer reviewers did not receive compensation from, nor did they have a substantial financial interest in, any of the manufacturers of the products under consideration. In addition, the peer reviewers were not employed by the federal government, except the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research.

[7] NRC recommended, for example, that it is appropriate to perform a phthalate cumulative risk assessment for MRDE (phthalate syndrome); the cumulative risk assessment should consider all endpoints associated with MRDE or, alternatively, one sensitive endpoint such as reductions in testosterone. NRC also recommended using dose addition, a hazard index approach, assuming that mixture effects occur at low-doses, and including other (non-phthalate) antiandrogens.

[8] Nipple retention does not normally occur in rodents, as it does in humans.

phthalate syndrome in rats, there is relatively little on the phthalate syndrome in other animal species. The CHAP reviewed the existing data-exposing species, such as rabbits, mice, and marmosets, to phthalates. The CHAP concluded that these studies with animals other than rats show that most animals tested are more resistant to phthalates than rats, but due to the limitations on these studies (*e.g.,* small number of animals exposed, only one phthalate, only one dose, high experimental variation), the CHAP found that ''studies in rats currently offer the best available data for assessing human risk.'' *Id.* at p. 18.

The CHAP reviewed, and discussed in its report, studies examining the mechanism by which phthalates produce adverse effects. The CHAP concluded that the phthalate syndrome effects are largely due to the suppression of testosterone production, as well as reduced expression of the insulin-like hormone 3 gene. *Id.* at pp. 18–19.

In addition to studies on animals, the CHAP also reviewed studies on the effect that exposure to phthalates has on human health (epidemiological studies). The CHAP noted that rat phthalate syndrome resembles testicular dysgenesis syndrome (TDS) in humans. TDS includes poor semen quality, reduced fertility, testicular cancer, undescended testes, and hypospadias.[9] CHAP report at p. 2. The CHAP concluded that studies provide human data linking prenatal exposure to phthalates with certain effects on male reproductive development (such as reduced anogenital distance,[10] reduced sperm quality and infertility in male infants). In addition, the CHAP discussed studies that found associations between prenatal or neonatal exposure to phthalates and reductions in mental and psychomotor development and increases in attention deficits and behavioral symptoms in children. *Id.* at pp. 27–33; Appendix C.

2. Exposure

The CHAP assessed human exposure to phthalates by two different, but complementary, methods: Human biomonitoring (HBM) and exposure-scenario analysis. HBM relies on measurements of phthalate metabolites in human urine to estimate exposure to phthalates. *Id.* at pp. 34–48; Appendix D. The CHAP used two data sources for HBM: NHANES and the Study for Future Families (SFF). NHANES is conducted by the CDC, and measures phthalates and other chemicals in human urine and blood in a statistically representative sample of thousands of U.S. residents. The CHAP used data from NHANES to estimate phthalate exposures in pregnant women and women of reproductive age (WORA). Because NHANES does not measure phthalate metabolites in children younger than 6 years old, the CHAP used measurements from the SFF to obtain exposure estimates for infants. SFF is a study of mother-child pairs, funded by the National Institutes of Health (NIH) and the EPA. The CHAP used this HBM data to derive daily intake (DI) estimates to use in its risk assessment calculations. The CHAP used the 2005/2006 NHANES data cycle in its analysis. The SFF data are from 1999 to 2005. From the HBM data, the CHAP concluded that ''exposure to phthalates in the United States (as worldwide) is omnipresent. The U.S. population is co-exposed to many phthalates simultaneously.'' *Id.* at p. 37. The CHAP also noted that, because the data indicate that sources and routes of exposure among high- and low-molecular weight phthalates are similar, it is highly likely that substitution of one phthalate will lead to increased exposure to another similar phthalate. *Id.*

The HBM data do not measure the sources of people's exposure to phthalates. For this, the CHAP used a scenario-based exposure assessment. *Id.* at pp. 49–60; Appendix E. The CHAP used estimations of phthalate concentrations in various sources to predict exposures to subpopulations (pregnant women/WORA, infants, toddlers, and children). For the scenario-based exposure assessment, the CHAP estimated the DINP exposure that would occur if DINP were allowed in children's toys and child care articles. The CHAP found that for most phthalates, food, rather than children's toys or child care articles, is the primary source of exposure for women and children. The CHAP examined exposures to various phthalates from these sources. The CHAP found that infants, toddlers, and children were primarily exposed to DINP, DEHP, and DIDP. For infants, exposure to DINP was primarily from diet, but exposure was also due to DINP in teethers and toys. *Id.* at pp. 50–51.

3. Phthalates Risk Assessment

a. Cumulative Risk Assessment

In accordance with the CPSIA's direction, the CHAP considered health effects of phthalates ''in combination with other phthalates.'' 15 U.S.C. 2057c(b)(2)(B)(ii). The CHAP found, based on published studies, that active phthalates act in an additive fashion. That is, exposures to multiple phthalates at lower doses act in concert to produce the same effect as a higher dose of a single phthalate. The CHAP stated: ''Experimental data on combination of effects of phthalates from multiple studies (*e.g.,* Howdeshell *et al.* (2008)) provide strong evidence that dose addition can produce good approximations of mixture effects when the effects of all components are known.'' *Id.* at p. 61. The CHAP also noted that, in addition to phthalates, other chemicals, including certain pesticides and preservatives, add to the male reproductive effects of phthalates. CHAP report at pp. 26–27. Due to the additive effects of certain phthalates, the CHAP determined that it is appropriate to conduct a cumulative risk analysis to assess the antiandrogenic phthalates the CHAP identified. *Id.*

For its cumulative risk assessment, the CHAP used a Hazard Index (HI) approach which, the CHAP noted, is widely used in cumulative risk assessments of chemical mixtures. *Id.* To determine the HI, one first calculates the hazard quotient (HQ) for each chemical and then adds the HQs together. The ''HQ'' is generally defined as the ratio of the potential exposure to a substance and the level at which no adverse effects are expected. If the HQ is less than one, the expectation is that no adverse effects will result from exposure; but if the HQ is greater than one, adverse effects are possible. Rather than use acceptable daily intakes (ADI) or reference doses (RfDs) as the denominator of HQs, the CHAP used ''potency estimates for antiandrogenicity'' (PEAAs). The PEAA is an estimate of the level of exposure at which the risk of antiandrogenic effects is considered negligible. The CHAP estimated a PEAA for each phthalate by dividing the MRDE ''antiandrogenic'' point of departure (POD; toxicity endpoint) by an uncertainty factor (UF). The CHAP used three sets of PEAAs (the CHAP refers to these as Cases) to evaluate the impact of assumptions in calculating the HI. *Id.* at pp. 61–65.

The CHAP calculated the HI per woman and infant, using the NHANES data on pregnant women (representing exposure to the fetus) and the SFF data on children. The CHAP found that roughly 10 percent of pregnant women in the U.S. population have HI values that exceed 1.0 (pregnant women had median HIs of about 0.1 (0.09 to 0.14), while the 95th percentile HIs were

[9] A malformation of the penis.

[10] Distance between the anus and genitals, which is greater in males than in females.

about 5, depending on which set of PEAAs was used. The CHAP found that 4–5 percent of infants have HI values that exceed 1.0 (infants had median HIs about 0.2, while the 95th percentiles were between 0.5 and 1.0). *Id.* at p. 65 and Table 2.16. Based on this cumulative risk assessment, the CHAP recommended that phthalates that induce antiandrogenic effects (DINP, DIDP, DPENP, DHEXP, and DCHP should be permanently banned from use in children's toys and child care articles at levels greater than 0.1 percent. *Id.* at pp. 7–8.

Regarding the HQs for the individual phthalates, the CHAP found that DEHP dominated, ''with high exposure levels and one of the lowest PEAAs.'' *Id.* at p. 65. HQ values were similar for three phthalates (DBP, BBP, and DINP), while DIBP had the smallest HQs. *Id.*

b. Risks in Isolation

In accordance with the CPSIA's direction, the CHAP also considered the risks of phthalates in isolation. 15 U.S.C. 2057c(b)(2)(B)(ii). The CHAP used a margin of exposure (MOE) approach to assess the risks in isolation. CHAP report at p. 69. The MOE is the ''no observed adverse effect level'' (NOAEL) of the most sensitive endpoint in animal studies divided by the estimated exposure in humans. Higher MOEs indicate lower risks. Generally, MOEs greater than 100 to 1,000 are adequate to protect public health. *Id.* The CHAP found that, with the exception of DEHP, for all phthalates that it evaluated in isolation, the MOEs were within acceptable ranges. *Id.* at pp. 82–121.

4. CHAP's Recommendations to the Commission

a. Phthalates Subject to the Interim Prohibition

Diisononyl phthalate (DINP)

The CHAP recommended that the Commission permanently prohibit the use of DINP in children's toys and child care articles at levels greater than 0.1 percent. The CHAP explained that, although DINP is less potent than other active phthalates, it induces antiandrogenic effects in animals, and therefore, DINP can contribute to the cumulative risk from other antiandrogenic phthalates. *Id.* at pp. 95–99.

The CHAP explained that studies exposing rats to DINP during the critical period of fetal development showed effects on male reproductive development. The CHAP stated: ''Five such studies have shown that DINP exposure in rats during the perinatal period is associated with increased incidence of male pups with areolae and other malformations of androgen-dependent organs and testes (Gray *et al.,* 2000), reduced testis weights before puberty (Matsutomi *et al.,* 2003), reduced AGD (Lee *et al.,* 2006), increased incidence of multinucleated gonocytes, increased nipple retention, decreased sperm mobility, decreased male AGD, and decreased testicular testosterone (Boberg *et al.,* (2011)), and reduced fetal testicular testosterone production and decreased StAR and Cyp11a mRNA levels (Adamson *et al.,*2009; Hannas *et al.,* 2011b).'' *Id.* at pp. 96–97.

The CHAP report discussed the CHAP's determination of a NOAEL for DINP. *Id.* at pp. 97–98. The CHAP stated:

> Taken together, the data from Boberg *et al.* (2011), Hannas *et al.* (2011b), and Clewell *et al.* (2013a; 2013b) indicate that the developmental NOAEL, based on antiandrogenic endpoints (nipple retention, fetal testosterone production, and MNGs) is between 50 and 300 mg/kg–day. Taking a conservative approach, the CHAP assigns the NOAEL for DINP at 50 mg/kg–day. However, the CHAP also wants to point out that a simple extrapolation based upon relative potencies (as described in Hannas *et al.,* 2011b) with 2.3-fold lesser potency of DINP than DEHP (in terms of fetal testicular T reduction) would lead to a NOAEL of 11.5mg/kg–d for DINP. This scenario is reflected in case 2 of the HI approach.

Id. at p. 98. Regarding exposure, the CHAP observed: ''DINP has been used in children's toys and child care articles in the past.'' *Id.* The CHAP noted that metabolites of DINP have been detected in urine samples in NHANES surveys. *Id.*

Considering risk in isolation (following the MOE approach), the CHAP found MOEs that are generally considered adequate for public health. For male developmental effects, in infants (using the SFF study) the CHAP stated that the total exposure ranged from 640 to 42,000, using 95th percentile estimates of exposure. For pregnant women (using NHANES data), the CHAP stated that the MOE for total DINP exposure ranged from 1000 to 68,000. The CHAP stated: ''Typically, MOEs exceeding 100–1000 are considered adequate for public health; however, the cumulative risk of DINP with other antiandrogens should also be considered.'' *Id.* at p. 99. The CHAP also considered the effects of DINP on the liver, and it found that the MOEs were within an acceptable range.

In making its recommendation to the CPSC concerning DINP, the CHAP stated: ''The CHAP recommends that the interim ban on the use of DINP in children's toys and child care articles at levels greater than 0.1% be made permanent. This recommendation is made because DINP does induce antiandrogenic effects in animals, although at levels below that for other active phthalates, and therefore can contribute to the cumulative risk from other antiandrogenic phthalates.'' *Id.*

Di-*n*-octyl phthalate (DNOP)

The CHAP reviewed data on DNOP. *Id.* at pp. 91–95. The CHAP found that, although DNOP is a potential developmental toxicant (causing supernumerary ribs) and a potential systemic toxicant (causing adverse effects on the liver, thyroid, immune system and kidney), ''DNOP does not appear to possess antiandrogenic potential.'' The CHAP estimated that MOEs for DNOP for infants and toddlers ranged from 2,300 to 8,200. The CHAP concluded: ''because the MOE in humans are likely to be very high, the CHAP does not find compelling data to justify maintaining the current interim ban on the use of DNOP in children's toys and child care articles.'' The CHAP recommended that the Commission lift the interim prohibition with regard to DNOP, but also recommended that ''agencies responsible for dealing with DNOP exposures from food and child care products conduct the necessary risk assessments with a view to supporting risk management steps.'' *Id.* at p. 95.

Diisodecyl phthalate (DIDP)

The CHAP reviewed data on DIDP. *Id.* at pp. 100–105. The CHAP found that, although DIDP is a potential developmental toxicant (causing supernumerary ribs) and a potential systemic toxicant (causing adverse effects on the liver and kidney), ''DIDP does not appear to possess antiandrogenic potential.'' The CHAP estimated the MOEs for DIDP range from 2,500 to 10,000 for median intakes and from 586 to 33,000 for 9th percentile intakes. *Id.* at p. 104. The CHAP found that DIDP's MOEs in humans are likely to be relatively high. The CHAP stated: ''The CHAP does not find compelling data to justify maintaining the current interim ban on the use of DIDP in children's toys and child care articles.'' The CHAP recommended that the Commission lift the interim prohibition with regard to DIDP, but suggested that ''agencies responsible for dealing with DIDP exposures from food and child care products conduct the necessary risk assessments with a view to supporting risk management steps.'' *Id.* at pp. 104–105.

b. Other Phthalates

Due to their adverse effect on male reproductive development (and thus their contribution to the cumulative risk from other antiandrogenic phthalates), the CHAP recommended that the Commission permanently prohibit the use of four additional phthalates at levels greater than 0.1 percent in children's toys and child care articles.

Diisobutyl phthalate (DIBP)

The CHAP found that DIBP is similar in toxicity to DBP, one of the phthalates subject to the CPSIA's permanent prohibition. The CHAP reviewed studies that found that exposure to DIBP had effects on male reproductive development. The CHAP stated: ''Six studies in which rats were exposed to DIBP by gavage during late gestation showed that this phthalate reduced AGD in male pups, decreased testicular testosterone production, increased nipple retention, increased the incidence of male fetuses with undescended testes, increased the incidence of hypospadias, and reduced the expression of P450scc, ins13, genes related to steroidogenesis, and StAR protein (Saillenfait *et al.,* 2006; Borch *et al.,* 2006a; Boberg *et al.,* 2008; Howdeshell *et al.,* 2008; Saillenfait *et al.,* 2008; Hannas *et al.,* 2011b).'' *Id.* at p. 110.

Regarding exposure, the CHAP noted that DIBP has been detected in some toys during routine CPSC compliance testing. The CHAP stated: ''DIBP is too volatile to be used in PVC but is a component in nail polish, personal care products, lubricants, printing inks, and many other products.'' *Id.* at 111. Metabolites of DIBP have been detected in human urine in NHANES surveys and in Germany.

Assessing risk, the CHAP found: ''The margins of exposure (95th percentile total DIBP exposure) for pregnant women in the NHANES study ranged from 5,000 to 125,000. For infants in the SFF study, the MOE (95th percentile total DIBP exposure) ranged from 3,600 to 89,000.'' *Id.* Although these MOEs are within an acceptable range, the CHAP stated that the cumulative risk should be considered. *Id.* Explaining its recommendation concerning DIBP, the CHAP stated:

> Current exposures to DIBP alone do not indicate a high level of concern. DIBP is not widely used in toys and child care articles. However, CPSC has recently detected DIBP in some children's toys. Furthermore, the toxicological profile of DIBP is very similar to that of DBP, and DIBP exposure contributes to the cumulative risk from other antiandrogenic phthalates. The CHAP recommends that DIBP should be permanently banned from use in children's toys and child care articles at levels greater than 0.1%.

Id. at pp. 111–112.

Di-*n*-pentyl phthalate (DPENP)

Although DPENP is not widely used, the CHAP found that it is the most potent phthalate with respect to developmental toxicity. According to the CHAP, two studies (Howdeshell *et al.* (2008) and Hannas *et al.* (2011a)) found that DPENP exposure reduced fetal testicular testosterone production, StAR Cyp11a, and ins13 gene expression, and increased nipple retention. *Id.* at p. 112. The CHAP stated that DPENP is not currently found in children's toys or child care articles and is not widely found in the environment. *Id.* at p. 113. In its recommendation, the CHAP stated: ''The CHAP recommends that DPENP should be permanently banned from use in children's toys and child care articles at levels greater than 0.1%. The toxicological profile of DPENP is very similar to that of the other antiandrogenic phthalates, and DPENP exposure contributes to the cumulative risk.'' *Id.*

Di-*n*-hexyl phthalate (DHEXP)

According to the CHAP, a National Toxicology Program review of DHEXP in 2003 reported that based on the limited data available at that time, DHEXP is a developmental toxicant at high doses (9900 mg/kg-d), but the data were not adequate to determine an NOAEL or LOAEL. The CHAP stated that since then, ''one developmental toxicity study has reported that DHEXP exposure reduced the AGD in male pups in a dose-related fashion and increased the incidence of male fetuses with undescended testes (Saillenfait *et al.,* 2009a).'' *Id.* at p. 114. The CHAP report stated: ''Saillenfait *et al.* observed reproductive tract malformations, including hypospadias, undeveloped testes, and undescended testes, in young adult male rats exposed prenatally to doses of 125 mg/kg-d DHEXP or greater (Saillenfait *et al.,* 2009b).'' *Id.* at p. 115.

The CHAP stated that DHEXP is currently not found in children's toys or child care articles and is not widely found in the environment. It is primarily used in the manufacture of PVC and screen printing inks and is also used ''as a partial replacement for DEHP.'' *Id.* at p. 116. Regarding risk, the CHAP stated: ''DHEXP is believed to induce developmental effects similar to those induced by other active phthalates. Due to low exposure, current risk levels are believed to be low.'' *Id.* The CHAP recommended that DHEXP be permanently banned from use in children's toys and child care articles at levels greater than 0.1%. The CHAP stated: ''The toxicological profile of DHEXP is very similar to that of the other antiandrogenic phthalates, and DHEXP exposure contributes to the cumulative risk.'' *Id.*

Dicyclohexyl phthalate (DCHP)

The CHAP found that studies on DCHP showed effects on male reproductive development. The CHAP report states: ''Two studies in rats exposed to DCHP by gavage during late gestation showed that this phthalate prolonged preputial separation, reduced AGD, increased nipple retention, and increased hypospadias in male offspring (Sallenfait *et al,* 2009a; Yamasaki *et al.,* 2009). One study in rats exposed to DCHP in the diet showed that DCHP decreased the AGD and increased nipple retention in F1 males (Hoshino *et al.,* 2005).'' *Id.* at pp. 116–117. The CHAP stated that DCHP is currently not found in children's toys or child care articles and is not widely found in the environment. FDA has approved it ''for use in the manufacture of various articles associated with food handling and contact.'' DCHP is also a component of hot melt adhesives. *Id.* at p. 117. The CHAP stated: ''DCHP induces developmental effects similar to other active phthalates. Due to low exposure, current risk levels are believed to be low.'' The CHAP recommended that DCHP be permanently banned from use in children's toys and child care articles at levels greater than 0.1%. *Id.* at p. 118.

c. Phthalate Alternatives

The CPSIA also directed the CHAP to consider health effects of phthalate alternatives and to include in its report to the Commission recommendations for any phthalate alternatives that should be banned. 15 U.S.C. 2057c(b)(2)(B)(viii) and 2057c(b)(2)(C). The CPSIA defines ''phthalate alternative'' as ''any common substitute to a phthalate, alternative material to a phthalate, or alternative plasticizer.'' *Id.* 2057c(g)(2)(A). Accordingly, the CHAP also reviewed phthalate alternatives. CHAP report at pp. 121–142. The CHAP did not recommend banning any phthalate alternatives. We also note that the Commission's rulemaking authority under section 108 of the CPSIA does not extend to phthalate alternatives. 15 U.S.C. 2057c(b)(3).

D. Comments Regarding the CHAP

Comments concerning the substance of the CHAP's analysis are discussed in section IV of this preamble. This section covers comments concerning the CHAP's process.

1. Peer Review

Comment: Applicability of OMB Peer Review Bulletin. Commenters asserted that the CHAP report was subject to OMB's peer review bulletin, that it qualifies as a ''highly influential'' scientific assessment, and that it should be subject to a peer review that comports with the highest standards for transparency, openness, and objectivity, as outlined in the OMB's peer review bulletin. (Comments 8.6 and 8.7).

Response: The OMB's bulletin, *Final Information Quality Bulletin for Peer Review* (70 FR 2664 (Jan. 14, 2005)) (OMB Bulletin), requires ''to the extent permitted by law,'' that agencies conduct peer review on all influential scientific information that the agency intends to disseminate. The OMB Bulletin defines ''influential scientific information'' 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 2675. We believe that the CHAP report could be considered ''influential'' under this definition. According to the OMB Bulletin, ''dissemination'' means ''agency initiated or sponsored distribution of information to the public.'' *Id.* at 2674. The preamble to the OMB Bulletin notes that the OMB Bulletin ''does not directly cover information supplied by third parties (*e.g.,* studies by private consultants, companies and private, non-profit organizations, or research institutions such as universities). However, if an agency plans to disseminate information supplied by a third party (*e.g.,* using this information as the basis for an agency's factual determination that a particular behavior causes a disease), the requirements of the OMB Bulletin apply, if the dissemination is 'influential.' '' *Id.* at 26676. Although the CHAP report was written by a third party, we believe that by relying on the CHAP report in support of the NPR, the Commission disseminated the CHAP report. Under the Bulletin, additional requirements apply to ''highly influential scientific assessments,'' which the Bulletin defines as a scientific assessment that:

(1) Could have a potential impact of more than $500 million in any year, or

(2) is novel, controversial, or precedent-setting or has significant interagency interest.

One might consider the CHAP report to be a ''novel, controversial, or precedent-setting'' report that it could be of ''significant interagency interest'' because, as the CHAP report indicates, many of the products that contain phthalates (*e.g.,* food and cosmetics) fall under other agencies' jurisdiction.

Comment: Compliance with OMB Peer Review Bulletin. Some commenters asserted that the CHAP failed to adhere to the OMB Bulletin requirements for the peer review of a highly influential scientific assessment. In contrast, other commenters supported the peer review process used for the CHAP report, stating that the peer review was part of an open and transparent process. (Comment 8.7).

Response: The peer review process used for the draft CHAP report complied with the additional requirements for highly influential scientific assessments. For example, as noted by some commenters, the peer review of the draft report was conducted by four independent scientists, using the same criteria for selecting the peer reviewers (by nomination of the National Academy of Sciences) required for selecting the CHAP members. The peer reviewers were not employed by manufacturers of the products under consideration or by the federal government, except the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research.

Additionally, the CPSC made public: The identity of the peer reviewers, the charge to the peer reviewers, the draft report that was reviewed, and the peer reviewers' comments. CPSC posted all of the information on the CPSC Web site at the same time the final CHAP report was released to the public; and the information is available on the CPSC's Web site, in accordance with the additional requirements for a highly influential scientific assessment.[11] Thus, the public would have ample opportunity to see the concerns reviewers raised and how the CHAP addressed the concerns.

Finally, regarding public comment, as discussed in the next response, the peer review process used by CPSC complied with the OMB Bulletin.

Comment: Peer review and public comment. Commenters asserted that as a ''highly influential'' assessment, the CHAP report should have been subject to an open public comment period, as set forth in the OMB Bulletin. Commenters asserted that the Bulletin establishes strict minimum requirements for the peer review of highly influential scientific assessments, including a requirement that an agency ''make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review . . . and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public.'' Commenters asserted that this would have allowed for comment on flaws in the CHAP's analysis. (Comment 8.8).

Response: The OMB Bulletin states: ''The selection of an appropriate peer review mechanism for scientific information is left to the agency's discretion.'' *Id.* at 2665. It also advises: ''[a]gencies are directed to choose a peer review mechanism that is adequate, giving due consideration to the novelty and complexity of the science to be reviewed, the relevance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review.'' *Id.* at 2668. We also note that CPSC staff consulted with OMB staff before finalizing the peer review plan for the CHAP report, as recommended by the OMB Bulletin.

Although the OMB Bulletin uses the term ''requirements,'' the document emphasizes the intent to allow agencies flexibility in determining appropriate methods of peer review, *id.* at 2665, and the OMB Bulletin is a guidance document. The OMB Bulletin states that it ''is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity.'' *Id.* at 2677. *See Family Farm Alliance* v. *Salazar,* 749 F. Supp. 2d 1083 (E.D. Cal. 2010) (finding that a claim that the U.S. Fish and Wildlife Service had not conducted appropriate peer review was not judicially reviewable). Although the draft CHAP report was not provided to the public for comment at the time that the CHAP submitted the report for peer review, the agency was not required to do so, nor was the agency required to sponsor a public meeting on the peer review. CPSC staff and the CHAP members reasonably desired that the report should achieve a high level of quality before it was released to the public. Moreover, as explained in the next response, the CHAP report was developed through a very open public process that provided for public input as the CHAP was developing its report.

2. CHAP's Transparency and Openness

Comment: Transparency and openness of CHAP's process. Several commenters stated generally that the process for the CHAP report was not open and transparent, but had been conducted behind closed doors. Other commenters questioned the transparency of particular aspects of the CHAP report, such as the methods used to review the scientific health evidence

[11] *See https://www.cpsc.gov/chap.*

and assess cumulative risk. In contrast, other commenters asserted that the CHAP process was a sound and fair process, adding that the process was highly public, and that the CHAP considered public comments and written submissions (including from industry representatives who charged that the process was not open). (Comments 8.8 and 10.3).

Response: The CHAP's process for developing its report was open and transparent throughout. The CHAP developed its approach in public during seven public meetings and six public teleconference calls. During these public meetings, the CHAP discussed the methods that the CHAP would use to conduct the cumulative risk assessment. CPSC provided a page on its Web site to post all CHAP-related information. All of the data submitted to the CHAP, CPSC contractors' reports, and peer-reviewed staff reports used by the CHAP were posted on the CPSC's public Web site. The CPSC's Web site also included correspondence submitted to CPSC concerning the CHAP's work. In fact, the CHAP elected not to use industry studies on DINX and DPHP, for the very reason that the manufacturer would not make the toxicology studies available to the public. NHANES data (which the CHAP relied on) are available to the public from the CDC. Once the CHAP transmitted its final report to the Commission, CPSC posted the final report, the draft report that had been submitted for peer review, and peer reviewers' comments. The CHAP considered all subject matter expert comments from the peer review of the CHAP draft report. The initial pages of the CHAP report outlined changes to the CHAP report resulting from the peer reviewers' comments.

3. Weight of Evidence and Completeness of CHAP's Review

Comment: Nature of CHAP's review. Some commenters stated that the CHAP did not, but should have, conducted a systematic review and/or followed a weight of evidence (WOE) approach. Various commenters asserted that the CHAP should have: Employed a consistent WOE framework; demonstrated how the CHAP graded, rated, and interpreted the epidemiology studies; and specified a clear and systematic approach for addressing the uncertainties of the data equally. (Comment 10.1).

Response: The CHAP used the WOE approach in two different manners. First, the CHAP wrote a ''Weight of Evidence'' section for each recommendation for each phthalate and phthalate alternative. The CHAP also used WOE more broadly when developing overall recommendations for each phthalate or phthalate alternative. The CHAP explicitly stated factors it considered relevant to making its recommendations. CHAP report at p. 79. The CHAP stated, however, that ''Because of the nature of the subject matter and the charge questions, which involve different streams of evidence and information, the CHAP concluded that its review was not amenable to the systematic review methodology.'' *Id.* at p. 12. This does not mean that the CHAP's review was unsystematic and biased. Rather, the CHAP, which began in 2010, did not have all of the systematic review methods that are available today. However, the CHAP incorporated many of the elements that are now included in systematic review methods in their work. (See Response 10.1 of Tab B of staff's briefing package for more detailed response.)

IV. Final Rule and Rationale

This section presents the final rule and explains the Commission's rationale for the rule. The Commission has considered the CHAP report, staff's analysis of the CHAP report, staff's analysis of recent NHANES data, and the public comments submitted in response to the proposed rule and staff's NHANES reports. More specifically, we present the Commission's rationale for the rule by explaining the Commission's consideration of: Phthalates' effects on male reproductive development, human exposure to phthalates, assessment of phthalates' cumulative risk and risks in isolation, and assessment of risk for each phthalate that the CHAP considered. In addition, the Commission considered the appropriate concentration limit for the phthalates restrictions and the appropriate effective date for the rule. In this section, we also discuss phthalate requirements established by international standards and other countries.

A. Hazard: Phthalates' Effect on Male Reproductive Development

1. Summary

In accordance with the CPSIA's direction, the CHAP reviewed all available toxicity data on phthalates. The CHAP determined that the critical endpoint for its analysis was adverse effects on male reproductive development (MRDE) and other adverse effects on male fertility. This focus was consistent with the NRC's 2008 assessment. As noted in the NPR, CPSC staff supports the CHAP's choice to focus on this endpoint because: MRDE in animals is associated with many of the most common phthalates; for most active phthalates, these effects are the most sensitive health effect; and phthalate syndrome in animals resembles testicular dysgenesis syndrome (TDS) in humans. Moreover, phthalates' effects on male reproductive development are well studied. 79 FR 78331–32.

As the CHAP reported, ''Studies conducted over the past 20 plus years have shown that phthalates produce a syndrome of reproductive abnormalities in male offspring when administered to pregnant rats during the later stages of pregnancy.'' CHAP report at p. 15. These effects include: Reduced testosterone synthesis, reduced anogenital distance (AGD), nipple retention (normally does not occur in male rats), undescended testes, testicular atrophy, testicular histopathology, multi-nuclear gonocytes (MNGs), reduced production of insulin-like hormone 3 (insl3), underdeveloped gubernacular cords,[12] undescended testes, and genital malformations (hypospadias).[13] Effects may differ depending on the dose. The CHAP noted: ''the highest incidence of reproductive tract malformations is observed at higher phthalate dose levels, whereas changes in AGD and nipple/areolae retention are frequently observed at lower phthalate does levels.'' CHAP report at p. 15. These effects persist into adulthood and lead to reduced or absent reproductive ability. Many, but not all, phthalates cause phthalate syndrome.[14] The CHAP identified five phthalates (DBP, BBP, DINP, DIBP, and DEHP) that cause phthalate syndrome and for which human biomonitoring data were available to assess exposure.

As discussed in the CHAP report, studies have reported similar effects in species other than rats, such as guinea pigs, mice, rabbits, and ferrets.[15] The evidence of phthalate syndrome in mice is even stronger now than when the CHAP developed its analysis.[16] In addition, as the CHAP noted, ''there is a rapidly growing body of

[12] Underdeveloped gubernacular cords lead to undescended testes.

[13] Foster (2006); Foster *et al.* (2001); Howdeshell *et al.* (2016); Howdeshell *et al.* (2008).

[14] The CHAP referred to phthalates that cause phthalate syndrome as ''antiandrogenic,'' due to the importance of testosterone inhibition in causing phthalate syndrome. Antiandrogenic also serves to distinguish phthalates from other chemicals that act through the androgen receptor, which phthalates do not.

[15] Guinea pigs (Gray *et al.* (1982)), mice, (Gray *et al.* (1982); Moody *et al.* (2013); Ward *et al.* (1998)), rabbits (Higuchi *et al.* (2003)), and ferrets (Lake *et al.* (1976)).

[16] Clewell *et al.* (2011) and Ding *et al.* (2011).

epidemiological studies on the potential association of exposure to phthalates with human health.'' CHAP report at p. 27. For example, the CHAP discussed two human studies linking prenatal phthalate exposure to effects such as reduced AGD in male infants. *Id.* at p. 28. TDS in humans bears similarities to rat phthalate syndrome. *Id.* at p. 2. The effects of TDS (*e.g.,* hypospadias, cryptorchidism, testicular cancer, impaired fertility) are observed with regularity in the U.S. population. Phthalates have been proposed as possible contributors to TDS.[17]

2. Comments Concerning Male Reproductive Developmental Effects

Several commenters raised issues concerning phthalates' effects on male reproductive development (MRDE). They asserted that studies do not support a determination that phthalates have the same effects on male reproductive development in humans (and other animals) as they do in rats. Commenters also asserted that, even if phthalates have some effect, humans are less sensitive and the CHAP failed to take this into account, especially through appropriate uncertainty factors. Additionally, commenters raised questions about the epidemiology studies the CHAP discussed, *i.e.,* studies concerning phthalates' effects on human populations. Commenters also asserted that, because MRDE would affect the developing fetus, this was not an appropriate endpoint for CPSC's consideration of a regulation on children's toys and child care articles. Commenters raised questions specifically about DINP's association with MRDE. A summary of key comments/responses concerning MRDE appears in this section. Comments/responses concerning DINP, in particular, are provided in section IV.D.1.a. of this preamble.

a. Animal Studies and Their Relevance to Humans

Comment: Studies on effects of phthalates on animals other than rats. Several commenters questioned the relevance of studies on rat phthalate syndrome in assessing effects on humans. Commenters asserted that studies involving animals other than rats (*e.g.,* hamsters and marmosets,) indicate that phthalates are not likely to have the same adverse effects in people that they have in rats. Commenters argued that marmosets, being primates and having reproductive organ development that is similar to humans, were more closely related to humans than rats and, therefore, are a better model for estimating human risk. Commenters focused particularly on one study (McKinnell *et al.* (2009)) that reported no observed effects for several relevant endpoints. Some commenters asserted that studies involving mice indicate that humans, who are more similar to mice than rats, are likely less sensitive to phthalates than rats. Commenters also cited xenograft studies (*i.e.,* transplanting human fetal testicular tissue into rats or mice) as supporting the conclusion that exposure to phthalates does not result in MRDE in humans, or at the least, humans are less sensitive than rats. (Comments 1.1 through 1.5).

Response: Phthalate syndrome has been reported to occur in multiple mammalian species, including guinea pigs, mice, rabbits, and ferrets. Although studies indicate that hamsters were resistant to the effects of phthalates due to their slow metabolism to the active metabolite, a study by Gray *et al.* (1982) shows that giving the active metabolite to hamsters causes phthalate syndrome. Regarding mice, the CHAP discussed studies that found some effects in mice (*e.g.,* disruptions in seminiferous cord formation, the appearance of multinucleated gonocytes, and suppression of insulin-like factor 3 (insl3)). CHAP report at p. 6. Some studies published after the CHAP completed its analysis provide additional evidence of phthalate syndrome effects in mice, including reduced testosterone levels, reduced testosterone production, testicular damage, reduced sperm count and quality, reduced AGD, delayed pubertal onset, and increased nipple retention.[18] Thus, there is now even stronger evidence of phthalate syndrome in mice than was available to the CHAP. The CHAP cautioned that differences in methodology could cloud the issue of which species is more sensitive. CHAP report at pp. 17 and 72. Even if mice or other species are less sensitive than rats, it is not possible to make a direct comparison to humans without dose-response information in humans.

Furthermore, the most sensitive species is generally used in assessing risks to humans.[19] The CHAP concluded that rats provide the most sensitive and most extensive studies in male developmental toxicity. CHAP report at pp. 1, 15, 16, 76. Phthalate syndrome in rats resembles the TDS in humans. *Id.* at pp. 2, 75. For these reasons, the CHAP concluded that studies in rats currently offer the best available data for assessing human risk. *Id.* at pp. 18, 75.

Regarding the marmoset studies, the CHAP paid particular attention to these studies and invited Richard Sharpe, the principal investigator of the Hallmark and McKinnell studies, to present his findings at the CHAP meeting in November 2011. Dr. Sharpe agreed with the CHAP that both studies were limited by the small numbers of animals used and the brief duration of exposure. Dr. Sharpe added that his studies were very preliminary and that it would be premature to use his studies' results to support public health decisions. Even though limited, the published studies do show that the phthalate metabolite suppressed steroidogenesis in neonatal marmosets.

Regarding the xenograft studies, commenters cited two studies in which rat fetal testes or human fetal testicular tissue were transplanted (xenografted) into rats (Heger *et al.* (2012)) or mice (Mitchell *et al.* (2012)). As discussed by the CHAP, these studies are subject to a number of limitations. CHAP report at p. 17. Most of the human fetal tissue samples were obtained after the human window of maximum susceptibility to phthalates, meaning that the tissues were less susceptible to MRDE induced by phthalates. In contrast, constant exposure to phthalates in the womb would always expose the fetal tissue to phthalates at their time of maximum sensitivity. Staff provides more detailed responses concerning these studies on animals other than rats in comment/responses 1.1 through 1.5.

Comment: Implications of *in vitro* studies and studies involving chemicals other than phthalates. Some commenters discussed studies in which human testicular tissue or cells were cultured *in vitro* and then exposed to phthalates.[20] Commenters asserted that these studies raise questions about whether phthalate-induced testosterone reduction in rats is relevant to humans. Commenters also asserted that studies (which were not cited by the CHAP) of chemicals with the same mode of action as phthalates, DES and finasteride, show that humans are resistant to phthalates. (Comments 1.6 and 1.7).

Response: In vitro studies use techniques that are performed in a controlled environment outside of a living cell or organism, while *in vivo* studies are performed inside living cells or organisms. CPSC staff reviewed the studies and concludes that the *in vitro* studies with human fetal testicular

[17] Scott *et al.* (2007); Skakkebaek *et al.* (2001).

[18] Doyle *et al.* (2013) and Ge *et al.* (2015).

[19] Barnes and Dourson (1988); CPSC (1992); EPA (1991).

[20] Desdoits-Lethimonier *et al. (*2012); Lambrot *et al.* (2009).

tissue are still preliminary and are generally not sufficient, by themselves, to support public health decisions. *In vivo* animal studies are generally given greater weight in risk assessment. As the CHAP noted, there is also a growing body of evidence in humans that shows associations between phthalate exposure and MRDE endpoints that are consistent with the rat data.

Regarding DES and finasteride, the CHAP assessed each phthalate based on the best available data for each individual chemical, and based its recommendations on those assessments. The CHAP did not base its conclusions on an assumption that all phthalates will behave the same way as DES or finasteride. The DES and finasteride publication cited by commenters implies that humans are less sensitive than rats to these two chemicals. However, this assertion does not mean that all phthalates will produce similar biological effects as DES or finasteride; phthalates do not have a similar chemical structure, are not metabolized or detoxified in the same way, and will not have similar dose-response curves to those of DES or finasteride.

b. Uncertainty Factors

Comment: Adjusting uncertainty factors. Some commenters asserted that, even if one accepts that studies on rats demonstrate that phthalates have some effect on humans, humans are less sensitive than rats, and one must adjust the interspecies uncertainty factor to avoid overestimating the risk to humans. Some commenters suggested that instead of an interspecies uncertainty factor of 10, which the CHAP used, the uncertainty factor should be 0.1 (*i.e.,* humans are 10x less sensitive than rodents) to 1 (humans are equally sensitive as rodents).'' Other commenters asserted that the CHAP should have used a different intraspecies uncertainty factor. They argued that the intraspecies uncertainty factor of 10 used by the CHAP is overly conservative because the PEAAs are already based on a sensitive population. Commenters on both types of uncertainty factors asserted that following their recommendations would have reduced the HI in the CHAP's cumulative risk analysis so that it would be less than one. (Comments 1.8 and 1.9).

Response: An uncertainty factor is used in risk assessments to account for differences among different species. An interspecies uncertainty factor of 10 is consistent with the general practice used by CPSC, EPA, and others in risk assessment, to account for interspecies differences.[21]

Humans are frequently more sensitive to reproductive and developmental effects than animals,[22] and human males are considered more vulnerable than other mammals.[23] Commenters cited xenograft studies to support the assertion that humans are less sensitive than rats to phthalates effects. As discussed in the response above, these preliminary studies do not provide sufficient support for reducing the interspecies uncertainty factor.

An uncertainty factor is also used to account for differences in how members of the same species could react to a chemical (*i.e.,* human variability). In deriving PEAAs, the CHAP applied an intraspecies UF of 10 to account for differences in sensitivity among individuals. CHAP report at pp. 63–66. CPSC staff expects that the population of infants and fetuses will have a broad range of sensitivity, because age, sex, genetic composition, nutritional status, and preexisting diseases may all alter susceptibility to toxic chemicals.[24] Multiple federal agencies use an intraspecies uncertainty factor of 10.[25] The CHAP used only the interspecies uncertainty factor and intraspecies uncertainty factor in its analyses. The CHAP did not apply an additional UF to protect infants.

c. Epidemiology Studies

Comment: Role of epidemiology studies in CHAP's report and recommendations. Some commenters suggested that human epidemiological evidence for phthalate-induced effects was equivocal or inconsistent with results from animal studies, and did not support the CHAP's conclusions and recommendations. Some commenters asserted that these studies did not show consistent results and have not established a cause and effect relationship between phthalate exposure and MRDE effects in humans. (Comment 7.1).

Response: The CHAP's assessment and recommendations to the Commission are based primarily on animal studies. However, the CHAP reviewed epidemiology studies as well. CPSC staff agrees with the CHAP that these epidemiology studies indicate an association of exposure to phthalates with human health. Under CPSC's Chronic Hazard Guidelines and other agencies' guidance, epidemiological studies establishing a causal relationship between exposure and effect are not required to conclude that a substance or mixture is ''probably toxic to humans.'' CPSC's Chronic Hazard Guidelines, 57 FR 46626, 46641 (Oct. 9, 1992). CPSC staff considers that there is sufficient evidence in animal studies to conclude that certain phthalates are probably toxic to humans. Epidemiological data provide supporting evidence for the animal data and also support the conclusion that the animal data are relevant to humans. In addition, staff states that the CHAP's conclusion is consistent with a recent NAS (2017) report that also concluded that there is a ''moderate level of evidence'' from epidemiological studies that DEHP and DBP induce MRDE in humans (based on changes in AGD). The NAS report's conclusions provide additional confidence that phthalates cause MRDE in humans. Although there are a few inconsistencies in the findings from epidemiological studies, inconsistencies among epidemiological studies are common, due to differences in study methods, characteristics of the study population, study size, and the statistical power of the study to detect associations. Establishing cause and effect in epidemiological studies is not required by federal and international agencies to conclude that a substance is likely to cause similar effects in humans.

Comment: Studies on reduced anogenital distance (AGD). Several commenters raised questions about an association between phthalate exposure and reduced AGD in males. Commenters noted inconsistencies in results among published studies and noted that effects occurred sporadically and inconsistently, even when performed by the same laboratory. Some commenters pointed to inconsistencies between epidemiological and animal studies. Other commenters took a different view, noting that ''these markers are linked with diminished reproductive health in males.'' (Comments 7.3 and 7.7).

Response: The CHAP considered and discussed the inconsistent epidemiological data, noting the need to evaluate carefully negative and positive findings. CHAP report at p. 21. The CHAP considered the available epidemiological evidence, along with the animal studies, and determined that human AGD is a relevant measure of the antiandrogenic mode of action of phthalates during fetal development. CPSC staff concludes that, with few exceptions, the epidemiology studies

[21] Barnes and Dourson (1988); CPSC (1992); Dankovic *et al.* (2015); EPA (1991); Pohl and Abadin (1995).

[22] EPA (1991).

[23] Klaassen (2001), p. 703.

[24] Pohl and Abadin (1995).

[25] Barnes and Dourson (1988); CPSC (1992); Dankovic *et al.* (2015); EPA (1991).

are generally consistent with one another and with the results of animal studies.

Reduced AGD is one of many effects associated with phthalate syndrome. Studies demonstrate that phthalates cause permanent effects on male reproductive development.[26] Jain and Singal (2013) reported that infants with undescended testis (cryptorchidism—an adverse clinical outcome) had a significantly shorter AGD and AGI when compared to infants with descended testis. Thankamony *et al.* (2014) reported the results of a comparative study involving AGD (and penile length) in infants that were normal and those with hypospadias or cryptorchidism. They determined that AGD was statistically reduced in boys with hypospadias or cryptorchidism when compared to boys without these pathologies. They concluded: ''The findings support the use of AGD as a quantitative biomarker to examine the prenatal effects of exposure to endocrine disruptors on the development of the male reproductive tract.''

Comment: DEHP exposure and medical procedures. One commenter stated that the lack of evidence showing effects occurring in adults and infants who are exposed to DEHP from intensive medical procedures makes it unlikely that less potent phthalates would induce adverse reproductive effects in humans. (Comment 7.4).

Response: Few studies have specifically investigated possible health outcomes from phthalate exposures from medical equipment. The commenter cited two studies, one that the CHAP also discussed. Although this study did not find phthalate-related health effects, the CHAP concluded that the very small sample size limits its usefulness. CPSC staff concludes that because of the uncertainties in the existing data, no conclusions can be drawn from high exposures to DEHP in medical procedures.

d. Relevance of Endpoint to Rulemaking

Comment: Disconnect between risk assessment's focus on fetus as target population and focus of rule. Commenters questioned how a rule restricting phthalates in children's toys and child care articles could reduce the risk of phthalate syndrome when the fetus, not infants and children who use toys and child care products, is the population primarily at risk for adverse effects on male reproductive development. Commenters noted that the CHAP's analysis shows that exposures of women to DINP from children's toys and childcare articles are negligible. (Comment 1.11).

Response: Although fetuses are considered to be the most sensitive population for MRDE, based on data from animal studies, the CHAP recognized that other populations such as infants, toddlers, and children also are susceptible to the effects of phthalates. CHAP report at p. 14. Testosterone production and other processes involved in reproduction remain critical throughout male development in animals and humans from the prenatal period through puberty.

Testosterone production is required throughout a male's lifetime to maintain the ability to reproduce.[27] Moreover, CPSC, like other federal agencies, uses the most sensitive and appropriate human target population in risk assessments. The practice of selecting the most protective endpoints and potency estimates (*i.e.,* PODs) based on the best available studies is consistent with the statutory mandate to provide a reasonable certainty of no harm with an adequate margin of safety. Using the lowest POD also is consistent with CPSC Chronic Hazard Guidelines, 57 FR 46626 (Oct. 9, 1992), and other federal agency practices.[28]

3. National Academy of Sciences Report on Endocrine Disruptors

In July 2017, the National Academies of Sciences, Engineering, and Medicine (NAS) released a report entitled, *Application of Systematic Review Methods in an Overall Strategy for Evaluating Low-Dose Toxicity from Endocrine Active Chemicals* (NAS 2017).[29] The study responds to EPA's request that the NAS develop a strategy to evaluate the evidence for potential human health effects from endocrine active chemicals at low doses. The NAS selected phthalates as one of two chemicals to demonstrate the systematic review methods and integration of results. In a chapter titled, ''*Phthalates and Male Reproductive-Tract Development,*'' the NAS study evaluated three health effects (fetal testosterone, anogenital distance (AGD), and hypospadias). CPSC staff reviewed the NAS study.

Unlike the CHAP report, the NAS study is not a risk assessment. Rather, the NAS study reviewed individual phthalates and three individual health effects, focusing on whether enough quality data existed to term the particular phthalates a reproductive hazard to humans. In contrast, the CHAP considered all phthalate syndrome effects. In spite of these differences, the NAS report's conclusions are consistent with the CHAP and staff's hazard conclusions. The phthalates section of the NAS report focused on DEHP, and provided a ''final hazard conclusion'' for each of the endpoints. Thus, for fetal testosterone and AGD, DEHP is presumed to be a reproductive hazard to humans; for hypospadias, DEHP is suspected to be a reproductive hazard to humans (NAS 2017, pp. 78–81). For the other assessed phthalates, including DINP, the NAS report did not conduct the final analysis step that results in a ''final hazard conclusion.'' The report provides only the ''initial hazard evaluations'' for fetal testosterone, AGD, and hypospadias in humans. The report found for fetal testosterone, the phthalates BBP, DBP, DEP, DIBP, DINP, and DPP are presumed to be reproductive hazards to humans; DEP is not classifiable for this endpoint (NAS 2017, Table 3–30). AGD, BBP, DBP, and DEP are presumed to be reproductive hazards to humans, while DIBP, DIDP, and DINP are not classifiable (NAS 2017, Table 3–29). For hypospadias, BBP is suspected to be a reproductive hazard to humans and DBP is presumed to be a reproductive hazard to humans (NAS 2017, Table 3–31). The NAS committee did not evaluate DHEXP, DCHP, or DIOP.

With regard to DINP, the NAS study concluded:

- DINP effect on Fetal Testosterone: The NAS concluded: ''there is a high level of evidence that fetal exposure to DINP is associated with a decrease in fetal testosterone in male rats,'' and that there was ''inadequate evidence to determine whether fetal exposure to . . . DINP, . . . is associated with a reduction in fetal testosterone in male humans.'' Overall, the NAS' initial hazard evaluation of DINP and fetal testosterone in humans was that DINP was a ''presumed human hazard.''
- DINP effect on AGD: The NAS concluded: ''there is an inadequate level of evidence to assess whether fetal exposure to DINP is associated with a decrease in AGD in male rats,'' and: ''the available studies do not support DINP exposure being associated with decreased AGD.'' Overall, the NAS' initial hazard evaluation of DINP and AGD in humans was ''not classifiable.''

[26] *e.g.,* Boberg *et al.* (2011); Clewell *et al.* (2013b).

[27] Foster (2006).

[28] Barnes and Dourson (1988); EPA (1991).

[29] NAS (2017) Application of Systematic Review Methods in an Overall Strategy for Evaluating Low-Dose Toxicity from Endocrine Active Chemicals. National Academies of Sciences, Engineering, and Medicine, National Research Council. Washington, DC: The National Academies Press. doi: *https://doi.org/10.17226/24758.*

CPSC staff provides a more detailed discussion of the NAS report in the final rule briefing package at section III.B. of the briefing memorandum.

B. Exposure to Phthalates

As noted, the CHAP considered exposure in two ways: Human biomonitoring studies that estimate total exposure to phthalates and the scenario-based assessment that estimates exposure to specific products and sources.

1. Human Biomonitoring

a. Summary

The CHAP used data from NHANES to estimate phthalate exposures to pregnant women. The CHAP also used human biomonitoring data from the SFF study to estimate exposures to infants and their mothers because NHANES does not collect data on children under 6 years old. The CHAP's analysis of NHANES data was based on the 2005/2006 data cycle. CPSC staff subsequently analyzed data from later NHANES data sets. Because the 2005/2006 data set was the last to sample a sufficient number of pregnant women to make reliable exposure estimates for pregnant women, CPSC staff's analyses are for women of reproductive age (WORA). Staff determined that WORA are a suitable surrogate for pregnant women. CPSC staff's June 2015 report; Tab A of staff's briefing package. CPSC staff then used the CHAP's methodology and later NHANES data sets (2007/2008, 2009/2010, 2011/2012) to estimate phthalate exposure, individual phthalate risk, and the cumulative risk (*i.e,* hazard index). *Id.* When CDC released another data set, 2013/2014, staff performed a similar analysis using that data. CPSC staff's February 2017 report; Tab A of staff's briefing package. No more recent SFF data are available.

In CPSC staff's analysis of NHANES data published following the CHAP's analysis, staff found that total phthalate exposures in WORA have changed. The median total exposure to the phthalates included in the CHAP's cumulative risk assessment (DEHP, DINP, BBP, DBP, DIBP) has increased by 20 percent in WORA. In particular, the estimated median DEHP exposure in WORA has declined over time, while the estimated median DINP exposure in WORA has increased fivefold since 2005/2006.[30] Although DEHP was the major contributor to the cumulative risk in 2005/2006, DINP now contributes about as much as DEHP. *See* TAB A of staff's briefing package, Figures 6 and 7, and Table 8.

No new data on infants or pregnant women are available to quantify the effects of changing exposures. Given that the overall phthalate exposures to WORA have declined since 2005/2006, it is possible that exposures to infants and pregnant women have also declined. In general, studies indicate that infants' and children's exposures to chemicals tend to be greater than in adults.[31] With regard to phthalates, daily intakes of the phthalates the CHAP examined in its cumulative risk assessment were generally twofold to threefold greater in SFF infants than in their mothers. CHAP report at Table 2.7. In the CHAP's scenario-based exposure assessment, estimated daily intakes were twofold to fivefold greater in infants than in women. CHAP report, Appendix E1, Table E1–18. Additionally, a study of German nursery school children found they had roughly twice the DEHP exposure as their parents.[32] Because CPSC does not have exposure data for children more recent than the SFF data used by the CHAP, staff can only make a qualitative assessment that infants and children could have greater exposure to phthalates than what the NHANES data indicate for WORA. In section IV.C.1. of this preamble, we discuss the effect of the more recent NHANES data on risk.

b. Comments Concerning Biomonitoring Data

i. Particular Data Sets

Comment: CHAP's use of 2005/2006 NHANES data. Several commenters criticized the CHAP's use of 2005/2006 NHANES data. Commenters noted that the CHAP report states: ''the stopping point for CHAP analysis and interpretation was information available by the end of 2012.'' However, commenters stated, both 2007/2008 data and 2009/2010 data were available by then. A commenter noted that the 2009/2010 data set was available in September 2012, nearly 2 full years before the final CHAP report was issued and before the CHAP cutoff date for consideration of new information (end of 2012). The commenter noted that the 2011/2012 data set was available in November 2013, ahead of the meeting in January 2014 at which the CHAP discussed the peer review of its report. (Comment 3.1).

Response: The CHAP used 2005/2006 NHANES data on pregnant women to assess phthalate exposure as part of the cumulative risk assessment, to satisfy the CPSIA's charge to ''examine the likely levels of children's, *pregnant women's,* and others' exposure to phthalates . . . .'' 15 U.S.C. 2057c(b)(2)(B)(iii) (emphasis added). This data set was the most recent data on pregnant women available at the time the CHAP completed its analysis in July 2012. CHAP report at p. 31. The 2005/2006 NHANES study was the last data cycle to include a large sample of pregnant women. The CHAP included summary phthalate metabolite data from the 2007/2008 data cycle in its report, *id.* at Tables 2.5, 2.6., but did not calculate exposure and risk because this data set did not have sufficient numbers of pregnant women. Partial data for 2009/2010 were first released in September 2012, after the CHAP completed its analysis in July 2012. Although the 2011/2012 data on phthalate metabolites were initially released in November 2013, the data were revised in October 2014, and other files that were needed to calculate exposure and risk were not published until January 2015, well after publication of the final CHAP report. Regarding the CHAP report's statement about a cutoff date, read in context, the cutoff date clearly refers to the final update of the CHAP's search of the biomedical literature for new peer-review publications in biomedical journals, specifically, National Library of Medicine databases. In any event, CPSC recognized that more recent NHANES data than the set on which the CHAP relied were available. Accordingly, CPSC staff analyzed the later NHANES data sets and used the most recent data in its analysis for the final rule.

Comment: Pregnant women and women of reproductive age. Some commenters stated that the 2005/2006 NHANES data on WORA were a reasonable surrogate for the data on pregnant women, and that the CHAP should have used WORA in its cumulative risk assessment because the WORA have an increased sample size in most NHANES datasets and phthalates exposures for both are statistically similar. Commenters asserted that the sample size for pregnant women in the CHAP's analysis was too small to yield reliable risk estimates. In contrast, another commenter supported the CHAP's decision to base its analysis on the 2005/2006 data that focused on pregnant women. (Comments 3.7 and 3.10).

Response: The CHAP stated that it chose to use biomonitoring data from the 2005/2006 NHANES and from the SFF ''because of the CHAP's task to

[30] Zota *et al.* (2014).

[31] CHAP 2014; Sathyanarayana *et al.* (2008a); Swan (2008); Swan *et al.* (2005).

[32] Koch *et al.* (2004).

investigate the likely levels of children's, pregnant women's, and others' exposure to phthalates and to consider the cumulative effect of total exposure to phthalates both from children's products and other sources.'' CHAP report at p. 35. Although, as the CHAP stated, there are indications that exposures may be higher in pregnant women than in women in general, the CHAP stated: ''the exposures were not found to be significantly different.'' *Id.* at p. 36. CPSC staff compared estimates from the 2005/2006 NHANES data set to determine whether WORA had similar daily intake (DI) and Hazard Index as Pregnant Women. CPSC staff found that median and 95th percentile estimates of the DI for five phthalates were generally similar when comparing WORA to pregnant women. Regarding the sample size of pregnant women, CDC calculated the sample size necessary for statistical analysis of NHANES data. In the data sets after 2005/2006, NHANES no longer oversampled pregnant women. Therefore, the numbers of pregnant women in data sets after 2005/2006 were too small to generate statistical estimates for pregnant women. *See* Tab A of staff's briefing package.

ii. Biomonitoring Methodology

Commenters raised concerns about various technical aspects of the NHANES data (*e.g.,* effects of fasting, spot sampling rather than averaging urine samples over time, using hydrolic metabolites for DINP and DIDP, and appropriate metabolite markers). Key points are discussed below. More details are provided in Tab B of the staff's briefing package, particularly comments 1.13, 3.6, 3.11, and comments 3.14 through 3.17.

Comment: Urinary spot sampling. Several commenters raised concerns about urinary spot sampling. They noted that biomonitoring studies (and NHANES in particular) take one spot urine sample as opposed to averaging urine samples collected over a longer period of time. Commenters claimed that spot sampling does not accurately reflect the duration of exposure necessary to develop MRDE. They stated that the exposure information should match the exposure scenario of that hazard data to which it is compared (*e.g.,* chronic exposure to chronic hazard). They asserted that spot sampling would not capture the day-to-day variability in urinary concentration of most phthalates and would overestimate the risk. However, another commenter stated that spot samples are as predictive of urinary concentration as 24-hour urinary samples. (Comments 1.13 and 3.11).

Response: The CHAP and CPSC staff estimated daily intake of each phthalate by modeling creatinine-related metabolite measurements across participants in NHANES. NHANES measured metabolites from one spot urine sample per individual in the study. Spot urine samples were collected at different sites and at various times of the day and days of the week. Additionally, because participants for each NHANES study cycle were randomly selected from civilian, non-institutionalized individuals in the United States, according to a probability-based complex, multistage sample design, the estimated daily intakes are representative of the U.S. population. The estimated daily intakes and the resulting HQs and HIs represent estimated population per capita phthalate exposure across the 2-year NHANES cycle, not average daily estimates of an individual's exposure across time. Thus, an estimated proportion of the population with an HI less than one, using HBM from NHANES, represents the estimated proportion of the population within that cycle that would have an HI less than one at any one given time of that cycle. Estimates based on NHANES HBM do not imply that individuals with HI less than one at a given time will continue to have an HI less than one for all 2 years of a NHANES study cycle.

CPSC staff notes that longer-term exposures are not necessarily required to cause MRDE. Numerous studies in animals have demonstrated that MRDE and related effects can occur after one or a few doses.[33] Shorter-term elevated exposure could be related to adverse health outcomes in the fetus, if the exposure occurs during the window of susceptibility. Although human phthalate exposures may vary from day-to-day or during the course of a day, humans are exposed to phthalates every day.

Comment: Fasting time differences. Some commenters discussed whether fasting times affected the concentration of phthalate metabolites in the urine in NHANES results and whether there were differences in fasting times in the data sets of different years. (Comment 3.6).

Response: The CHAP paid special attention to the possible effects of fasting on NHANES data. Staff reviewed NHANES documentation [34] [35] and spoke with CDC staff regarding fasting protocol changes between cycles. No fasting requirements changed. Therefore, fasting requirements were not a factor in the decision not to combine data from subsequent NHANES cycles with the 2005/2006 data. CPSC staff concludes that fasting may have an impact on food-borne phthalates; but if anything, this would result in underestimation of risk. CPSC staff concludes that the major conclusion or the recommendation of the CHAP report would not change whether the CHAP included the early NHANES data or not.

Comment: Urinary excretion rates and metabolites. Some commenters raised concerns about the urinary excretion rates and the metabolites used in the NHANES data. One commenter asserted that staff's analysis in its June 2015 report of the 2009/2010 and 2011/2012 NHANES data sets overestimated exposures because it did not consider urinary excretion rates. Another commenter stated that the metabolites used for DINP and DIDP could lead to underestimation of phthalate risk when compared to other phthalates, such as DEP, DBP, DIBP, and BBP. Five commenters asked CPSC to re-evaluate exposure using additional metabolite biomarkers for DINP, DNOP, and other phthalates and also re-evaluate using later NHANES data. One of the commenters asserted that the quantitative estimates of DINP risk from the 2017 analysis provided by CPSC staff were calculated incorrectly and were 17 percent too high. The commenter requested that staff use multiple metabolites (*e.g.,* MINP and MCOP) to estimate DINP exposure instead of just one (MCOP). The commenter noted that exposure estimated for DEHP used four metabolites. (Comments 3.14 through 3.17).

Response: Regarding staff's 2015 report and excretion rates, the additional information necessary to calculate directly urinary mass excretion rates was not collected during the 2005/2006 or 2007/2008 NHANES studies. Therefore, the extrapolation method was the only option available to the CHAP. Staff replicated the CHAP's reported exposure and risk estimates using the 2005/2006 NHANES data and

[33] Carruthers and Foster (2005); Creasy *et al.* (1987); Ferrara *et al.* (2006); Gray *et al.* (1999); Hannas *et al.* (2011); Jobling *et al.* (2011); Jones *et al.* (1993); Li *et al.* (2000); Parks *et al.* (2000); Saillenfait *et al.* (1998); Saitoh *et al.* (1997); Spade *et al.* (2015); Thompson *et al.* (2004); Thompson *et al.* (2005).

[34] National Health and Nutrition Examination Survey, 2005–2006 Data Documentation, Codebook, and Frequencies. Available at: *https://wwwn.cdc.gov/Nchs/Nhanes/2005-2006/FASTQX_D.htm.*

[35] National Health and Nutrition Examination Survey, 2003–2004 Data Documentation, Codebook, and Frequencies. Available at: *http://wwwn.cdc.gov/nchs/nhanes/2003-2004/PH_C.htm.*

applied the same methods to calculate estimates from the later NHANES studies. Regarding metabolite biomarkers, CPSC used MCOP to analyze phthalate exposure, as the CHAP did. This was appropriate because for exposed individuals, MCOP will be detected more frequently and at higher levels than other DINP metabolites. Regarding the use of both MINP and MCOP to estimate DINP exposures, staff does not agree that the estimated exposures for DINP in the 2015 and 2017 analyses were incorrect. CPSC staff used one metabolite, MCOP, to estimate DINP exposure in order to be consistent with the CHAP methodology and previous staff exposure and risk documents. The CHAP recognized that there are multiple ways to estimate phthalate exposure using individual and combined phthalate metabolites, and the CHAP provided a table of potential metabolites and associated fraction of the urinary metabolite excreted factors. CHAP report at Table D–1.

Comment: SFF data. A commenter noted that SFF data were collected before the CPSIA was implemented, and before an asserted sharp decline in DEHP exposure. Thus, according to the commenter, basing the NPR on the SFF data (which was the exposure data used to determine that 5 percent of infants have an HI greater than one) is not supportable. (Comment 3.5).

Response: Infants' and children's phthalate exposures tend to be greater than adults' exposure.[36] For the phthalates in the CHAP's cumulative risk assessment, daily intakes were generally twofold to threefold greater in SFF infants than in their mothers. CHAP report at Table 2.7. No more recent information on infant exposures is available than the 1999/2005 SFF data, which was used by the CHAP (and subsequently by CPSC in the NPR). Infant exposures may have changed since 2005, but staff has no infant data to quantify any change.

2. Scenario-Based Exposure Assessment

a. Summary

Because biomonitoring data do not provide any information about the sources of phthalate exposure, the CHAP also included a scenario-based exposure assessment in its report. CHAP report at pp. 49–60, Appendix E1. The exposure assessment evaluated exposure from individual sources, such as toys, personal care products, and household products. The assessment considered the exposure routes of inhalation, direct and indirect ingestion, and dermal contact. The CHAP stated that its goal was to determine the significance of exposure to phthalates in toys and to estimate exposure to toddlers and infants for all soft plastic articles, except pacifiers (because pacifiers do not contain phthalates). *Id.* at p. 49. For phthalates that are currently prohibited from being in children's toys and child care articles, the CHAP report provides estimated exposures that would hypothetically occur if phthalates were allowed in those products. *Id.* at pp. 49–50.

Scenario-based exposure estimates are developed using information about relevant sources of phthalate exposure (*e.g.,* concentrations of phthalates in soil, dust, and in products); data on migration or leaching of phthalates from products; physiological information (*e.g.,* body weight and skin surface area); and information about how the subpopulations use and interact with products, including frequency and duration of contact with products and environmental media.

The exposure assessment considered seven categories of exposure sources and activities involving those sources: Diet, prescription drugs, personal care products, toys, child care articles, indoor environment, and outdoor environment. *Id.* at p. 50. For each subpopulation (pregnant women/WORA, infants, toddlers, and children), the assessment provides estimated daily aggregate exposures to each of the eight phthalates included in the cumulative risk assessment. *Id.* at pp. 50–51 and Table 2.11. The relative contribution (percent of total exposure) for each activity was determined. The analysis found that for women, diet contributes more than 50 percent of the exposure to DIBP, DNOP, DEHP, DINP and DIDP. *Id.* at Appendix E1–26. For infants and toddlers, more than 50 percent of DIBP, DINP, and DIDP exposure and more than 40 percent of DEHP exposure comes from diet.

Although certain phthalates had not been permitted in children's toys and child care articles since 2008, the exposure assessment considered what contribution these products could make to overall phthalate exposure if those phthalates were allowed in children's toys and child care articles. The exposure analysis showed that, on average, mouthing and dermal exposure to toys could contribute around 12.8 percent to the overall DINP exposure of infants, if DINP were used in these products. CHAP report at Appendix E1, Table E–21. The same analysis shows that dermal contact with child care articles could contribute up to an additional 16.5 percent of the overall exposure to infants. Therefore, if DINP were used in all of the products that were included in the scenario-based exposure assessment, children's toys and child care articles could account for around 29 percent of infants' total exposure from all evaluated sources. *Id.*

It is not possible to accurately quantify the number of toys that might have DINP in them if the interim prohibition were lifted or to quantify the effect that changes in DINP exposure would have on the percentage of the population (infants, pregnant women, or WORA) with HI less than or equal to one.

b. Comments Concerning Scenario-Based Exposure Assessment

Comment: Exposure through diet. Commenters noted that diet is the primary source of exposure to phthalates for infants and children and that children's toys and child care articles contribute very little to overall phthalate exposures, especially for women of reproductive age and fetuses. They reasoned that, therefore, a prohibition on phthalate-containing children's toys and child care articles would have little effect on overall risk. (Comment 5.3).

Response: CPSC disagrees that the contribution from sources other than diet are negligible, especially for DINP. The scenario-based exposure assessment in the CHAP report shows that mouthing and dermal exposure to toys could contribute an average of 12.8 percent, 5.4 percent, and 1 percent of the overall DINP exposure to infants, toddlers, and children, respectively, if DINP were used in these products. CHAP report at Appendix E1, Tables E1–21, E1–22 and E1–23. Mouthing and handling soft plastic teethers and toys could contribute 12.8 percent (mean exposure) or 16.6 percent (95th percentile exposures) of total DINP exposure in infants. *Id.* at Appendix E1, Tables E1–21. Dermal contact with the evaluated toys and child care articles may contribute up to an additional 16.5 percent of exposures to infants. *Id.* Therefore, although infants' DINP exposure was primarily from diet, up to 29 percent may be due to the presence of DINP in the evaluated toys and child care articles (*Id.* Figure 2.1).

Comment: Exposure through house dust. One commenter noted that house dust contributed to background exposure, that DEHP was in 100 percent of dust samples, that consumer products and building materials were the source of such dust, and that the EPA soil screening levels for DEHP were exceeded by the concentrations found. (Comment 5.4).

[36] CHAP (2014); Sathyanarayana *et al.* (2008a); Swan (2008); Swan *et al.* (2005).

Response: The CHAP's and staff's analyses considered exposures to house dust. The CHAP's exposure scenarios estimated theoretical exposures from house dust. The CHAP found that for infants and toddlers, incidental ingestion of household dust contributed roughly 25 percent to the total BBP exposure and 15 percent to total DEHP exposure. For children, the CHAP found that household dust contributed about 18 percent to DEHP exposures. CHAP report at Appendix E1–35. Additionally, because NHANES includes exposures from all routes, the NHANES estimates would have included the survey individual's exposures to household dust.

C. Risk Assessment

As the CPSIA directed, the CHAP considered risks of phthalates in combination and in isolation. The CHAP conducted a cumulative risk assessment to evaluate the effects of multiple phthalates, specifically phthalates known to cause MRDE and other adverse effects on male fertility. As explained in section III.C.3, the CHAP used information from toxicity studies concerning MRDE and human biomonitoring studies to determine a hazard quotient (HQ) for each phthalate and the hazard index (HI) for each individual in the two populations of interest (pregnant women and children). To assess risks of phthalates in isolation, the CHAP used a margin of exposure (MOE) approach.

For reasons discussed in sections III.C.1 and IV.A.1. of this preamble, the CHAP and CPSC have focused on phthalates' association with MRDE. The CHAP's and CPSC's determination of risk associated with the use of phthalates in children's toys and child care articles is based on a cumulative risk assessment that considers the contribution that allowing antiandrogenic phthalates to be used in children's toys and child care articles would have on the overall cumulative risk from phthalates. Relying on this cumulative risk assessment, the Commission determines that, to meet the CPSIA's criteria of reasonable certainty of no harm and protection of the health of children, it is necessary to prohibit children's toys and child care articles containing concentrations of more than 0.1 percent of the phthalates that can cause MRDE (DINP, DIBP, DPENP, DHEXP, and DCHP). In this section, we discuss the cumulative risk assessment and related comments. We discuss each phthalate in section IV.D of this preamble.

1. Cumulative Risk Assessment

a. Summary

i. CHAP's Analysis and NPR

A cumulative risk assessment estimates the potential risk following exposure to multiple ''stressors,'' in this case, multiple phthalates. As discussed in section III.C of this preamble, the CHAP found, and CPSC agrees, that certain phthalates cause male reproductive developmental effects and may appropriately be considered in a cumulative risk assessment. CPSC concludes that a cumulative risk assessment is appropriate here because evidence indicates that phthalates are ''dose additive.'' That is, for phthalates that cause MRDE, the chemicals will act together; the effects of one such phthalate will add to the effects of another such phthalate. As the CHAP report explained, experimental studies show the additive effects of phthalates on MRDE.[37] The CHAP also demonstrated that the phthalates included in the CHAP's cumulative risk assessment share a common mechanism of action (primarily antiandrogenicity) and affect the same target organ (primarily the testes).

This rule is based on a cumulative risk assessment that uses the methodology employed by the CHAP, along with exposure data from the most recent NHANES data sets. The cumulative risk assessment follows a hazard index (HI) approach that is commonly used for cumulative risk assessments. The CHAP's cumulative risk assessment was consistent with the recommendations of a National Academy of Sciences report on cumulative risk assessment of phthalates. Cumulative risk assessment of chemical mixtures has been an established practice since the 1980s. The CHAP introduced a minor modification to the standard methodology: The CHAP calculated hazard indices for each individual sampled in NHANES rather than the more common HI approach of using population percentiles from exposure studies on a per-chemical basis. This allowed the CHAP to calculate hazard quotients (HQs) for each phthalate and an HI for each individual in each study. This avoids overestimating the risk for individuals with higher than average exposures, such as those at the 90th and 95th percentiles.

The CHAP calculated an HQ for each phthalate using three sets of ''potency estimates of antiandrogenicity'' (PEAAs). The PEAA is an estimate of the exposure at which the risk of MRDE is negligible. The CHAP estimated a PEAA for each phthalate by dividing the MRDE ''antiandrogenic'' point of departure (POD; toxicity endpoint) by an uncertainty factor (UF). The POD is the lowest dose level at which an adverse effect was seen. A UF is a quantitative factor that is used to account for uncertainties associated with available data (*e.g.,* interspecies, intraspecies, database, and toxicity uncertainties). The CHAP stated that it used three sets of PEAAs to explore the effect of different methodology (*e.g.,* different uncertainty factors and PODs) on cumulative risk estimates to ''determine the sensitivity of the results to the assumptions for PEAAs and the total impact on the HI approach.'' CHAP report at p. 4. Each case brings a different perspective to the risk assessment. The CHAP report discusses the three cases at pages 63–64. Case 1 was based on published, peer-reviewed values using a study by Kortenkamp and Faust.[38] Case 2 was based on a relative potency method with DEHP as the index chemical, using multiple-dose studies of *in-vitro* fetal testosterone production by Hannas *et al.* (2011).[39] For Case 3, the CHAP derived new PEAA values after considering all the available literature, including studies such as Boberg *et al.* (2011).[40] As explained in response to comments, CPSC staff concludes that each of the three cases has certain advantages, all three are appropriate, and the risks resulting from the three cases are quite similar.

The CHAP calculated HQs for each phthalate by dividing the exposure by the PEAA. The CHAP then calculated the HI by summing the HQs for each phthalate. If the HI is greater than one, there may be concern for antiandrogenic effects in the exposed population due to cumulative effects of phthalates. As explained previously, the CHAP used 2005/2006 NHANES data for exposure estimates for pregnant women and 1999–2005 SFF data for exposure estimates for mothers and infants. CPSC staff subsequently repeated the CHAP's analysis using more recent NHANES data. The CHAP found that pregnant women had median HIs of about 0.1 (0.09 to 0.14), while the 95th percentile HIs were about 5, depending on which set of PEAAs was used. Roughly 10 percent of pregnant women had HIs greater than one. CHAP report at Table 2.16. Infants had median HIs about 0.2, while the 95th percentiles were between

[37] Hannas *et al.* (2012); (2011); Howdeshell *et al.* (2007); (2016); (2008).

[38] Kortenkamp and Faust (2010).

[39] Hannas *et al.* (2011).

[40] Boberg *et al.* (2011).

0.5 and 1.0. About 5 percent of infants had HIs greater than one. *Id.*

The CHAP characterized the distribution of the estimated HIs, by reporting the central tendency measure (statistical median [41]) and the upper percentiles (95th, and 99th). CHAP report at Table 2.16. The CHAP's analysis showed that the median HIs for NHANES pregnant women were less than one (HIs of 0.09 to 0.14), but the 95th percentile HIs were greater than one (HIs of 3.6 to 6.1). Staff notes that the CHAP emphasized that an HI greater than one is the metric that defines excess exposure, relative to the acceptable exposure level; the CHAP did not indicate that the 95th percentile, or any other part of the cumulative risk distribution, should be used to establish unacceptable risk for risk management purposes. The CHAP, having determined that an HI greater than one was necessary to identify the population at risk, then used the distribution of HIs to identify the percentage of the population with an estimated HI greater than one. Staff notes that, while the CHAP presented the distribution statistics, described above, the CHAP focused on the proportion of the population with HIs exceeding one, not on any particular percentile of the distribution. To repeat, the CHAP neither used nor suggested a specific percentile as a threshold for recommendations or regulatory proposals.

The CHAP's HI approach is consistent with the CPSC's chronic hazard guidelines (Chronic Guidelines). The Chronic Guidelines discuss a safety factor approach to determine acceptable risk for a reproductive or developmental toxicant. 57 FR 46626, 46656 (Oct. 9, 1992). Under the safety factor approach, one determines the acceptable daily intake (ADI) for a substance by adding a safety factor to the lowest no observed effect level (NOEL) seen among relevant studies. The Chronic Guidelines state that if the hazard is ascertained from human data, a factor of 10 is applied to the NOEL, and if the hazard is ascertained from animal data, a factor of 100 is applied. *Id.* Staff states that the safety factor approach is similar to the HI approach that the CHAP followed. The CHAP's PEAA values are equivalent to an ADI, and the HI is the ratio of the daily exposure to the ADI. The Chronic Guidelines do not define the percentage of the population (*i.e.,* number of individuals versus the sample population or entire population) that must have an HI less than one to ensure a ''reasonable certainty of no harm . . . with an adequate margin of safety.''

As discussed in the NPR preamble, based on the CHAP report, the Commission proposed to prohibit children's toys and child care articles containing the antiandrogenic phthalates the CHAP had examined. The NPR stated that the Commission considers that an HI less than one is necessary to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety and to protect the health of children. 79 FR at 78334. The NPR also stated that the Commission considers that an HI less than one is necessary to protect the health of children. *Id.* at 78335.

In the NPR, the Commission stated the CHAP's determination that approximately 10 percent of pregnant women and 5 percent of infants had an HI greater than one. The Commission did not establish directly, however, that there was a specific proportion of the population that must have an HI less than or equal to one to ensure a ''reasonable certainty of no harm with an adequate margin of safety'' or to ''protect the health of children.''

ii. Analysis Using Most Recent Data

After publication of the NPR, CPSC staff analyzed NHANES data for WORA (from 2007 through 2014). CPSC staff reports for 2015 and 2017; TAB A of CPSC staff's briefing package: Staff's analysis shows that the risk to WORA, as indicated by HI, has decreased. Median and 95th percentile HIs for WORA are both less than one. Staff estimates that between 98.8 and 99.6 percent of WORA have HIs less than or equal to one. Out of a sample of 538 WORA in the 2013/2014 cycle, 99.5 percent of WORA have an HI less than or equal to one when considering PEAA Case 1 and 99.6 percent when considering Case 3. For PEAA Case 2, an estimated 98.85 percent of WORA have an HI less than or equal to one in the same cycle. *See* Tab A of staff's briefing package. This means that some individual WORA in the NHANES sample have an HI greater than one for each PEAA case. Out of a sample of 538 WORA, for PEAA Case 1, three WORA had an HI greater than one; for PEAA Case 2, nine WORA had an HI greater than one; and for PEAA Case 3, two WORA had an HI greater than one. However, the national population projection for HI greater than one is not estimable at the upper percentiles of the distribution due to sampling variability. Thus, staff is unable to estimate the percentage of WORA with an HI greater than one in the population of approximately 60 million WORA in the United States.

As noted in Tab A of the staff's briefing package, the decreases in HI are primarily due to decreases in DEHP exposures. The HQ for DINP is replacing the HQ for DEHP proportionally for contributions to the total HI. In each PEAA case, DINP has less potency than DEHP; thus, even though DINP's proportion of contribution to total HI is increasing, the values of HI have still decreased overall across cycles.

CPSC does not have exposure data for infants that is more recent than the SFF data on which the CHAP relied. Because the risk to WORA has declined since 2005/2006, it is possible that exposures and risks to infants have also declined. However, because the routes of exposure (*e.g.,* food, medicines, products) are different for each target population, it is not possible to quantify the changes in one population based on the other. As explained in section IV.B.1, infants' exposures generally are two- to threefold greater than adults. Thus, CPSC concludes that phthalate exposures and risks in WORA probably underestimate the risks to infants and children.

CPSC's assessment of the risk (and the need for this rule) is also informed by the fact that, although the overall risk as portrayed in the cumulative risk assessment has decreased, DINP's contribution to the cumulative risk has greatly increased. It is not possible to quantify accurately the number of toys expected to have DINP or the effect of changes in DINP exposure on the percentage of the population (infants, pregnant women, or WORA) with HI less than or equal to one. However, any increase in exposure due to resumed or increased use of DINP in products is likely to decrease the percentage of the population with HI less than or equal to one. Allowing DINP to be re-introduced into children's toys and child care articles would open a pathway of exposure to a phthalate that studies have clearly demonstrated causes adverse effects on male reproductive development. Although DIBP, DPENP, DHEXP, and DCHP are not currently found in children's toys and child care articles (or only rarely), these phthalates

[41] The median is the midpoint of the distribution, where one-half of the values are smaller than *(i.e.,* below) the median value, and one-half of the values are larger than the median. The 95th percentile of the distribution is the value indicating 95 percent of values are smaller than this value, and 5 percent of values are larger. The median and 95th percentile values describe the data distribution, in this case the HI values estimated for the population of pregnant women or women of reproductive age who experience phthalate exposures. These values, by themselves, do not define acceptable risk levels. Rather, the acceptable risk level is a policy decision.

also cause MRDE and contribute to the cumulative risk.

b. Comments on Cumulative Risk

i. Appropriateness of Conducting a Cumulative Risk Assessment

Comment: General acceptance of cumulative risk assessment. Commenters asserted that cumulative risk assessment is not a generally accepted approach. They stated that cumulative risk assessment is not appropriate as a basis for regulatory action, but only as a screening analysis. However, another commenter noted that ''when multiple phthalates act on a similar biologic target, it is critical to understand and regulate based on their combined effect on human health.'' (Comments 2.1 through 2.3).

Response: Cumulative risk assessment is a well-established approach to evaluate risks posed by mixtures of multiple chemicals. EPA first issued guidelines for the risk assessment of chemical mixtures in 1986. Subsequently, ATSDR and the World Health Organization (WHO) issued guidance for cumulative risk assessment of chemical mixtures.[42] EPA routinely uses cumulative risk assessment to assess risks from pesticides, as required by the Food Quality Protection Act of 1996. Additionally, EPA and ATSDR use cumulative risk assessment to assess risks under Superfund.[43] EPA also has performed cumulative risk assessments, to assess phthalates.[44] The CHAP followed guidance issued by the National Academy of Science for conducting cumulative risk assessments with the one modification, explained above, that allowed the CHAP to calculate HQs for each phthalate and an HI for each individual in the NHANES and SFF studies. Regarding the assertion that the CHAP's cumulative risk assessment was only a screening-level analysis, CPSC concludes that the CHAP's analysis is a refined assessment that could be considered tier 3, the highest tier, under the framework established by the WHO. The CHAP's CRA began with a comprehensive review of the toxicology and exposure literature. The primary exposure assessment for the CHAP report was based on measurements of phthalate metabolites in a statistically representative population (NHANES study) of actual people. As required for tier 3 assessments under the WHO framework, the CHAP's analysis included probabilistic measurements of exposure and risk.

Comment: Dose additivity. Several commenters asserted that there was not sufficient evidence of dose additivity, especially at low doses, to conduct a cumulative risk assessment for phthalates. Some commenters asserted that one needs a common mode or mechanism of action to support an assumption that phthalates are additive, and they stated that evidence of a common MOA was lacking. Commenters stated that the CHAP had not considered all the relevant papers on dose additivity. (Comments 2.4 through 2.8).

Response: The CHAP did not need to present evidence of a common MOA or mechanism of action to justify performing a cumulative risk assessment because data from laboratory studies by Hannas and Howdeshell show that phthalate mixtures, in fact, act in a cumulative, additive fashion.[45] Thus, the CHAP did not have to make any assumptions about additivity. In fact, one of the reasons that the CHAP chose MRDE as the health effect for its CRA is that MRDE is the only health endpoint that was extensively studied in phthalate mixtures. CHAP report at p. 2. Moreover, even without a common mechanism of action, chemicals can have cumulative effects in mixtures.[46] Substances can act on the same process, but in different ways, to produce additive effects. In any event, CPSC concludes that evidence demonstrates that the phthalates in the CRA do have a common mechanism of action. As discussed, the phthalates all act on the male reproductive system. More specifically, they act by inhibiting testosterone production in the testis during a critical period in development by decreasing expression of genes involved in steroid synthesis.[47] Additional factors, such as reduced expression of insulin-like hormone 3 gene (insl3), also are at work.[48]

Regarding low doses, studies of phthalate mixtures at low doses do not exist, and the commenters did not present any evidence of a threshold for phthalate-induced MRDE. Although mixture studies at low (environmental) doses have not been performed, there are published studies in which the doses of the individual phthalates produced little or no effect, but the mixtures produced significant cumulative effects.[49] In a recent study, rats were exposed to phthalates and other antiandrogens at doses well below the NOAEL. Although the individual phthalates had no observable effect, the mixture induced MRDE-related effects.[50] Thus, additivity occurs even at doses where individual phthalates have no observable effect. As discussed in response to comments 2.6 and 2.7, CPSC concludes that the CHAP did consider all relevant papers and that dose addition is appropriate for assessing the cumulative effects of phthalates and other antiandrogens.

Comment: Mode or mechanism of action. Commenters asserted that the mechanism of action by which phthalates affect male reproductive development is not clear. They argued that, in the absence of clarity that phthalates share a common mechanism of action, the CHAP should not conduct a cumulative risk assessment. Some commenters focused particularly on DINP, asserting that DINP does not have the same mode or mechanism of action as other phthalates. (Comments 1.21 through 1.25).

Response: Knowledge of the mode or mechanism of action can help inform the risk assessment process. However, a detailed understanding of the mode/mechanism of action is never required to perform a risk assessment. Several studies have shown that the phthalates act by inhibiting testosterone production in the testis during any critical period in development,[51] by decreasing expression of genes involved in steroid synthesis. Reduced expression of insulin-like hormone 3 gene (insl3) is an additional pathway.[52] Furthermore, all of the phthalates in the cumulative risk assessment induce a similar spectrum of effects, known as the ''phthalate syndrome,'' and which is also described as ''antiandrogenic'' effects. DINP has been clearly established by multiple studies as causing the same pattern of effects (phthalate syndrome)[53] and by other studies as acting by the same MOA as other phthalates in the cumulative risk

[42] EPA (1986). EPA (2000b), ATSDR (2004), and WHO (Meek *et al.* 2011).

[43] ATSDR (2017; EPA (2017); Howdeshell *et al.* (2016).

[44] Christensen *et al.* (2014); Gallagher *et al.* (2015).

[45] Hannas *et al.* (2012); (2011); Howdeshell *et al.* (2007); (2016); (2008).

[46] Axelstad *et al.* (2014); Christiansen *et al.* (2009); Howdeshell *et al.* (2016); Levin *et al.* (1987); Rider *et al.* (2008; 2010; 2009).

[47] Foster *et al.* (2001); Gray *et al.* (2000); Mylchreest *et al.* (1998); Parks *et al.* (2000).

[48] Foster (2005); Howdeshell *et al.* (2016); NRC (2008); Wilson *et al.* (2004).

[49] Axelstad *et al.* (2014); Christiansen *et al.* (2010); Hotchkiss *et al.* (2004); Howdeshell *et al.* (2007); (2016); Rider *et al.* (2010).

[50] Conley *et al.* (2017).

[51] Foster *et al.* (2001); Gray *et al.* (2000); Mylchreest *et al.* (1998); Parks *et al.* (2000).

[52] Foster (2005), Howdeshell *et al.* (2016), NRC (2008), and Wilson *et al.* (2004).

[53] Adamsson *et al.* (2009); Boberg *et al.* (2011); Clewell *et al.* (2013b); Gray *et al.* (2000); Hannas *et al.* (2011); Masutomi *et al.* (2003).

assessment.[54] Other experts agree that the phthalates in the CHAP's cumulative risk assessment act by the same mechanism of action.[55] Staff also notes that mixtures studies including DINP show that the effects of DINP and other phthalates are additive.[56] Therefore, a common mechanism of action is not necessary to include DINP in the cumulative risk assessment.

Comment: Inclusion of permanently prohibited phthalates in CRA. Commenters asserted that it was not appropriate for the CHAP to include DEHP and other phthalates that are subject to CPSIA's permanent prohibition in the CHAP's cumulative risk assessment. Commenters asserted that nearly all of the risk in the CHAP's cumulative risk assessment is due to exposures to those phthalates, yet they can no longer contribute to the cumulative risk from exposure to children's products. At least one commenter stated that if the cumulative risk assessment excluded phthalates subject to the CPSIA's permanent prohibition, the HI would be less than one. The commenter reasoned that, therefore, there is a reasonable certainty of no harm from the use of any other phthalates in children's products. Thus, the statutory requirement to ''ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety'' is satisfied without continuing the interim prohibition. Another commenter stated that a cumulative risk assessment is useful when exposure to each single substance is below the level of concern, but exposures to multiple chemicals with the same mechanism of action (or that affect the same endpoint) at the same time rise to levels of concern. However, the commenter asserted, with phthalates, only one chemical (DEHP) poses a risk in isolation. (Comments 2.9 and 5.2).

Response: In accordance with direction in the CPSIA, the CHAP examined phthalates in isolation and in combination with other phthalates. 15 U.S.C. 2057c(b)(2)(B)(ii). Moreover, to accurately assess cumulative risk, it was appropriate for the CHAP to include DEHP (and other phthalate subject to CPSIA's permanent prohibition). Although DEHP is not allowed in children's toys and child care articles, it is permitted in other products. DEHP is found in drinking water, surface water, storm water, soil, and wildlife.[57] It is found in indoor and outdoor air, household dust, and indoor surfaces. DEHP has been found in gloves, footwear, personal care products, medical devices, paints, adhesives, sealants, wallpaper, flooring and food. Thus, given the number and variety of sources of exposure, DEHP should be included in the cumulative risk assessment. The results of staff's cumulative risk assessment using more recent NHANES data, show that, even though exposure to DEHP is decreasing, phthalate exposures are still high enough that some women in the data sample have HIs exceeding one. The CHAP's and staff's analyses indicate that risk is not entirely driven by DEHP. Considering 2013/2014 NHANES data, DINP contributes approximately 6 to 51 percent (medians) or 18 to 76 percent (95th percentiles) of the overall risk. *See* TAB A of staff's briefing package.

ii. NHANES Data in the Cumulative Risk Assessment

Comment: Using the CRA to assess individual's risk. Some commenters asserted that calculating risk using NHANES data (that uses spot urine sampling rather than measurements over time) is not an accurate indication of a person's real exposure to phthalates and thus the CHAP's HI calculations do not show true risk. They asserted it is inappropriate and not scientifically supportable to report results as a proportion of the population with an HI over one (because the individual spot urine samples are too variable and do not represent chronic exposures over time). For example, one commenter stated that an individual's HI from a spot urine sample ''has essentially no bearing on risk to the individual'' because it does not represent a repeat dose, longer term exposure is necessary to induce the adverse effects (phthalate syndrome) and that a few HIs (or HQs such as DINP) above one also are not representative of the population risk. Commenters thought that this approach was overly conservative and overestimated the risk. (Comments 3.11 through 3.13).

Response: Staff concurs that spot urine samples are variable and are not representative of long-term exposures, but also notes that numerous studies in animals have demonstrated that MRDE and related effects can occur after one or a few doses.[58] It is impossible to know whether a particular spot urine sample is overpredicting or underpredicting the actual exposure. HBM data are a direct measure of human exposure and, therefore, superior to alternatives such as modeled exposures. NHANES is a high quality study and provided exposure data that are representative of the U.S. population. Similar data with 24-hour or longer sampling times are not available.

Staff concludes that it is statistically appropriate to portray the individual NHANES data as a proportion of the NHANES sample population with an HI less than or equal to one. Staff notes that in the 2013/2014 NHANES sample of 538 WORA (of approximately 60 million WORA in the U.S. population), there were from two to nine individuals with a HI greater than one (*i.e.,* at risk), depending on the PEAA case. As described in section 5.4 of TAB A of staff's briefing package, the 2013/2014 NHANES data set cannot be used to estimate how many WORA in the U.S. population have HIs greater than one.

Comment: Impact of more recent NHANES data on CRA. Several commenters stated that CPSC staff's analysis of more recent NHANES data shows that the risk from phthalates has declined. Commenters noted that that even at the 95th percentile, the HI is uniformly less than one and has decreased further from the HI values calculated for the 2011/2012 data cycle. They concluded that the CRA using current exposure data shows that there is a reasonable certainty of no harm. Thus, the statutory requirement is satisfied without Commission action. (Comment 3.2).

Response: The CRA using current exposure data indicates that at least some of the actual WORA in the NHANES data had HIs greater than one, showing that there is not a reasonable certainty of no harm with an adequate margin of safety. Moreover, the CHAP did not indicate that the 95th percentile, or any other part of the cumulative risk distribution, should be used to establish unacceptable risk. Therefore, discussions of acceptable risk should not be limited to the 95th or other percentile. Staff concurs with commenters that through the NHANES cycles, the population of WORA with an HI greater than one has decreased. In the 2013/14 NHANES sample of 538 WORA, there were from two to nine actual women from the NHANES sample with a HI greater than one (*i.e.,* at risk), depending on the PEAA case.

[54] Gray *et al.* (2000); Hannas *et al.* (2011).

[55] Foster (2005); Howdeshell *et al.* (2016); NRC (2008).

[56] Hannas *et al.* (2012); (2011); Howdeshell *et al.* (2007); (2016); (2008).

[57] Clark (2009); Versar (2010).

[58] Creasy *et al.* (1987); Jones *et al.* (1993); Saitoh *et al.* (1997); Saillenfait *et al.* (1998); Gray *et al.* (1999); Parks *et al.* (2000); Li *et al.* (2000); Thompson *et al.* (2004); Carruthers and Foster (2005); Thompson *et al.* (2005); Ferrara *et al.* (2006); Hannas *et al.* (2011); Jobling *et al.* (2011); Spade *et al.* (2015).

The 2013/2014 NHANES data cannot be used to estimate how many WORA in the U.S. population have HIs greater than one.

Comment: Use of values above the 95th percentile. A commenter on the 2017 staff report asserted that it is ''scientifically inappropriate to go above the 95th percentile in evaluating either individual or cumulative risks to the fetuses of women of reproductive age as indicated by the CRA.'' The commenter stated that going above the 95th percentile values are too unstable to provide a basis for regulatory decisions. The commenter noted that EPA's 2014 paper on five phthalates reported the 95th percentile from the calculations of HIs for three of the five phthalates (and the CHAP and CPSC's previous analyses used the 95th percentile). (Comment 3.21).

Response: Neither the CHAP nor staff used the 95th percentile (or any other percentile) as a threshold for recommendations or regulatory proposals in evaluating individual or cumulative risks. The 95th percentile, as well as other measures such as the average, median, or 99th percentile, is a commonly used metric, included by the CHAP, to help characterize the distribution of exposure and risk in a population. The rule is not based on any particular percentile, but on the observation that actual women from the NHANES sample have HIs greater than one.

For its cumulative risk assessment, the CHAP addressed the range of HI in representative populations—including but not limited to the 50th percentile, 95th percentile, and 99th percentile. In all analyses of the updated NHANES data for WORA and in the rule, staff does not rely on any particular percentile as a threshold for recommendations or regulatory proposals, but on the fact that at least some of the actual WORA from the NHANES samples had HIs greater than one. Because at least some of the actual WORA from the NHANES samples had HIs greater than one in every NHANES data cycle analyzed, there is not a reasonable certainty of no harm with an adequate margin of safety. For example, for the 2013–14 NHANES data, between two and nine real women from the sample of 538 WORAs had an HI greater than one, depending on the case model used. The CHAP emphasized, and the Commission continues to agree, that an HI greater than one is the metric that defines excess exposure.

CPSC disagrees with the blanket statement that it is scientifically inappropriate to go above the 95th percentile in interpreting a cumulative risk assessment. There is no scientific basis for an assertion that the 95th percentile of a distribution is the largest value that can be considered. The commenter specified that the values above the 95th percentile are unstable. In this case, staff agrees that the values associated with the upper tail of the distribution of HIs (*e.g.,* above the 95th percentile) have large variance estimates, due to sample size (*i.e.,* statistically unstable). The large variances mean that we are precluded from estimating the precise number of WORA with HIs greater than one in the larger population from which the sample was selected. However, as noted above, actual women with HIs greater than one were observed in every NHANES data cycle analyzed. As the commenter mentioned, EPA's paper (Christensen *et al. (*2014)) states, ''we present findings for the 95th percentile of estimated phthalate intake recognizing that there may be more variability in these values, because this information provides insight into the potential risk at the highest levels of exposure in a general population setting.'' Staff considers EPA's discussion to be consistent with the CHAP's and staff's presentation of results because the goal is to provide insight into the risks among the most highly exposed individuals. The CHAP's and staff's analyses are based on human biomonitoring, *i.e.,* actual observations of people. These observations should be considered in risk management and decision-making.

iii. The Three Cases

Comment: Criticism of the three cases (PEAAs) the CHAP used. Commenters raised concerns about all three of the CHAP's cases. Some commenters asserted that the cases inappropriately combined points of departure (PODs) for different types of endpoints (for example, reduced testosterone production, observation of MNGs, and retained nipples) for different effect measures. Commenters stated that the cases had treated transient, non-adverse biomarkers in the same way as adverse effects when selecting PODs. (Comments 4.1 through 4.3 and 4.6).

Response: We discuss the major criticisms of the specific cases in the following comment/responses. As discussed in the section on MRDE, a wide variety of effects of different types and severities are included under the umbrella of phthalate syndrome. Staff disagrees with commenters' assertions that these effects cannot be considered equal when selecting PODs. Any observed effect related to the male reproductive system is a marker of biological activity that could lead to a broad range of effects in the organism. Thus, such markers should be given equal weight in quantifying the biological activity.

Comment: Case 1. Commenters criticized the study that was the basis for Case 1 (Kortenkamp and Faust), which calculated a potency estimate based on a lowest observed adverse effect level (LOAEL) rather than a no observed adverse effect level (NOAEL) which the commenters stated introduced greater uncertainties. Commenters also asserted that the publication of more robust studies since 2010 (*e.g.,* Boberg) indicating that the Case 1 PEAAs were overstated by a factor of 4 made Case 1 outdated. Commenters also criticized the use of larger uncertainty factors (UFs) for some phthalates. (Comments 4.7 and 4.8).

Response: CPSC agrees that more recent literature has been published regarding the selection of PODs and UFs for phthalates that cause phthalate syndrome. However, this does not mean that Case 1 should be excluded. Rather, alternate approaches (such as Case 1) to POD selection are useful to understand the potential effects of POD and UF selection on risk. Notably, the CHAP considered all relevant hazard studies (including those cited by the commenters) in its *de novo* review of the literature for Case 3.

Comment: Case 2. Commenters criticized various aspects of Case 2 and the study underlying it, (Hannas *et al.* (2011)). Several commenters asserted that CPSC should completely disregard Case 2. They asserted that Case 2 was based on a model that used a hypothetical NOEL for DINP and that the CHAP did not validate the assumptions in the model. The commenters stated that, because ''real world data'' exist that are more applicable and reliable, CPSC should not use Case 2. Commenters asserted that relative potency of DINP and DEHP was inappropriately estimated. For example, a commenter stated that an *in vivo* study (*i.e.,* using live animals) by Gray *et al.* (2000) had previously estimated that DEHP is 10–20 times more active than DINP, so the CHAP should not have used Case 2's estimate that DEHP is 2.3 times more active than DINP. A commenter asserted that the study underlying Case 2 (Hannas *et al.* (2011)) has several flaws and limitations, such as the rats were obtained from different labs, dose-response curves for DINP and DEHP were different, and the study used a low number of animals per group. (Comments 4.9 through 4.13).

Response: The CHAP established alternate approaches (such as Case 2) to POD selection that are useful in understanding the potential effects of POD and UF selection on risk. By stating that Case 2 was based on a model, commenters imply that *Hannas et al.* (2011) was not an *in vivo* study. However, Hannas *et al.* did expose live animals to phthalates. Measurements of the rate of testosterone synthesis were, by necessity, made in a biochemical assay (*in vitro* study) using tissue obtained from the animals. The CHAP's use of a study that included observation of effects from exposure both to DINP and DEHP allowed a direct comparison of the relative potencies of different phthalates because multiple phthalates were tested in the same laboratory using the same methods. This is the unique advantage of Case 2. Staff considers the estimation of relative potency in Hannas *et al.* (2011) to be valid and notes that substantially similar methods have been used in the estimation of relative potency.[59] Moreover, a 2009 review study estimated that DINP is 2.6 times less potent than DEHP.[60] This estimate is closer to the Hannas *et al* study underlying Case 2 than to the Gray study mentioned by commenters.

Regarding other alleged flaws in the Hannas *et al.* study, staff agrees that the rats used to study DEHP and DINP were obtained from different suppliers (as noted by Hannas *et al.*) and that control testosterone production was different for each group of rats (also identified in the publication). However, the study adequately controlled for these differences. Staff also concludes that the number of animals per dose group was appropriate.

Comment: Case 3. Commenters generally preferred Case 3. Some stated that the CHAP should have relied only on Case 3 in its cumulative risk assessment. However, some commenters had criticisms of Case 3. One commenter asserted that the POD for DINP was inadequately justified. A commenter characterized Case 3 as ''muddled'' and noted inconsistencies in how the CHAP discussed the NOEL for DINP. Comments questioned whether multi-nucleated gonocytes (MNGs), which are the basis of Case 3's point of departure for DINP, are relevant to antiandrogenicity and whether MNGs are an adverse effect. A comment questioned the choice of 50mg/kg/day as the POD for DINP, asserting that it is too conservative. (Comments 4.15 through 4.17).

[59] Furr *et al.* (2014).

[60] Benson (2009).

Response: For Case 3, the CHAP derived PEAAs for each phthalate based on the CHAP's own literature review considering all published peer reviewed studies on each phthalate. The CHAP considered studies by Clewell *et al.* (2013a, 2013b), Hannas *et al.* (2011), and Boberg *et al.* (2011) as most relevant and highest quality for identifying a NOAEL for DINP. CHAP report at pp. 97–98. The CHAP found that the lowest no effect level seen in these studies was 50 mg/kg-day based on observance of MNGs in the Clewell study. As the CHAP noted, this was a conservative estimate. It is common practice in risk assessment to select the most conservative health endpoint (from quality data sets) when performing a hazard assessment.[61] Although MNG formation is not directly linked to changes in testosterone production, and not necessarily a direct antiandrogenic effect of phthalate exposure, MNGs are a characteristic effect routinely observed in phthalate syndrome.[62] Thus, the observation of MNGs formed after DINP exposure is consistent with the occurrence of MNGs associated with exposure to other active phthalates and is a marker of phthalates' effects in the developing male reproductive system. Although MNGs might not be an adverse effect, finding MNGs following DINP exposure supports that DINP has a biological effect similar to the other active phthalates. Staff concludes that the CHAP's assignment of the NOAEL for DINP at 50 mg/kg-day based on the observation of MNGs, is reasonable.

2. Risk in Isolation

In accordance with the CPSIA's direction, the CHAP also considered the risk of phthalates individually. 15 U.S.C. 2057c(b)(2)(B)(ii). As discussed in section III.C.3.b, to do this, the CHAP used an MOE approach. The CHAP chose this approach, in part, due to the recommendation of a NRC report on risk assessment methodology.[63] Like the HI approach, the MOE is also widely accepted. *Id.* The MOE is the ''no observed adverse effect level'' (NOAEL) of the most sensitive endpoint in animal studies divided by the estimated exposure in humans. Higher MOEs indicate lower risks. Generally, MoEs greater than 100 to 1,000 are adequate to protect public health. CHAP report at pp. 20 and 69. The MOE approach is conceptually similar to the CPSC staff's default approach in CPSC's Chronic Hazard Guidelines for assessing non-cancer risks,[64] and would lead to similar conclusions about risk. We discuss the MOE for each phthalate the CHAP examined in section IV.D of this preamble, and we discuss comments concerning risks in isolation in that section as well.

[61] Barnes and Dourson (1988); CPSC (1992); EPA (1991).

[62] NRC (2008), Howdeshell (2016), and Gaido (2007).

[63] NRC (2009).

D. Assessments/Determination for Each Phthalate

The CHAP assessed and made recommendations concerning each of the phthalates that it examined. CHAP report at pp. 82–121. Based on the CHAP report, CPSC staff's assessment, public comments on the NPR and staff's NHANES reports, the Commission issues this rule prohibiting children's toys and child care articles that contain concentrations of more than 0.1 percent of DINP, DIBP, DPENP, DHEXP, and DCHP. The Commission concludes that, based on the best available scientific data, all of these phthalates cause MRDE and all contribute to the cumulative risk. Previous sections of this preamble have discussed the health effect of MRDE, exposure to phthalates, and the risk assessment for these phthalates. This section presents the Commission's evaluation of each of the phthalates covered under this regulation.

1. Phthalates Subject to the Interim Prohibition

The CPSIA established an interim prohibition on children's toys that can be placed in a child's mouth and child care articles that contain concentrations of more than 0.1 percent of DINP, DIDP, and DNOP. 15 U.S.C. 2057c (b)(1). The CPSIA directs the Commission to determine, based on the CHAP report, whether to continue in effect the interim prohibitions on children's toys that can be placed in a child's mouth and child care articles containing DINP, DIDP, and DNOP ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.'' Thus, for each of these phthalates, the Commission must decide whether it is appropriate to make the interim prohibitions permanent under the statutory criteria.

As explained in the preamble to the NPR and above, for phthalates causing MRDE, the Commission considered the cumulative risk, which was based on the CHAP's HI estimates. Consistent with the CHAP report, the Commission considers that the acceptable risk is exceeded when the HI is greater than one. This is also consistent with the CPSC's chronic hazard guidelines. 57

[64] 57 FR 46626 (Oct. 9, 1992).

FR 46626 (Oct. 9, 1992). The CPSC's chronic hazard guidelines consider the ''acceptable risk'' for a reproductive or developmental toxicant to be equivalent to an exposure equal to or less than the ''acceptable daily intake'' (ADI), that is, an HI [65] of less than or equal to one for the population affected by the toxicant. Thus, the Commission considers that an HI less than or equal to one is necessary ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.'' The chronic hazard guidelines do not define the percentage of the population (*i.e.,* number of individuals versus the sample population or entire population) that must have an HI less than one in order to ensure a ''reasonable certainty of no harm . . . with an adequate margin of safety.''

In the NPR, the Commission proposed to prohibit children's toys and child care articles containing more than 0.1 percent of DINP, DCHP, DHEXP, and DPENP based on the CHAP's determination that approximately 10 percent of pregnant women and 5 percent of infants had an HI greater than one. 79 FR at 78334–35. Thus, in issuing the NPR, the Commission concluded that the proportion of populations not affected by cumulative exposure to phthalates (at least 90 percent of pregnant women and 95 percent of infants) did not meet the standard of ''a reasonable certainty of no harm with an adequate margin of safety.'' The Commission did not establish directly, however, that there was a specific proportion of the population that must have an HI less than or equal to one to ensure a ''reasonable certainty of no harm with an adequate margin of safety'' or to ''protect the health of children.''

Staff's analysis of the most recent NHANES data showed that exposures to phthalates have changed. Using the CHAP's cumulative risk assessment methodology and the most recent NHANES data, staff has determined that between 98.8 and 99.6 percent of WORA (2013/2014 NHANES) had an HI less than or equal to one. As in previous NHANES data cycles, some individuals in the 2013/2014 NHANES data set still have an HI greater than one. Depending on the PEAA case used for analysis, between two and nine of the approximately 538 WORA in the NHANES 2013/2014 data sample had an HI of greater than one.[66] Thus, a portion of WORA is exposed to phthalates at levels that can induce MRDE or other phthalate syndrome effects. For non-antiandrogenic phthalates (*i.e.,* those that do not cause MRDE), the Commission considered the MOE, as estimated by the CHAP to assess risk. As mentioned previously, MOEs greater than 100–1,000 are generally considered adequate to protect human health. Thus, the Commission considers a MOE of 100 or greater to be necessary ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety'' or to ''protect the health of children.''

a. Diisononyl phthalate (DINP)

i. Summary

The CHAP recommended that ''the interim prohibition on the use of DINP in children's toys and child care articles at levels greater than 0.1 percent be made permanent.'' CHAP report at p. 99. The CHAP stated that it made this recommendation ''because DINP does induce antiandrogenic effects in animals, although at levels below that for other active phthalates, and therefore, can contribute to the cumulative risk from other antiandrogenic phthalates.'' *Id.* As discussed in section III.C.4.a. of this preamble, the CHAP cited multiple published studies that showed antiandrogenic effects after DINP exposure in rats. *Id.* at 96–97. DINP is less potent, by perhaps two- to 10-fold, than DEHP.[67] However, DINP contributes to the cumulative risk from all antiandrogenic phthalates. The CHAP found that 10 percent of pregnant women and up to 5 percent of infants have a HI greater than one based on data at that time.

CPSC staff examined more recent NHANES data than the dataset the CHAP considered. Using the CHAP's methodology and the 2013/2014 NHANES exposure data, CPSC staff determined that approximately 99 percent of WORA in the U.S. population now have an HI less than or equal to one (using the 2005/2006 NHANES data, 97 percent of WORA had an HI less than or equal to one). Additionally, CPSC staff's evaluation of recent NHANES data shows that exposure to DINP has increased approximately five-fold since 2005/2006. DINP now contributes as much to the cumulative risk as DEHP.

As shown by the scenario-based exposure assessment included in Appendix E–1 of the CHAP report, lifting the interim prohibition on children's toys that can be placed in the mouth and child care articles containing more than 0.1 percent DINP could increase exposure to DINP from these products, compared to exposures if DINP is not allowed in these products. If DINP were used in all of the products that were included in the scenario-based exposure assessment, DINP exposure from children's toys and child care articles could account for up to about 29 percent of infants' total DINP exposure from all evaluated sources. Staff does not know the extent to which manufacturers would return to using DINP in children's toys and child care articles if the interim prohibition were lifted. Staff is also unable to quantify the impact of increased DINP exposure on the percent of WORA or infants that have an HI less than or equal to one. However, staff notes that increased exposure will increase the MRDE risk to the population.

The CHAP also assessed the risks of DINP in isolation and found that the MOEs ranged from 830 to 1,500. CHAP report at pp. 95–99. As discussed previously, MOEs of at least 100 are adequate to protect public health. CPSC agrees with the CHAP's analysis that the MOEs for DINP in isolation, did not present a risk. However, DINP exposure has been increasing since the CHAP completed its analysis. Current analysis suggests that DINP MOEs, in isolation, (*e.g.,* the MOE is now 220 to 14,000 at the 95th percentile) are below the upper limit, and are nearing the lower limit considered adequate for protecting public health. Based on the CHAP's analysis and staff's analysis of more recent NHANES data (and after consideration of the comments discussed below), the Commission determines that continuing the interim prohibition concerning DINP is necessary to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.

The Commission proposed to expand the scope of the restriction on DINP's use so that the rule would prohibit all children's toys and child care articles containing DINP rather than only children's toys that can be placed in a child's mouth and child care articles. 79 FR at 78335. Likewise, the final rule prohibits all children's toys and child care articles containing concentrations of more than 0.1 percent of DINP. The

[65] HI is the ratio of the daily exposure to the ADI. The CHAP's PEAA values are equivalent to an ADI, EPA reference dose (RfD), ATSDR minimal risk level (MRL), or similar terms used by other agencies.

[66] The NHANES data was analyzed using 3 methods (Cases 1–3) For Case 1, three WORA had HIs greater than 1. For Case 2, nine WORA had HIs greater than 1. For Case 3, two WORA had HIs greater than 1.

[67] Gray *et al.* (2000); Hannas *et al.* (2011b).

Commission determines that this expansion of scope is necessary to protect the health of children. Covering all children's toys means that the rule will protect against exposure to DINP through dermal contact (through the skin from handling toys), indirect oral exposure from children handling a toy and then placing their hands in their mouths, and all mouthing behavior. The CHAP's estimates of oral exposure from mouthing toys included any behavior in which the toy contacts the mouth. CHAP report at Appendix E. However, the interim prohibition covers only toys that can be placed in a child's mouth. The CPSIA provides the following definition of ''toy that can be placed in a child's mouth'':

> For purposes of this section a toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.

15 U.S.C. 2057c(g)(2)(B). Thus, continuing the interim prohibition with regard to DINP without expanding the scope would exclude toys that are 5 centimeters or larger in one dimension (or have parts 5 centimeters or larger) even though children may be exposed to phthalates from licking or otherwise contacting the toy with the lips and tongue. Additionally, although staff does not have exposure estimates for indirect oral exposure from handling toys and normal hand-to-mouth behavior, staff concludes that exposures from handling toys will further contribute to the cumulative risk. Based on the analysis provided in Appendix E of the CHAP report, the Commission believes that the rule should encompass any behavior in which the toy contacts the mouth because this behavior provides a pathway of exposure to antiandrogenic phthalates.

ii. Comments Concerning DINP

As noted in section IV.A, commenters presented numerous arguments questioning whether phthalates are antiandrogenic, *i.e.,* cause MRDE, and about the cumulative risk assessment. This section discusses the comments that focused on DINP.

(a) Health Effects of DINP Exposure

Comment: DINP and MRDE. Numerous commenters questioned whether DINP is antiandrogenic, that is, whether it causes MRDE. Commenters asserted that studies do not consistently show that DINP induces the effects associated with rat phthalate syndrome (*e.g.,* decreased fetal testosterone, changes in anogenital distance, nipple retention, reproductive tract malformation, decreased sperm production). They cited numerous studies to support their assertions that DINP is not antiandrogenic and they stated that, for these reasons, the CHAP should not have included DINP in the cumulative risk assessment. However another commenter supported the inclusion of DINP in the cumulative risk assessment because DINP is antiandrogenic. (Comment 1.14).

Response: The CHAP found, and CPSC agrees, that DINP-induced effects are consistent with phthalate syndrome in rats. Clewell *et al.* found changes in testosterone, nipple retention, and AGD, among other observations, by multiple laboratories, which indicate that DINP exposure is associated with outcomes similar to the effects of other phthalates such as DEHP and DBP that cause MRDE; these findings support the conclusion that DINP causes phthalate syndrome. CHAP report at pp. 97–98. CPSC's conclusions are based on the weight of the evidence from review of multiple studies (discussed in comment responses 1.15 to 1.20). Phthalate syndrome is a spectrum of effects and thus one does not expect to observe all phthalate syndrome effects in all studies. The CHAP noted that effects of the phthalates it evaluated were dose-related. CHAP report at p. 2.

Although DINP is less potent than other antiandrogenic phthalates, DINP can contribute to the cumulative risk from other phthalates. DINP has similar effects as other antiandrogenic phthalates, and thus is considered antiandrogenic in the context of the cumulative risk assessment. CPSC concludes that because DINP causes phthalate syndrome, it was appropriate for the CHAP to include DINP in its cumulative risk assessment and for the Commission to prohibit children's toys and child care articles containing DINP.

Comment: DINP and effects on testosterone production. Some commenters stated that studies showed inconsistent results regarding the effect of DINP on the production of testosterone and that this indicates DINP does not induce rat phthalate syndrome. (Comment 1.15).

Response: As the commenters recognize, some studies *do* show reductions in testosterone following DINP exposure.[68] CPSC staff agrees that some studies (*e.g.,* Clewell *et al.* (2013a);(2013b)) involving repeated measurements over time have not shown permanent or persistent changes in testosterone. Sometimes this was due to differences in study design. However, permanent or persistent changes in testosterone are not required to have an adverse impact on male reproductive development; rather, transient reductions in the rate of testosterone synthesis at the critical period of development do have permanent effects (*e.g.,* structural, functional) on male reproductive organs.[69] Furthermore, staff agrees with the study by Hannas *et al.,* showing that the rate of testosterone synthesis, rather than plasma or testicular levels, is the most relevant measure of phthalate-induced effects on testosterone.[70] Additionally, testosterone measurements made after dosing lab animals with DINP has ended do not account for the possible effects of ongoing exposure, as could be expected for humans with exposures occurring after birth from food, water, or contact with consumer products. Staff notes that its conclusions are consistent with findings from a recent NAS systematic review of the DINP scientific literature.[71] In that review study, the authors asserted with high confidence that DINP could be considered a ''presumed human hazard'' because of its potential to reduce testosterone in male fetal rats.

Comment: Effect of DINP on anogenital distance. Some commenters cited studies showing little or no effect on anogenital distance (AGD, *i.e.,* the distance from the anus to the genitalia) after dosing with DINP. They asserted that these studies show DINP does not induce phthalate syndrome. A commenter questioned the results of one study where a significant decrease in AGD was observed, because of the very small differences between the treated and control groups. (Comment 1.16).

Response: Reduced AGD is one of the abnormalities that characterizes rat phthalate syndrome. CHAP report at pp. 1–2. The commenter questioned the AGD reductions observed in the Boberg *et al.* (2011) and Clewell *et al.* (2013b) studies; however, these results were actually larger than the magnitude considered by the commenter as unlikely to be biologically significant. Overall, the weight of evidence in the studies cited by the commenter demonstrates that DINP causes permanent effects on male reproduction. Thus, the commenter's contention regarding a transient nature of DINP's effects on AGD conflicts with the body

[68] Boberg *et al.* (2011); Borch *et al.* (2004); Clewell *et al.* (2013a); (2013b).

[69] Hannas *et al.* (2011).

[70] Hannas *et al.* (2011).

[71] NAS (2017).

of evidence that DINP leads to phthalate syndrome. Furthermore, the animal studies, which involve short term exposures, do not reflect the continuous exposures that occur in humans.

Comment: Nipple retention. Commenters questioned whether nipple retention is a relative endpoint when considering phthalates' effects on humans and questioned the results of studies by Boberg *et al.* (2011) and Gray *et al.* (2000). Commenters also noted that Clewell *et al.* (2013b) reported no significant difference in nipples in male rats exposed to DINP. (Comment 1.17).

Response: The CHAP specifically discussed nipple retention as a relevant endpoint for antiandrogenic activity, and concluded that nipple retention in male animals is consistent with phthalate-induced reductions in testosterone levels. CHAP report at p. 16 and Appendix A–2. Staff notes that nipple retention is sensitive to exposure of the developing animal during key windows of susceptibility. Studies cited by the commenters that indicate the dosing ends during gestation or within the early part of the postnatal period do not consider possible effects of ongoing exposure, as could be expected for humans with exposures occurring after birth, but within early life periods of vulnerability from food, water, or contact with consumer products. As noted previously, phthalate syndrome is a spectrum of effects; all effects will not be present in every study.[72] Although nipple retention in animals may not correspond to a specific endpoint in humans, nipple retention is an antiandrogenic effect that could manifest in different ways in humans.

Comment: Reproductive tract malformations. Commenters noted that a number of animal studies involving DINP have not reported male reproductive tract malformations, such as cryptorchidism or hypospadias. For example, commenters stated that in the study by Gray *et al.* (2000), the significance of the changes after DINP exposure were unclear and questionable. (Comment 1.18).

Response: Staff recognizes that the same specific male reproductive tract malformations have not been consistently observed following DINP exposure. As noted previously, phthalate syndrome is a spectrum of effects and not all effects will be observed in every study. As the CHAP recognized, the observation of effects depends on the dose level used in each study. CHAP report at p. 2. The three studies described by the commenter as ''definitive'' studies (Hellwig *et al.,* Hushka *et al.,* and Waterman *et al.*) were not designed or intended to detect phthalate syndrome effects. In fact, one of the ''definitive'' studies (Hushka *et al.*) was on DIDP, which does not cause phthalate syndrome. Staff acknowledges that the Clewell study demonstrates that DINP induces limited or no phthalate syndrome effects following dietary dosing to rats. In spite of this, the authors themselves conclude that DINP has less potency than DEHP or DBP, but more than DEP when considering effects on the male reproductive tract. They additionally state ''DINP is simply less potent than DBP and DEHP, *i.e.,* it has lower potency in causing any adverse responses.'' Staff also notes that this study involved oral dosing via feed, which is different than oral dosing using a tube inserted into the stomach (gavage dosing), which is used in typical developmental toxicity studies for determining phthalate syndrome effects. Different dosing strategies may account for the lack of effects seen in the Clewell study. Staff responds to commenters' criticisms of other studies in comment/response 1.18 in Tab B of the staff's briefing package.

Comment: DINP's effects on sperm. Several commenters asserted that there is no strong evidence that DINP adversely affects sperm production or quality. They discussed a number of studies regarding DINP's effects on sperm parameters, male mating behavior, and fertility. (Comment 1.19).

Response: Three studies that commenters described as definitive were not actually designed or intended to detect phthalate syndrome effects. One of them was on DIDP, which does not cause phthalate syndrome. Inconsistencies could be due to study parameters or to the lower potency of DINP compared to other phthalates that have more consistent effects on sperm and fertility. Staff provides a more detailed response in comment/response 1.19 in Tab B of the staff's briefing package.

Comment: Multi-nucleated gonocytes (MNGs). Several commenters disagreed with the CHAP's use of MNG formation as a phthalate syndrome endpoint, and asserted that MNG formation is not a consequence of exposure to DINP. Some commenters asserted that MNG induction should not be considered an adverse effect because the MNGs are eliminated within a few weeks after birth. (Comment 1.20).

Response: Although MNG formation is not linked directly to changes in testosterone production, and not necessarily a direct antiandrogenic effect of phthalate exposure, MNGs are a characteristic effect routinely observed after dosing with phthalates.[73] Thus, the observation of MNGs formed after DINP exposure is consistent with results after exposure to other active phthalates, such as DBP, and is a marker of phthalates' effects in the developing male reproductive system. Furthermore, one study suggests that the presence of MNGs may be linked to reduced fertility or testicular germ cell cancer in humans.[74]

Comment: Human epidemiology data and DINP antiandrogenicity. One commenter asserted that the available epidemiology data do not support the assertion that DINP is associated with reproductive effects in humans. The commenter presented a review of four studies that evaluated DINP's association with adverse human reproductive effects.[75] The review found lack of correlation or equivocal results in these studies. The commenter also found that a more recent study that reported slight reductions in AGD associated with DINP metabolites in mother's urine was equivocal.[76] Another commenter noted that statistical chance may have been responsible for some of the epidemiology studies' positive association. The commenter concluded that the weight of the current information did not support that humans developed reproductive or developmental issues following exposure to phthalates. (Comment 7.5).

Response: Of the four studies mentioned by the commenter, two were of adults and one was of boys aged 6–19 years. The CHAP concluded that studies in adult men were less relevant to the CHAP's work because exposures measured during adulthood cannot be used to infer childhood or early life exposure. Observational epidemiology studies control for the possibility of random chance, bias, or confounding in their study design and analysis. The primary studies that commenters mentioned discuss the studies' efforts to minimize these effects. Staff concludes that most of the studies cited by the commenters are not relevant to the current rulemaking on children's toys and child care articles because they involved adults or older children. Because humans are simultaneously exposed to multiple phthalates, it is difficult to distinguish the effects of different phthalates in epidemiology studies. Staff concludes that the overall

[72] Howdeshell *et al.* (2016).

[73] Spade *et al.* (2015).

[74] Ferrara *et al.* (2006).

[75] The studies were (Joensen *et al.* (2012); Jurewicz *et al.* (2013); Main *et al.* (2006); Mieritz *et al.* (2012).

[76] Bornehag *et al.* (2015).

weight of the evidence demonstrates an association between prenatal phthalate exposure and MRDE effects in infants.

(b) DINP and Risk

Comment: DINP's contribution to risk. Several commenters asserted that DINP contributes little to the cumulative risk. They noted that the CHAP's cumulative risk assessment showed that the estimated risks associated with phthalate exposure were driven by DEHP and DBP, and that DINP contributed only a small portion of the combined risk (less than one percent). A comment on CPSC staff's 2017 report stated that as DINP continues to replace DEHP, the risk will continue to fall, thus increased replacement of phthalates by DINP will lower the cumulative risk further than it currently is. Along these lines, the commenter asserted that lifting the interim prohibition regarding DINP would have only an ''inconsequential effect'' on cumulative risk. Some commenters asserted that, because DINP is less potent than DEHP, even if DINP entirely replaced DEHP, the 95th percentile HI would be far below one. (Comments 3.3, 3.4, and 5.1).

Response: CPSC agrees that the median and 95th percentile HIs would be less than one if all CRA phthalate exposures were considered to be from DINP. However, a certain number of WORA in the 2013/2014 NHANES sample have HIs and DINP HQs greater than one. Any increase in DINP exposure could increase these individuals' risk. In addition, there are a number of individuals that have HIs and DINP HQs near one. Additional DINP exposure to these individuals could increase the risk to greater than an HI of one (see comment response 3.2 and TAB A). Based on the scenario-based exposure assessment, lifting the interim prohibition on children's toys that can be placed in a child's mouth and child care articles containing more than 0.1 percent of DINP could result in children's toys and child care articles accounting for up to about 29 percent of total DINP exposure to infants. However, if DINP is not allowed in children's toys and child care articles, such products would not contribute to total DINP exposure. Staff is unable to quantify the impact of changes in DINP exposure on the percent of WORA or infants that have an HI less than or equal to one, although staff notes that an increased exposure will increase the MRDE risk to the population. Staff does not consider that increasing MRDE risk to the population is ''inconsequential,'' particularly to those affected.

As the commenter points out, in reality DINP would not replace all of the other phthalates because the differences in properties among the phthalates limit their use depending on the intended application. WORA with HQs greater than one were measured in each NHANES cycle despite the interim prohibition on children's toys that can be placed in a child's mouth and child care articles containing DINP. Any further increase in DINP exposure could increase the risk from DINP.

Comment: ''Reasonable certainty of no harm'' and DINP. Some commenters asserted that the standard ''reasonable certainty of no harm'' is met without continuing the interim prohibition regarding DINP. They reasoned that, because the CPSIA permanently prohibited children's toys and child care articles containing DEHP, DBP and BBP, those phthalates cannot contribute to any cumulative risk from these children's products in the future; and without those phthalates, the HI clearly is less than one, so there is a reasonable certainty of no harm from use of DINP in these children's products. In contrast, other commenters asserted that it ''turns logic upside-down'' to suggest that ''as DEHP is replaced by less toxic phthalates, there is a reasonable certainty of no harm from increasing exposures to the remaining phthalates,'' because the level of future replacement is unknown, but it is known that the replacement phthalates present hazards.

Commenters on the staff's analysis of more recent NHANES data asserted that CPSC staff's analysis clearly demonstrates that the interim prohibition involving DINP can be lifted while meeting the ''reasonable certainty of no harm'' standard set forth in the CPSIA because the NHANES 2013/2014 data show that cumulative risk for WORA continues to decline with the HI consistently below one for the 50th and 95th percentiles. (Comment 3.20).

Response: As explained, studies show that DINP contributes to the cumulative risk. The CPSIA's permanent prohibition keeps DEHP, BBP, and DBP out of children's toys and child care articles; however these phthalates continue to be used in other products and thus they contribute to the cumulative risk. The CRA demonstrates that HIs greater than one were observed in actual WORA sampled, in all NHANES data cycles, including the most recent (2013/2014). Thus, male children born to these women could be at risk for MRDE. Because a portion of the potentially sensitive population is still near the level of concern (HI greater than 1), permanently prohibiting children's toys and child care articles containing DINP is still necessary to ''ensure a reasonable certainty of no harm'' to children and pregnant women with an ''adequate margin of safety.''

Comment: Diet as source of exposure to DINP. Several commenters noted that diet is the primary source of exposure for DINP, as well as other phthalates, in infants and children. They asserted that DINP contributes so little to the combined risk from exposure to phthalates from all sources that a permanent prohibition on DINP's use in children's toys and child care articles would have little effect on the overall risk and, thus, the prohibition is not supported. (Comment 5.3).

Response: The CHAP report does show that food, rather than children's toys or child care articles, provides the primary source of phthalate exposure to women and children. CHAP report at pp. 49–53. The other main contributors were soft plastic toys and teethers (via mouthing), and personal care products such as lotions, creams, oils, soaps, and shampoos via dermal contact. *Id.* Figure 2.1.

The scenario-based exposure assessment included in the CHAP report shows that mouthing and dermal exposure to toys could contribute an average of 12.8 percent, 5.4 percent, and 1 percent of the overall DINP exposure to infants, toddlers, and children, respectively, if DINP were used in these products. *Id.* at Appendix E1, Tables E1–21, E1–22, and E1–23. Mouthing and handling soft plastic toys and teethers could contribute 12.8 percent (mean exposure) or 16.6 percent (95th percentile exposures) of total DINP exposure in infants. *Id.* at Table E1–21. Dermal contact with the evaluated toys and child care articles may contribute up to an additional 16.5 percent of exposures to infants. *Id.* Therefore, although infants' DINP exposure was primarily from diet, up to 29 percent may be due to the presence of DINP in the evaluated toys and child care articles. *Id.,* Figure 2.1.

Comment: DINP in isolation. Commenters asserted that the CHAP found no significant health risk from exposure to DINP by itself (considered in isolation), given the very large MOE estimates for median exposures, as well as for the 95th percentile of exposure. Commenters concluded that because of the high MOEs for DINP from all sources, the margins of safety must be even larger for the children's products' contribution to DINP exposure, and thus, there is no basis for a permanent prohibition on children's toys and child care articles containing DINP. A commenter also stated that replacement of DEHP by DINP would not be expected to increase the risk because of DINP's lower potency. A commenter

also asserted that even a doubling in DINP exposures would not increase the risk substantially, thus, restricting DINP's use is unwarranted. (Comment 5.5).

Response: As discussed previously, the CHAP's recommendations and the Commission's rule are based on the cumulative risk from DINP in combination with other phthalates. We note, however, that due to the increased exposure to DINP (as seen in the 2013/2014 NHANES data), DINP's risk in isolation has increased. Thus, DINP alone may dominate the cumulative risk in the future, and DINP exposure in isolation may approach the level of concern, especially considering Case 2. Using the most recent NHANES data, the MOEs for WORA exposed to DINP range from 2300 to 150,000 (median) and 220 to 14,000 (95th percentile) for all three cases.

CPSC disagrees with the assertion that doubling the DINP exposure would not increase the risk substantially, and notes that currently, a certain proportion of actual WORA have a DINP HQ greater than one and a certain proportion of actual WORA have DINP HQs near one. Increasing exposure to DINP may increase the number of individuals with an HQ greater than one or may increase the HQs of individuals with an HQ greater than one. Furthermore, doubling DINP exposures would lower the MOE for DINP to 110 to 7000 (95th percentile). The CHAP noted that MOEs exceeding 100 to 1000 are typically ''considered adequate for protecting public health.'' CHAP report at p. 4. Current analysis suggests, therefore, that DINP MOEs, in isolation, (*e.g.,* the MOE is 220 for Case 2) are below the upper limit, and are nearing the lower limit considered adequate for protecting public health.

Comment: Safety of DINP compared to alternatives. Numerous commenters expressed concern about prohibiting the use of DINP in children's toys and child care articles when not much is known about the toxicity and safety of alternative chemicals. Some commenters stated that the safety of alternative plasticizers should be thoroughly tested before placing restrictions on DINP. Commenters stated that DINP is well studied, has been used for over 50 years, and has been found safe for its intended uses. Commenters were concerned that prohibiting the use of DINP in children's toys and child care articles could potentially put people at greater risk as substitutes with uncertain safety are used instead. (Comment 10.5).

Response: CPSC shares the commenters' concerns about the shift of chemical use from phthalates with known toxicity to phthalate alternatives with less toxicity or exposure information. The CHAP identified several data gaps for phthalate alternatives. CPSC agrees with the CHAP's recommendation that appropriate federal agencies should perform additional research and risk assessment activities on phthalates and phthalate alternatives to fill in data gaps. However, CPSC does not believe that the lack of data on alternative plasticizers means we should not take action regarding DINP. DINP has in fact been covered by the interim prohibition since February 2009. As explained in the NPR and throughout this document and the staff's briefing package, based on the CHAP report and staff's analysis, we conclude that DINP causes adverse effects on male reproductive development and contributes to the cumulative risk of these effects from other antiandrogenic phthalates. Thus, the Commission determines that prohibiting children's toys and child care articles containing concentrations of more than 0.1 percent of DINP is necessary to ensure a reasonable certainty of no harm and to protect the health of children.

(c) Scope of Prohibition Regarding DINP

Comment: Support for expanding scope to all children's toys rather than those that can be placed in a child's mouth. Several commenters stated that the Commission lacked justification to expand the restriction on DINP from ''children's toys that can be placed in a child's mouth'' to all children's toys. One commenter noted that it is not clear the CHAP intended to recommend this expansion. Other commenters noted that because the MOEs for DINP show that it does not present a risk in isolation, there is no basis for expanding the interim prohibition to cover all children's toys. Commenters asserted that the Commission had little justification for the change and that it would have little effect on the risk. They noted that any risk comes primarily from mouthing. However, other commenters, citing evidence that DINP is associated with MRDE and the CHAP's CRA analysis, stated that the CRA clearly supported the proposed prohibition involving DINP and the proposed expansion of scope from toys that can be placed in a child's mouth to all children's toys. (Comments 6.1 and 6.2).

Response: As discussed previously, this rule is based on the cumulative risk analysis demonstrating that DINP (and other antiandrogenic phthalates) causes MRDE and, and the most recent NHANES data that shows that there were from two to nine individuals with a HI greater than one in a sample of 538 WORA. Limiting the rule to children's toys that can be placed in a child's mouth would exclude toys that could also expose children to DINP through mouthing behaviors other than placing the toy in the mouth and through hand to mouth exposure (*e.g.,* licking) as well as direct exposure through dermal contact. The 2013/2014 NHANES data indicate that exposure to DINP is increasing, even with the CPSIA's interim prohibition in effect. Covering all children's toys (rather than only those that can be placed in a child's mouth) will decrease exposure to DINP and thus reduce the risk of MRDE.

Comment: Reliance on low cost and low dermal exposure as rationale in NPR. Commenters asserted that the NPR had provided faulty rationales for the expansion. A commenter asserted that the Commission had inappropriately based the expansion to all children's toys on consideration of testing costs rather than on risk. A commenter stated that the reasoning stated in the NPR in favor of expanding the rule to all children's toys was inconsistent with the reasons CPSC had stated for not expanding the prohibition to all children's products. The commenter understood that CPSC did not propose to cover all children's products because of negligible exposure due to the infrequency of mouthing of children's products (that are not children's toys or child care articles). The commenter asserted that this same rationale indicates that the rule should not be expanded beyond children's toys that can be placed in a child's mouth. (Comment 6.3 and 6.6).

Response: The NPR mentioned that the proposed expansion would have little impact on testing costs. 79 FR 78335. However, the NPR merely noted this anticipated impact; the reason for the expansion is to reduce the risk of adverse health effects. Regarding any inconsistency between proposing to expand the interim prohibition to all children's toys and proposing not to cover additional children's products, we note that the proposal concerning all children's products was based primarily on a lack of information to assess the impact on children's health.

Comment: Reliance on European assessment as rationale in NPR. Commenters objected to the NPR's discussion of the Europe Union's regulations on phthalates. Commenters noted that the NPR stated that the European Commission's 2005 directive on phthalates had distinguished between all children's toys and toys that

can be placed in the mouth due to uncertainties about DINP, DNOP and DIDP. The NPR suggested that, now that the CHAP had issued its report, these uncertainties no longer exist. Commenters objected to the NPR's reliance on this reasoning to support the expansion of the regulation of DINP. In addition, the EU submitted a related comment noting that the European Chemicals Agency (ECHA) conducted an extensive review in 2010 on DINP, DIDP and DNOP, and concluded that exposure other than mouthing did not present further risk. (Comments 6.4 and 6.5).

Response: Regarding the ECHA's re-evaluation, that report did not specifically address the distinction between children's toys and toys that can be placed in a child's mouth. Additionally, the 2013 ECHA report used different health end points (liver toxicity) as the focus, rather than the MRDE focus used by the CHAP and CPSC. Moreover, the 2013 ECHA report did not consider cumulative health risks from multiple phthalates.

b. Di-n-octyl phthalate (*DNOP*)

The CHAP concluded that DNOP does not lead to male developmental reproductive toxicity in animals and, therefore, does not contribute to the cumulative risk. Although DNOP does cause other developmental (supernumerary ribs) and systemic effects (liver, thyroid, immune system, and kidney), the MOEs in humans are very high. Therefore, the CHAP recommended that the current prohibition involving DNOP be lifted. CHAP report at pp. 91–95. The NPR noted that DNOP levels in people are so low that they are not detectable in about 90 percent of humans, and that DNOP is not antiandrogenic, and, therefore, does not contribute to the cumulative risk. 79 FR 78334. Based on the CHAP report and staff's analysis, the Commission concludes that continuing the prohibition of children's toys that can be placed in a child's mouth and child care articles containing more than 0.1 percent of DNOP is not necessary to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.

c. Diisodecyl phthalate (DIDP)

The CHAP concluded that DIDP does not lead to male developmental reproductive toxicity in animals and, therefore, does not contribute to the cumulative risk. The CHAP considered the risk of DIDP in isolation and found that DIDP does cause other developmental (supernumerary ribs) and systemic effects (liver, and kidney). However, because the MOEs in humans are sufficiently high (range from 2,500 to 10,000 for median DIDP exposures and 586 to 3,300 for upper-bound exposures), the CHAP recommended that the interim prohibition involving DIDP be lifted. CHAP report at pp. 100–105. As noted in the NPR, DIDP exposure would need to increase by more than 250 times to exceed an acceptable level. 79 FR 78334. Based on the CHAP report and staff's analysis, the Commission concludes that continuing the prohibition of children's toys that can be placed in a child's mouth and child care articles containing more than 0.1 percent of DIDP is not necessary to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.

d. Comments Concerning DNOP and DIDP

Comment: Prohibition concerning DNOP and DIDP should be made permanent. Some commenters asked the Commission to make the interim prohibition regarding DNOP and DIDP permanent. Commenters reiterated the CHAP's conclusions that DNOP is a potential developmental toxicant, causing supernumerary ribs, and a potential systemic toxicant, causing adverse effects on the liver, thyroid, immune system, and kidney. They noted that the CHAP stated that DIDP was a 'probable toxicant' based on reproductive and developmental effects, and adverse systemic effects on the liver and kidney. A commenter suggested that ''there could be a cumulative impact from exposures to a mixture of DINP, DNOP and DIDP, which would enhance the concern about harm.'' Commenters asserted that without enough data to conduct a robust risk assessment, lifting the prohibition involving DNOP and DIDP will lead to elevated exposure to these two phthalates when others are covered by prohibitions. (Comments 5.8 and 5.9).

Response: The CHAP concluded that DIDP and DNOP do not appear to possess antiandrogenic potential and therefore the CHAP did not include them in the cumulative risk assessment. As discussed above, the CHAP's analysis of DIDP and DNOP in isolation showed high MOEs (greater than 1,000 for all populations) that are sufficient to protect human health. The CHAP found that DNOP exposure levels are so low that one of the metabolites, MNOP, was not detectable in about 90 percent of humans. CHAP report at Table 2.6. Exposures would have to increase by a large measure before the acceptable levels of exposure would be exceeded. Thus, the CHAP report and staff's analysis do not support a conclusion that prohibiting the use of DNOP or DIDP in children's toys that can be placed in a child's mouth and child care articles is necessary to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.

Comment: ''Reasonable certainty of no harm'' and DNOP and DIDP. Some commenters asserted that lifting the interim prohibition concerning DNOP and DIDP while banning other phthalates would raise questions about whether such action meets the ''reasonable certainty of no harm'' standard. They noted that the CHAP report found exposure to these chemicals from toys and child care articles and that the CHAP reported developmental and systemic toxic effects caused by these chemicals in animal studies. (Comment 5.9).

Response: The CHAP concluded that DIDP and DNOP do not appear to possess antiandrogenic potential and therefore the CHAP did not include these two phthalates in the cumulative risk assessment. Assessing these chemicals in isolation, the CHAP found that the margins of exposure were sufficiently high to protect human health. Therefore, staff concludes that there is no justification to continue the prohibition involving DNOP or DIDP.

2. Phthalates Subject to the Rule But Not Currently Prohibited Under the CPSIA. In addition to determining what action to take regarding the interim prohibition, the CPSIA directed the Commission to ''evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.'' 15 U.S.C. 2057c(b)(3)(B).

In the absence of a definition or other guidance on the meaning of the phrase ''necessary to protect the health of children,'' CPSC interprets the phrase in the context of the CHAP report and CPSC's chronic hazard guidelines,[77] which consider that an HI less than or equal to one is necessary to protect the health of children. As explained in the CHAP report, the four additional phthalates all cause male reproductive developmental effects and would contribute to the cumulative risk.

[77] 57 FR 46626 (Oct. 9, 1992).

The CHAP reviewed the potential health risks associated with eight phthalates that were not prohibited by the CPSIA, and it recommended that four additional phthalates (DIBP, DPENP, DHEXP, and DCHP) be prohibited from use in children's toys and child care articles. The CHAP found that these four phthalates are associated with adverse effects on male reproductive development and contribute to the cumulative risk from antiandrogenic phthalates. CPSC staff has reviewed the CHAP's assessment and agrees with the recommendation. Based on the CHAP's evaluation and the staff's assessment, the Commission proposed to prohibit children's toys and child care articles containing more than 0.1 percent of DIBP, DPENP, DHEXP, and/or DCHP. 79 FR 78335–78337. The Commission determines that prohibiting children's toys and child care articles that contain concentrations of more than 0.1 percent of DIBP, DPENP, DHEXP, and/or DCHP is necessary to protect the health of children and issues this final rule to establish this prohibition.

Although current exposures to these four phthalates are low, these phthalates could be used as substitutes for the phthalates subject to prohibition, thus increasing human exposures from MRDE phthalates. All of these four phthalates are capable of contributing to the cumulative risk. A 2014 study demonstrated that three of these four phthalates (DPENP, DHEXP, and DCHP) had much greater potency than DEHP which the CPSIA permanently prohibits from use in children's toys and child care articles.[78] The potency of the fourth (DIBP) was slightly less or similar to DEHP.[79] In addition, these four phthalates may have a greater potential for exposure than DINP, because lower molecular weight plasticizers generally have higher migration rates.[80]

a. Diisobutyl Phthalate (DIBP)

The CHAP recommended prohibiting the use of diisobutyl phthalate (DIBP) in children's toys and child care articles. CHAP report at pp. 110–113. DIBP is associated with adverse effects on male reproductive development and contributes to the cumulative risk from antiandrogenic phthalates. Furthermore, as noted in the NPR, DIBP has been found in some toys and child care articles during compliance testing by CPSC. The CHAP estimated that DIBP contributes up to 5 percent of the cumulative risk in infants from all products and sources. CHAP report at Table 2.16. More recent biomonitoring data show that DIBP exposures and risks have increased by about 50%. TAB A of staff briefing package.

DIBP is similar in toxicity to DBP, which is one of the phthalates subject to the CPSIA's permanent prohibition. DIBP was shown to be antiandrogenic in numerous studies and it acts in concert with other antiandrogenic phthalates. The CHAP found that current exposures to DIBP are low. When considered in isolation, DIBP has a MOE of 3,600 or more. CHAP report at pp. 24, 110–111. DIBP contributes roughly 1 to 2 percent of the cumulative risk from phthalate exposure to pregnant women and 1 percent to 5 percent in infants. However, the CHAP based its recommendation on cumulative risk.

Based on evaluation of the CHAP report and staff's review, the Commission concludes that there is sufficient evidence to conclude that DIBP is antiandrogenic and contributes to the cumulative risk. The Commission also concludes that, applying the CPSC chronic hazard guidelines, this phthalate is considered ''probably toxic'' to humans based on sufficient evidence in animal studies. As discussed previously, the Commission considers that a HI less than or equal to one is necessary ''to protect the health of children.'' Using the most recent biomonitoring data, some WORA in the sample have an HI that exceeds one. For PEAA Case 1, three WORA had an HI greater than one; for PEAA Case 2, nine WORA had an HI greater than one; and for PEAA Case 3, two WORA had an HI greater than one. In addition, CPSC staff has identified DIBP in a small portion of toys and child care articles during routine compliance testing. Therefore, the rule prohibits children's toys and child care articles containing concentrations of more than 0.1 percent of DIBP. The Commission concludes that this action is necessary to protect the health of children because it would prevent current and future use of this antiandrogenic phthalate in children's toys and child care articles.

b. Di-n-pentyl Phthalate (DPENP)

The CHAP recommended prohibiting the use of DPENP in children's toys and child care articles. CHAP report at pp. 112–113. DPENP is associated with adverse effects on male reproductive development and contributes to the cumulative risk from antiandrogenic phthalates. Furthermore, DPENP is the most potent of the antiandrogenic phthalates. Prohibiting the use of DPENP would prevent its use as a substitute for other banned phthalates. The Commission agrees with the CHAP's recommendation for DPENP. Based on the CHAP report and previous toxicity reviews by CPSC staff and a contractor,[81] the Commission concludes that there is sufficient evidence that DPENP is antiandrogenic and contributes to the cumulative risk. For example, the CHAP noted studies by Howdeshell *et al.* and Hannas *et al.,* which found that exposure to DPENP reduced fetal testicular testosterone production. *Id.* at p. 112. The Commission also concludes that, applying the CPSC chronic hazard guidelines, this phthalate is considered ''probably toxic'' to humans, based on sufficient evidence in animal studies. Furthermore, DPENP is roughly two- to three-fold more potent than DEHP.[82] Although CPSC staff has not detected DPENP in children's toys or child care articles, metabolites of DPENP have been detected in humans,[83] indicating that some exposure to DPENP does occur. In the CHAP's analysis, up to five percent of infants and up to 10 percent of pregnant women exceed the negligible risk level (HI greater than one). Using the most recent biomonitoring data, some WORA in the sample have an HI greater than one. Allowing the use of DPENP in children's toys and child care articles would further increase the cumulative risk. As discussed previously, the Commission considers that a HI less than or equal to one is necessary ''to protect the health of children.'' Therefore, the rule prohibits children's toys and child care articles containing concentrations of more than 0.1 percent of DPENP. The Commission concludes that this action is necessary to protect the health of children because it would prevent current and future use of this antiandrogenic phthalate in toys and child care articles.

c. Di-n-hexyl Phthalate (DHEXP)

The CHAP recommended prohibiting the use of DHEXP in children's toys and child care articles. CHAP report at pp. 114–116. DHEXP is associated with adverse effects on male reproductive development and may contribute to the cumulative risk from antiandrogenic phthalates. The Commission agrees with the CHAP's recommendation for DHEXP. Based on the CHAP report and previous review by CPSC staff and a contractor,[84] the Commission concludes that there is sufficient evidence that DHEXP is antiandrogenic and contributes to the cumulative risk. The

[78] Furr *et al.* (2014).

[79] Furr *et al.* (2014); Hannas *et al.* (2011).

[80] Dreyfus and Babich (2011).

[81] Patton, (2010).

[82] Hannas *et al.* (2011a).

[83] Silva *et al.* (2010).

[84] Patton (2010).

CHAP report noted a 1980 study by Foster *et al.* that found severe testicular atrophy in rats, among other effects. *Id.* at p. 114. The Commission also concludes that, by applying the CPSC chronic hazard guidelines, this phthalate may be considered ''probably toxic'' to humans based on sufficient evidence in animal studies. The CHAP found that up to five percent of infants and up to 10 percent of pregnant women exceed the negligible risk level (HI greater than one). Using the most recent biomonitoring data, some WORA in the sample have an HI that exceeds one. Allowing the use of DHEXP in children's toys and child care articles would further increase the cumulative risk. As discussed previously, the Commission considers that a HI less than or equal to one is necessary ''to protect the health of children.'' Although CPSC staff has not detected DHEXP in toys and child care articles during routine compliance testing thus far, prohibiting children's toys and child care articles containing DHEXP would prevent its use in these products as a substitute for other banned phthalates. Therefore, the rule prohibits children's toys and child care articles containing concentrations of more than 0.1 percent of DHEXP. The Commission concludes that this action is necessary to protect the health of children because it would prevent future use of this antiandrogenic phthalate in toys and child care articles.

d. Dicyclohexyl Phthalate (DCHP)

The CHAP recommended prohibiting the use of DCHP in children's toys and child care articles. CHAP report at pp. 116–118. DCHP is associated with adverse effects on male development and contributes to the cumulative risk from antiandrogenic phthalates.

The Commission agrees with the CHAP's recommendation for DCHP. Based on the CHAP report and previous reviews by CPSC staff and a contractor,[85] the Commission concludes that there is sufficient evidence that DCHP is antiandrogenic and contributes to the cumulative risk. For example, the CHAP noted two studies that found such effects as reduced AGD and nipple retention in rats exposed to DCHP. *Id.* at p. 116. The Commission also concludes that, by applying the CPSC chronic hazard guidelines, this phthalate is considered ''probably toxic'' to humans based on sufficient evidence in animal studies. 57 FR 46626 (Oct. 9, 1992). The CHAP found that up to five percent of infants and up to 10 percent of pregnant women exceed the negligible risk level (HI greater than one). Using the most recent biomonitoring data, some WORA in the sample have an HI that exceeds one. Allowing the use of DCHP in children's toys and child care articles would further increase the cumulative risk. As discussed previously, the Commission considers that a HI less than or equal to one is necessary ''to protect the health of children.'' Although the CPSC staff has not detected DCHP in toys and child care articles during routine compliance testing thus far, prohibiting the use of DCHP would prevent its use as a substitute for other banned phthalates. Therefore, the rule prohibits children's toys and child care articles containing concentrations of more than 0.1 percent of DCHP. The Commission concludes that this action is necessary to protect the health of children because it would prevent future use of this antiandrogenic phthalate in toys and child care articles.

e. Comments Concerning Phthalates Subject to the Rule But Not Currently Prohibited Under the CPSIA

Comment: Regulating DIBP, DPENP, DHEXP, DCHP. One commenter stated that DIBP, DPENP, DHEXP and DCHP are not widely used in children's toys and child care articles and are not prohibited in the European Union. The commenter stated that the proposed rule ''inevitably will extend inspection range, add cost to manufacturers and exporters and result in an unnecessary trade barrier.'' (Comment 5.7).

Response: CPSC agrees that DIBP, DPENP, DHEXP and DCHP are not widely used in children's toys and child care articles. However, as explained above, studies demonstrate that these four phthalates all cause MRDE and they are as, or more, potent than DEHP. Regarding the commenter's assertion that the prohibition of children's toys and child care articles containing these four phthalates would add costs and result in a trade barrier, because these phthalates are not widely used in children's toys and child care articles, the cost to manufacturers to reformulate the few products that might contain these phthalates should be small. Moreover, third party testing is already required for children's toys and child care articles containing prohibited phthalates and the incremental cost of adding the additional phthalates to the analysis is expected to be very small. Staff estimates that the additional materials needed would cost $0.35 per test or about 0.1 percent of a typical $300 phthalates test for a component part or material. The data analysis procedure would need to be modified to include the new phthalates, but staff does not expect this would additional burdens to qualified laboratories.

f. Children's Products

The scope of this rule covers children's toys and child care articles. The CPSIA authorizes the Commission to ''declare any children's product containing any phthalates to be a banned hazardous product'' if such action is necessary to protect the health of children. 15 U.S.C. 2057c(b)(3)(B). As explained in the NPR, the Commission is not expanding the rule to cover other children's products. 79 FR 78337–78338. Only limited data on exposure to phthalates from other children's products exist. The general information available does not support a determination that prohibiting any products other than children's toys and child care articles is necessary. Toys are more likely than many other children's products to be made of materials that could be plasticized with phthalates. Toys and child care articles are more likely than other children's products to provide a pathway of exposure to phthalates both through oral exposure (from direct contact with the mouth and indirect contact when children place their hands in their mouths) and dermal exposure. We received few comments in response to the NPR that addressed expansion of the scope of the regulation to all children's products.

Comment: Expanding the scope to all children's products. One commenter expressed disappointment that CPSC is not expanding the scope of the provisions involving phthalates to include other children's items such as raincoats, footwear, backpacks, school supplies, and clothes. The commenter asserted that a lack of data does not mean CPSC should assume there is no problem. (Comment 6.6).

Response: Staff has not found new information that would change the basis underlying the Commission's decision not to propose expanding the scope of the rule to all children's products. There is not enough information to adequately assess the health impact of children's products other than children's toys and child care articles. In contrast to children's products in general, a wealth of information regarding use exists for children's toys and child care articles from other agencies, such as EPA, and in scientific publications. The general information available indicates that exposure from children's products is comparatively less than that from children's toys and childcare articles.

[85] Versar/SRC (2010b).

g. Other Phthalates Not Included in the Rule

The CHAP examined 14 phthalates: The three subject to the CPSIA's permanent prohibition, the three subject to the CPSIA's interim prohibition, and eight additional phthalates. Of the eight additional phthalates, the CHAP recommended that four be prohibited from use in children's toys and child care articles, that three (Dimethyl Phthalate (DMP), Diethyl Phthalate (DEP), Di(2-propylheptyl) Phthalate DPHP) be free of any restriction, and the one (Diisooctyl Phthalate (DIOP)) be subject to an interim prohibition. CHAP report at pp. 1118–119. As discussed in the NPR, DIOP has a chemical structure consistent with other antiandrogenic phthalates. However, the CHAP concluded that there is not sufficient evidence to support a permanent prohibition. 79 FR 78337. The CPSIA did not provide for an interim prohibition as an option for the Commission's rule under section 108, and as the CHAP explained, insufficient data exists to determine that a permanent prohibition of DIOP is necessary to protect the health of children. We received a few comments concerning phthalates that the CHAP assessed but are not covered by CPSC's rule.

Comment: DIOP. Some commenters suggested that the CPSC permanently prohibit children's toys and child care articles containing DIOP. They stated that the CHAP had noted DIOP's structural similarity to antiandrogenic phthalates and they concluded that CPSC should not assume that it would meet the CPSIA criteria when hazard and exposure data are lacking. (Comment 5.10).

Response: Although the CHAP recognized that the structure of DIOP suggests that it may be associated with antiandrogenic effects, no experimental data exist that would support a conclusion that DIOP causes MRDE. Additionally, potency and exposure data are lacking. Thus, there is no basis for regulatory action on DIOP at this time.

Comment: Prohibitions involving other phthalates. Some commenters asserted that ''The CHAP's lack of recommendations for additional regulatory action on phthalates like DIOP, DMP, DEP, DPHP or many of the alternatives evaluated is not an endorsement of their safety'' because of the lack of sufficient hazard and exposure data on these chemicals. The commenters suggested that CPSC continue to review and monitor these phthalates and to recommend that other federal agencies take appropriate actions. (Comment 10.4).

Response: CPSC staff participates in several interagency collaborations to discuss issues of mutual interest, including phthalates. CPSC will continue these cooperative activities.

E. The Concentration Limit

For both the permanent and interim prohibitions, the CPSIA established a concentration limit of 0.1 percent. The CHAP stated:

> When used as plasticizers for polyvinyl chloride (PVC), phthalates are typically used at levels greater than 10%. Thus, the 0.1% limit prohibits the intentional use of phthalates as plasticizers in children's toys and child care articles but allows trace amounts of phthalates that might be present unintentionally. There is no compelling reason to apply a different limit to other phthalates that might be added to the current list of phthalates permanently prohibited from use in children's toys and child care articles.

CHAP report at p. 79. As discussed in the NPR, this concentration limit is not based on risk, and the Commission found no risk-based justification to change the limit from the 0.1 percent specified in the CPSIA. Thus, the Commission proposed to maintain this concentration limit. 79 FR 78338. We did not receive any comments concerning the concentration limit. The final rule retains the 0.1 percent concentration limit.

F. International and Other Countries' Requirements for Children's Toys and Child Care Articles Containing Phthalates

1. Summary of Requirements

Other countries have restrictions concerning the use of various phthalates in children's toys and child care articles. The requirements vary, but the following countries have some regulatory restrictions on phthalates that can be used in children's toys and child care articles: The European Union (EU), Denmark, Canada, Japan, Australia, Brazil, Argentina, Taiwan, and Hong Kong. The requirements differ on the phthalates restricted and products covered. Unlike CPSC's rule, these restrictions are based on evaluations of phthalate exposures in isolation, not in combination with other phthalates. There is no international standard that establishes substantive requirements for phthalates in children's toys and child care articles. International Organization for Standardization (ISO) 8124–6:2014 specifies a method for testing toys and children's products to determine if they contain phthalates; it does not establish any content limits. We provide a summary of other countries' requirements concerning phthalates in children's toys and child care articles:

DINP:

- *Denmark:* Prohibits all phthalates at concentrations above 0.05 percent in toys and child care articles intended for children under 3 years old.
- *EU:* Limits the use of DINP (as well as DIDP and DNOP) individually or as mixtures in toys and child care articles which can be placed in the mouth by children to no greater than 0.1 percent by weight of the plasticized material.
- *Canada:* Limits use in the vinyl in any part of a toy or child care article that can be placed in the mouth of a child under four years of age to no greater than 0.1 percent of DINP, DIDP or DNOP.
- *Japan:* For toys that are intended to come in contact with the mouth (excluding pacifiers and teething rings), parts made from plasticized materials that are intended to come in contact with the mouth must not contain more than 0.1 percent DINP (or DIDP or DNOP); PVC parts not intended to come in contact with mouth must not use DINP as a raw material.
- *Brazil:* Limits use of DINP in plastic materials in all kinds of toys for children under three to no greater than 0.1 percent.
- *Argentina:* Limits use of DINP in toys and child care articles made of plastic material that can be placed in the mouth to no greater than 0.1 percent.
- *Taiwan:* Limits DINP use in toys and child care articles to no greater than 0.1 percent individually or in combination with DEHP, DBP, BBP, DIDP, or DNOP.
- *Hong Kong:* Limits the combination of DINP, DIDP and DNOP to no greater than 0.1 percent of the total weight of the plasticized materials in toys or children's products any part of which can be placed in the mouth of a child under four years of age.
- *Australia:* Considered but rejected limiting DINP in children's toys and child care articles.

Other Phthalates Covered by CPSC's Rule (DIBP, DPENP, DHEXP, DCHP)

- *Denmark:* In 2009 instituted a national prohibition on all phthalates at concentrations above 0.05 percent in toys and child care articles intended for children under 3 years old. This covers all four phthalates: DIBP, DPENP, DHEXP, DCHP.
- No restrictions concerning DIBP, DPENP, DHEXP, DCHP in children's toys and child care articles in other countries.

As this summary demonstrates, requirements concerning DINP in

children's toys and child care articles vary across different countries. However, even if the precise requirements differ, numerous countries have some limitation on the use of DINP in children's toys and child care articles, and one other country restricts the use of DIBP, DPENP, DHEXP, and DCHP in children's toys and child care articles.

2. Comments Concerning Other Countries' and International Requirements

Comment: Differences between CPSC's proposed rule and other countries' requirements. Some commenters observed that CPSC's NPR differed from restrictions in other countries. These comments focused on CPSC's expansion of the interim prohibition regarding DINP to cover all children's toys. Commenters noted the inconsistency between the EU's requirements concerning DINP and the CPSC's proposed rule. Two commenters stated that the CPSC's rule is consistent with the EU. A commenter expressed concerns that the rule might be a barrier to international trade under the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT) due to the differences between CPSC's rule and other countries' approaches. (Comment 5.6).

Response: As discussed above, CPSC's rule concerning DINP differs from other countries' restrictions. However, there is variation among these countries; no uniform consensus on regulation of DINP in children's toys and child care articles exists. Regarding the TBT, we note that there is no international standard establishing restrictions on phthalates in toys. ISO 8124–6:2014 only specifies a test method to determine if toys and children's products contain phthalates. Rather, countries have established their own technical regulations. The TBT states that technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective. CPSC's rule would not be a barrier to trade because it will apply equally to both domestic manufacturers and importers. We also note that the TBT recognizes that protection of human health or safety is a legitimate objective.

G. Description of the Final Rule

The text of the final rule is the same as the proposed rule with one exception. For clarity, we have added language from section 108(c) of the CPSIA (as amended by Pub. L. 112–28) regarding the application of the rule. This addition does not change the substance of the rule because the statutory provision applies regardless of whether it is stated in the rule. Section 108(c) of the CPSIA states that the permanent and interim phthalate prohibitions, and any phthalates rule the Commission issues under section 108(b)(3) of the CPSIA, ''shall apply to any plasticized component part of a children's toy or child care article or any other component part of a children's toy or child care article that is made of other materials that may contain phthalates.'' 15 U.S.C. 2057c(c).

The Commission received comments on various aspects of the substance of the proposed rule. These comments and responses to them are summarized throughout this document. More detailed comment summaries and responses are at Tab B of staff's briefing package.

Section 1307.1—Scope and Application

Section 1307.1 describes the actions that the rule prohibits. This provision tracks the language in section 108(a) of the CPSIA regarding the permanent prohibition and prohibits the same activities: Manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of a children's toy or child care article that contains any of the prohibited phthalates.

Section 1307.2—Definitions

Section 1307.2 provides the same definitions of ''children's toy'' and ''child care article'' found in section 108(g) of the CPSIA. ''Children's toy'' means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. ''Child care article'' means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething. Although these definitions are stated in the CPSIA, the rule text restates them for convenience. We did not receive comments on these definitions, which re-state statutory definitions.

Section 1307.3—Prohibition on Children's Toys and Child Care Articles Containing Specified Phthalates

Section 1307.3(a) states the products the rule prohibits. For convenience, this section provides both the items that are subject to the CPSIA's existing permanent prohibition and the items that are subject to prohibition under the rule. Stating all prohibitions in this section will allow a reader of the CFR to be aware of all the CPSC's restrictions concerning phthalates, both statutory and regulatory.

Paragraph (a) sets out the CPSIA's existing permanent prohibition which makes it unlawful to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any children's toy or child care article that contains concentrations of more than 0.1 percent of DEHP, DBP, or BBP. The restriction on these products was established by section 108(a) of the CPSIA. This statutory prohibition is not affected by the rule, but is merely restated in the regulatory text.

Paragraph (b) prohibits the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any children's toy or child care article that contains concentrations of more than 0.1 percent of DINP, DIBP, DPENP, DHEXP, and DCHP. As explained above, in accordance with section 108(b)(2) of the CPSIA, the Commission appointed a CHAP that considered the effects on children's health of phthalates and phthalate alternatives as used in children's toys and child care articles and presented the Commission with a report of its findings and recommendations. After reviewing the CHAP's report, the most recent exposure data, and public comments, the Commission is finalizing this rule in accordance with section 108(b)(3) of the CPSIA.

For the reasons explained in this preamble, the Commission concludes that prohibiting children's toys and child care articles that contain concentrations of more than 0.1 percent of DINP would ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety. DINP is currently subject to the CPSIA's interim prohibition. 15 U.S.C. 2057c(b)(1). Section 1307.3(b) changes the scope of regulation of DINP from the current interim scope of ''any children's toy that can be placed in a child's mouth'' [86] (and child care articles) to include all children's toys. Based on the recommendations in the CHAP report, the Commission is not continuing the interim prohibitions on DIDP and DNOP.

Additionally, § 1307.3(b) prohibits children's toys and child care articles

[86] Section 108(g)(2)(B) of the CPSIA states that ''a toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.''

containing four phthalates that are not currently subject to restrictions under the CPSIA: DIBP, DPENP, DEXP, and DCHP. For the reasons explained previously, the Commission concludes that prohibiting children's toys and child care articles containing concentrations of more than 0.1 percent of DIBP, DPENP, DEXP, or DCHP is necessary to protect the health of children.

The final rule adds paragraph (c) to § 1307.3 to clarify the application of the rule. Section 108(c), as amended by Public Law 112–28 (August 12, 2011), addresses the application of the Commission's phthalates rule. For convenience and clarity, we are restating that statutory provision in § 1307.3 (c).

H. Effective Date

The APA generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposed an effective date of 180 days after publication of the final rule in the **Federal Register**. The final rule provides a 180-day effective date. As discussed in the NPR and in section V. of this preamble, the Commission expects that this rule will have a minimal impact on manufacturers, and that changes to testing procedures to include children's toys and child care articles containing the four additional prohibited phthalates would require minimal effort by testing laboratories. 79 FR 78339. In accordance with the CPSIA, restrictions on the use of certain phthalates in children's toys and child care articles are currently in effect. This rule does not affect the permanent prohibition on children's toys and child care articles containing more than 0.1 percent of DEHP, BBP, and DBP. The CPSIA's interim prohibition currently applies to children's toys that can be placed in a child's mouth and child care articles containing DINP. Thus, with regard to DINP, the impact from the rule would be only on children's toys that cannot be placed in a child's mouth. CPSC expects that a relatively small percentage of children's toys that cannot be placed in a child's mouth would need to be reformulated to remove DINP. Because the four additional phthalates (DIBP, DPENP, DHEXP, and DCHP) are not widely used in children's toys and child care articles, few manufacturers will need to reformulate products to comply with this aspect of the rule. Regarding third party testing, testing laboratories are already testing children's toys and child care articles for the permanently prohibited phthalates and are testing children's toys that can be placed in a child's mouth and child care articles for DINP. Testing laboratories can expand their procedures to include the four additional phthalates with minimal effort. CPSC received a few comments, summarized below, concerning the effective date.

Comment: Effective date. Two commenters stated that the Commission should set an effective date of at least 1 year from finalizing the rule. They asserted that DIDP and DINP are difficult to differentiate through testing, and that if the interim prohibition concerning DIDP was lifted while DINP continues to be restricted, laboratories would need additional time to address the technical testing difficulties. Another commenter urged the Commission to shorten the proposed 180-day effective date based on the minimal impact CPSC anticipates to ''ensure that there is no gap in the protections from DINP.'' Another commenter asked for clarification that the rule would not be retroactive (back to 2011). (Comment 5.11).

Response: CPSC acknowledges that differentiating DINP and DIDP may be difficult. However, laboratories can differentiate DINP and DIDP using currently available equipment and methods. Manufacturers can maintain current formulations while they address any perceived challenges differentiating DINP and DIDP. As explained above, CPSC expects that the rule will require minimal changes for manufacturers and testing laboratories. Therefore 180 days from publication in the **Federal Register** should be sufficient time for the rule to take effect. We see no need to shorten the effective date. The interim prohibition established by section 108(b)(1) remains in effect until this rule becomes effective. We confirm that the rule is prospective and will apply to products manufactured and imported on or after the effective date. As mentioned, however, the interim prohibition remains in place until the final rule takes effect.

V. Regulatory Flexibility Act

A. Certification

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. Small entities include small businesses, small organizations, and small governmental jurisdictions. The Commission certified in the NPR that this rule will not have a significant impact on a substantial number of small entities pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b) in the NPR. 79 FR 78324, 78339–41. Some comments expressed general concerns about the economic impact of the proposed rule, but none provided information or evidence that the rule would have a significant impact on a substantial number of small entities. Summaries of these comments and CPSC's responses are provided below. More detailed summaries and responses are in Tab B of the staff's briefing package. None of the comments received by the Commission changes the basis for the certification, nor has Commission staff received any other information that would require a change or revision the Commission's previous analysis of the impact of the rule on small entities. Therefore, the certification of no significant impact on a substantial number of small entities is still appropriate.

As explained in greater detail in the NPR, the certification is based on CPSC's determination that:

(1) Few, if any, manufacturers would need to alter their formulations to comply with the rule because:

- Children's toys that can be placed in a child's mouth and child care articles containing DINP have been prohibited since 2009. Thus, no manufacturer would have to reformulate any products in these categories.
- Only children's toys that cannot be placed in a child's mouth (no dimension of the toy is less than 5 cm) containing DINP would have to be reformulated. Thus, only a small subset of children's toys that cannot be placed in a child's mouth would be affected by the rule.
- DIBP, DPENP, DHEXP, and DCHP are not widely used in children's toys and child care articles. Therefore, relatively few manufacturers would have to reformulate products to eliminate these phthalates due to the rule.

(2) The rule would have a small marginal impact on the cost of third party testing because:

- All children's toys and child care articles are already subject to third party testing for DEHP, DBP, and BBP.
- Currently, children's toys that can be placed in a child's mouth and child care articles must also be tested for the presence of DINP.
- Laboratory equipment and methods are already in place for testing the prohibited phthalates, therefore the additional cost of testing for DIBP,

DPENP, DHEXP, and DCHP would be very low.

• Identification and quantification protocols for prohibited phthalates would need minimal modification to include DIBP, DPENP, DHEXP, and DCHP because each of these phthalates can be isolated at unique elution times by gas chromatography. Thus, the additional cost of analysis would be very low.

• The additional cost of laboratory materials would be very low. Chemical standards for testing would be required for the four additional phthalates, but the standards for DNOP and DIDP would no longer be required. Therefore, the number of chemical standards needed would increase by two which CPSC expects would increase the cost of third party testing for phthalates by less than 35 cents per test, which is relatively small compared to current cost of phthalate testing (approximately $300 per product or component part).

B. Comments Concerning Impact on Small Business

Comment: Testing costs. Two commenters agreed with CPSC that the rule will have a small impact on testing costs. One commenter asked for CPSC to clarify how testing of technical mixtures of DINP and DIDP would be performed, noting that when DINP is detected in a sample, additional analytical steps are needed (at additional cost) to determine if the DINP is present as a 'pure' chemical or if the DINP is part of a technical mixture. Some commenters asked the Commission to take action to reduce testing costs. (Comment 9.1).

Response: For the reasons explained above, CPSC expects that the additional burden associated with the rule is small, with no significant impact on a substantial number of small entities. Regarding testing of mixtures of DINP and DIDP, the restriction on DINP applies whether DINP is in the product intentionally or unintentionally. Thus, laboratories will not need to undertake any additional effort to determine the source of DINP found in a children's toy or child care article. Regarding steps to reduce testing burdens, the Commission has recently issued determinations that will lower testing costs for some children's toys and child care article manufacturers. 82 FR 41163 (August 30, 2017). The determinations rule went into effect on September 29, 2017.

Comment: Costs and benefits of NPR. Regarding the NPR's determination that the proposed rule's economic impact would be minimal, one commenter stated CPSC had not considered the effect on consumers or the possibility that smaller manufacturers would be burdened by the rule in the future, ''which offers no demonstrated public health benefits in exchange for even 'minimal' costs.'' The commenter asserted that the rule would take a ''safe and useful chemical'' away from consumers. (Comment 9.4).

Response: Because CPSC followed the rulemaking requirements stated in section 108 of the CPSIA, which differ from rulemaking requirements under the CPSA and the FHSA, CPSC did not prepare a regulatory analysis of the costs and benefits of the rule. However, as discussed above, CPSC did conduct an analysis of the impact of the proposed rule on small entities. The commenter did not explain how future small manufacturers would be burdened. For the reasons explained above and in the NPR, CPSC expects the costs for small businesses subject to this rule would be small.

VI. Notice of Requirements

The CPSA establishes certain requirements for product certification and testing. Children's products subject to a children's product safety rule under the CPSA must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* 2063(a)(2). The Commission must publish a notice of requirements (NOR) for the accreditation of third party conformity assessment bodies (or laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). The final rule for 16 CFR part 1307, ''*Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates,*'' is a children's product safety rule that requires the issuance of an NOR. The Commission previously published in the **Federal Register** an NOR for the phthalate-containing products prohibited by the permanent and interim prohibitions state in section 108 on August 10, 2011. (76 FR 49286). The codified listing for the NOR can be found at 16 CFR 1112.15(b)(31). In this same issue of the **Federal Register** the Commission is publishing a notice of proposed rulemaking that would update the existing NOR for the phthalate-containing products prohibited by this final rule.

VII. Paperwork Reduction Act

The final rule does not include any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

VIII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the Consumer Product Safety Act (CPSA)]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) Section 108(f) of the CPSIA is entitled ''Treatment as Consumer Product Safety Standards; Effect on State Laws.'' That provision states that the permanent and interim prohibitions and any rule promulgated under section 108(b)(3) ''shall be considered consumer product safety standards under the Consumer Product Safety Act.'' That section further states: ''Nothing in this section of the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) shall be construed to preempt or otherwise affect any State requirement with respect to any phthalate alternative not specifically regulated in a consumer product safety standard under the Consumer Product Safety Act.'' 15 U.S.C. 2057c(f). This provision indicates that the preemptive effect of section 26(a) of the CPSA will apply to the final rule.

IX. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). Because this rule falls within the categorical exclusion, no environmental assessment or environmental impact statement is required.

X. List of References

This section provides a list of the documents referenced in this preamble and in the staff's briefing package.

Adamsson A, Salonen V, Paranko J, Toppari J. (2009) Effects of maternal exposure to di-isononylphthalate (DINP) and 1,1-dichloro-2,2-bis(p-chlorophenyl)ethylene (p,p′-DDE) on steroidogenesis in the fetal rat testis and adrenal gland. Reprod Toxicol 28(1):66–74.

Adibi JJ, Lee MK, Naimi AI, et al. (2015) Human Chorionic Gonadotropin Partially Mediates Phthalate Association With Male and Female Anogenital Distance. Journal of Clinical Endocrinology and Metabolism 100:E1216–1224.

Allen BC, Crump KS, Shipp AM (1988) Correlation between carcinogenic potency of chemicals in animals and humans. Risk Analysis 8:531–544.

Andrade AJ, Grande SW, Talsness CE, et al. (2006) A dose response study following in utero and lactational exposure to di-(2-ethylhexyl) phthalate (DEHP): Reproductive effects on adult male offspring rats. Toxicology 228(1):85–97.

Arbuckle, TE, Davis, K, Marro, L, Fisher, M, Legrand, M, LeBlanc, A, Gaudreau, E, Foster, WG, Choeurng, V, Fraser, WD, and the MIREC Study Group. 2014. Phthalate and bisphenol A exposure among pregnant women in Canada—Results from the MIREC study. Environment International. 68. 55–65.

Ashworth M, Cressey P. (2014) Health risk assessment of selected phthalates in children's toys. New Zealand Ministry of Health. Client Report FW 14054. October 2014. *https://www.esr.cri.nz/assets/HEALTH-CONTENT/MoH-reports/FW14054-Phthalates-in-childrens-toys.pdf.*

ATSDR (2004) Guidance Manual for the Assessment of Joint Toxic Action of Chemical Mixtures. May 2004. In: U.S. Department of Health and Human Services PHS, Agency for Toxic Substances and Disease Registry, Division of Toxicology (ed). U.S. Department of Health and Human Services, Atlanta, GA.

ATSDR (2017) Interaction Profiles for Toxic Substances. In: Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, Atlanta, GA. Accessed January 12, 2017. *https://www.atsdr.cdc.gov/interactionprofiles/index.asp.*

Axelsson J, Rylander L, Rignell-Hydbom A, Jonsson BA, Lindh CH, Giwercman A (2015) Phthalate exposure and reproductive parameters in young men from the general Swedish population. Environ Int 85:54–60.

Axelstad M, Christiansen S, Boberg J, et al. (2014) Mixtures of endocrine-disrupting contaminants induce adverse developmental effects in preweaning rats. Reproduction 147(4):489–501.

Aylward LL, Lorber M, Hays SM (2011) Urinary DEHP metabolites and fasting time in NHANES. Journal of Exposure Science and Environmental Epidemiology (2011) 21, 615–624 21:615–624.

Banks K, Tuazon E, Berhane K, et al. (2012) Cryptorchidism and testicular germ cell tumors: Comprehensive meta-analysis reveals that association between these conditions diminished over time and is modified by clinical characteristics. Frontiers in endocrinology 3:182.

Barnes DG, Dourson M (1988) Reference dose (RfD): Description and use in health risk assessments. Regul Toxicol Pharmacol 8(4):471–86.

Barušić L, Galić A, Bošnir J, et al. (2015) Phthalate in children's toys and childcare articles in Croatia. Current science 109(8):1480–1486.

Bellinger DC (2013) Prenatal Exposures to Environmental Chemicals and Children's Neurodevelopment: An Update. Safety and health at work 4(1):1–11.

Benson R (2009a) Hazard to the developing male reproductive system from cululative exposure to phthalate esters—dibuty phthalate, diisobutyl phthalate, butylbenzyl phthalate, diethylhexyl phthalate, dipentyl phthalate, and diisononyl phthalate. Regul Toxicol Pharmacol 53:90–101.

Benson R (2009b) Hazard to the developing male reproductive system from cumulative exposure to phthalate esters—dibutyl phthalate, diisobutyl phthalate, butylbenzyl phthalate, diethylhexyl phthalate, dipentyl phthalate, and diisononyl phthalate. Regulatory toxicology and pharmacology: RTP 53(2):90–101.

Biedermann-Brem S, Biedermann M, Pfenninger S, et al. (2008) Plasticizers in PVC Toys and Childcare Products: What Succeeds the Phthalates? Market Survey 2007. Chromatographia 68(3):227–234.

Boberg J, Christiansen S, Axelstad M, et al. (2011) Reproductive and behavioral effects of diisononyl phthalate (DINP) in perinatally exposed rats. Reprod Toxicol 31(2):200–9.

Borch J, Ladefoged O, Hass U, Vinggaard AM (2004) Steroidogenesis in fetal male rats is reduced by DEHP and DINP, but endocrine effects of DEHP are not modulated by DEHA in fetal, prepubertal and adult male rats. Reprod Toxicol 18(1):53–61.

Borgert CJ, Baker SP, Matthews JC (2013) Potency matters: Thresholds govern endocrine acivity. Regulatory Toxicology and Pharmacology (67):83–88.

Borgert CJ, Sargent EV, Casella G, Dietrich DR, McCarty LS, Golden RJ (2012) The human relevant potency threshold: Reducing uncertainty by human calibration of cumulative risk assessments. Regulatory Toxicology and Pharmacology 62:313–328.

Bornehag CG, Carlstedt F, Jönsson BA, et al. (2015) Prenatal phthalate exposures and anogenital distance in Swedish boys. Environmental Health Perspectives 123:101–107.

Braun JM, Sathyanarayana S, Hauser R (2013) Phthalate exposure and children's health. Current opinion in pediatrics 25(2):247–54.

Calafat AM, Needham LL, Silva MJ, Lambert G (2004) Exposure to di-(2-ethylhexyl) phthalate among premature neonates in a neonatal intensive care unit. Pediatrics 113(5):e429–34.

Calafat AM, Wong LY, Silva MJ, et al. (2011) Selecting adequate exposure biomarkers of diisononyl and diisodecyl phthalates: Data from the 2005–2006 National Health and Nutrition Examination Survey. Environ Health Perspect 119(1):50–5.

Carlson KR, Patton LE, Versar (2010) Toxicity review of dicyclohexyl phthalate (DCHP). U.S. Consumer product Safety Commission, Bethesda, MD 20814. October 24, 2010. *https://www.cpsc.gov/PageFiles/125779/dchp.pdf.*

Carruthers CM, Foster PMD (2005) Critical window of male reproductive tract development in rats following gestational exposure to din-n-butyl phthalate. Birth Defects Res B Dev Reprod Toxicol 74:277–285.

CDC (2012) National Health and Nutrition Examination Survey Data. National Center for Health Statistics, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services. Hyattsville, MD.

CDC (2017) Fourth National Report on Human Exposure to Environmental Chemicals. Updated Tables, Updated Tables, January 2017, Volume One. Centers for Disease Control & Prevention, Atlana, GA. January 2017. *https://www.cdc.gov/exposurereport/pdf/FourthReport_UpdatedTables_Volume1_Jan2017.pdf.*

Chakraborty TR, Alicea E, Chakraborty S (2012) Relationships between urinary biomarkers of phytoestrogens, phthalates, phenols, and pubertal stages in girls. Adolescent health, medicine and therapeutics 3:17–26.

Chandra A, Copen CE, Stephen EH (2013) Infertility and Impaired Fecundity in the United States, 1982–2010: Data From the National Survey of Family Growth. Center for Disease Control and Prevention (CDC), National Center for Health Statistics. Hyattsville, MD. National health statistics reports; no. 67. *https://www.cdc.gov/nchs/data/nhsr/nhsr067.pdf.*

CHAP (2001) Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Diisononyl Phthalate (DINP). U.S. Consumer Product Safety Commission, Bethesda, MD. June 2001. *https://www.cpsc.gov/s3fs-public/pdfs/dinp.pdf.*

CHAP (2014) Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Phthalates and Phthalate Alternatives. U.S. Consumer Product Safety Commission, Bethesda, MD. July 2014. *http://www.cpsc.gov/chap.*

Chevrier C, Petit C, Philippat C, et al. (2012) Maternal urinary phthalates and phenols and male genital anomalies. Epidemiology 23(2):353–6.

Chou K, Wright RO (2006) Phthalates in food and medical devices. Journal of medical toxicology: Official journal of the American College of Medical Toxicology 2(3):126–35.

Christensen KL, Makris SL, Lorber M (2014) Generation of hazard indices for cumulative exposure to phthalates for use in cumulative risk assessment. Regul Toxicol Pharmacol 69(3):380–9.

Christiansen S, Boberg J, Axelstad M, et al. (2010) Low-dose perinatal exposure to di(2-ethylhexyl) phthalate induces anti-androgenic effects in male rats. Reprod Toxicol 30(2):313–21.

Christiansen S, Scholze M, Dalgaard M, et al. (2009) Synergistic disruption of external

male sex organ development by a mixture of four antiandrogens. Environ Health Perspect 117(12):1839–46.

Clark K (2009) Phthalate ester concentration database. Prepared for the Phthalate Esters Panel, American Chemistry Council, Washington, DC. Transmitted by Steve Risotto, ACC May 28, 2010. *https://www.cpsc.gov/s3fs-public/Risotto%20052810.pdf.* (Data base files are at: *https://www.cpsc.gov/s3fs-public/phthalateMono2009.pdf; https://www.cpsc.gov/s3fs-public/phthalateRef2009.pdf; https://www.cpsc.gov/s3fs-public/otherPEs2009.pdf; https://www.cpsc.gov/s3fs-public/DEPH2009.pdf*).

Clewell RA, Edwards K, Campbell J, Clewell H, Andersen M (2011) Determining structural determinants of phthalate antiandrogenic potency in vitro using rat and mouse Leydig tumor cells. The Toxicologist:2370.

Clewell RA, Sochaski M, Edwards K, Creasy DM, Willson G, Andersen ME (2013a) Disposition of diisononyl phthalate and its effects on sexual development of the male fetus following repeated dosing in pregnant rats. Reproductive Toxicology 35:56–69.

Clewell RA, Thomas A, Willson G, Creasy DM, Andersen ME (2013b) A dose response study to assess effects after dietary administration of diisononyl phthalate (DINP) in gestation and lactation on male rat sexual development. Reproductive Toxicology 35:70–80.

Cohen SM, Meek MEB, Klaunig JE, Patton DE, Fenner-Crisp PA (2003) The human relevance of information on carcinogenic modes of action: Overview. Critical Reviews in Toxicology 33:581–589.

Colon I, Caro D, Bourdony CJ, Rosario O (2000) Identification of phthalate esters in the serum of young Puerto Rican girls with premature breast development. Environ Health Perspect 108(9):895–900.

Conley JM, Lambright CR, Evans N, Cardon MC, Wilson VS, Gray LE (2017) A Mixture of 18 Anti-Androgens at Concentrations below Individual Chemical Effect Levels Produces Reproductive Tract Malformations in the Male Rat. The Toxicologist 150(1):1645.

CPSC (1992) Labeling requirements for art materials presenting chronic hazards; guidelines for determining chronic toxicity of products subject to the FHSA; supplementary definition of ''toxic'' under the Federal Hazardous Substances Act; final rules. **Federal Register** 57:46626–46674.

CPSC (1995) Report on the Cancer Risk from Exposure to Polycyclic Aromatic hydrocarbons (PAH's) in Indoor Air Emissions from EPA-Certified (Phase II) Wood Stoves. U.S. Consumer Product Safety Commission, Bethesda, MD. June 30, 1995.

CPSC (2002) Response to petition HP 99–1. Request to ban PVC in toys and other products intended for children five years of age and under. U.S. Consumer Product Safety Commission, Bethesda, MD. August 2002. *http://www.cpsc.gov/Newsroom/FOIA/Commission-Briefing-Packages/2002/.*

CPSC (2014a) Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates. **Federal Register** 79(249):78324–78343. December 30, 2014.

CPSC (2014b) Staff Briefing Package. Notice of Proposed Rulemaking: Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates. U.S. Consumer Product Safety Commission, Bethesda, MD. November 24, 2014 *https://www.cpsc.gov/s3fs-public/pdfs/blk_media_Briefing-Package-Proposed-Rule-on-Prohibition-of-Childrens-Toys-and-Child-Care-Articles-Containing-Specified-Phthalates.*

CPSC (2015) Estimated Phthalate Exposure and Risk to Pregnant Women and Women of Reproductive Age as Assessed Using Four NHANES Biomonitoring Data Sets (2005/2006, 2007/2008, 2009/2010, 2011/2012). U.S. Consumer Product Safety Commission. Rockville, MD 20850. June 2015 *https://www.cpsc.gov/s3fs-public/NHANES-Biomonitoring-analysis-for-Commission.pdf.*

CPSC (2017) Estimated Phthalate Exposure and Risk to Women of Reproductive Age as Assessed Using 2013/2014 NHANES Biomonitoring Data. U.S. Consumer Product Safety Commission (CPSC), Rockville, MD. February 2017. *https://www.cpsc.gov/s3fs-public/Estimated%20Phthalate%20Exposure%20and%20Risk%20to%20Women%20of%20Reproductive%20Age%20as%20Assessed%20Using%202013%202014%20NHANES%20Biomonitoring%20Data.pdf.*

Creasy DM, Beech LM, Gray TJ, Butler WH (1987) The ultrastructural effects of di-n-pentyl phthalate on the testis of the mature rat. Exp Mol Pathol 46(3):357–71.

Crump KS (2014) An attempt to estimate an exposure threshold is not a scientific exercise-example of silicosis from exposure to quartz dust. Journal of occupational and environmental medicine 56(10):e104.

Crump KS, Hoel DG, Langley CH, Peto R (1976) Fundamental carcinogenic processes and their implications for low dose risk assessment. Cancer research 36(9 pt.1):2973–9.

Dankovic DA, Naumann BD, Maier A, Dourson ML, Levy LS (2015) The Scientific Basis of Uncertainty Factors Used in Setting Occupational Exposure Limits. Journal of occupational and environmental hygiene 12 Suppl 1:S55–68.

Desdoits-Lethimonier C, Albert O, Le Bizec B, et al. (2012) Human testis steroidogenesis is inhibited by phthalates. Human Reproduction 27:1451–1459.

Ding NA, Rahman I, Huhtaniemi T, Zacharewski TR (2011) Mono- and di-ester phthalates alter testosterone production in mouse bltk1 murine Leydig tumor cells. The Toxicologist:1039.

Doyle TJ, Bowman JL, Windell VL, McLean DJ, Kim KH (2013) Transgenerational effects of di-(2-ethylhexyl) phthalate on testicular germ cell associations and spermatogonial stem cells in mice. Biol Reprod 88(5):112.

Dreyfus M (2010) Phthalates and Phthalate Substitutes in Children's Toys. CPSC 2002. U.S. Consumer Product Safety Commission, Bethesda, MD. March 2010. *http://www.cpsc.gov/PageFiles/126545/phthallab.pdf.*

Dreyfus MA, Babich MA (2011) Plasticizer migration from toys and child care articles. The Toxicologist 120:266.

Durmaz E, Ozmert EN, Erkekoglu P, et al. (2010) Plasma phthalate levels in pubertal gynecomastia. Pediatrics 125(1):e122–9.

Duty SM, Singh NP, Silva MJ, et al. (2003) The relationship between environmental exposures to phthalates and DNA damage in human sperm using the neutral comet assay. Environ Health Perspect 111(9):1164–9.

EC (2005) DIRECTIVE 2005/84/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2005 amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles). Official Journal of the European Union *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005L0084&from=EN* (December 27, 2005):4–043.

EC (2006) REGULATION (EC) No 1907/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL. Concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 1/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC. Official Journal of the European Union L396 (December 30, 2006):396–849.

ECETOC (2003) Derivation of Assessment Factors for Human Health Risk Assessment. European Centre for Ecotoxicology and Toxicology of Chemicals, Brussels, Belgium. Technical Report No. 86. February 2003 *http://www.ecetoc.org/wp-content/uploads/2014/08/ECETOC-TR-086.pdf.*

ECHA (2010) Evaluation of new scientific evidence concerning the restrictions contained in annex xvii to regulation (ec) no 1907/2006 (reach) review of new available information for di-'isononyl' phthalate (DINP) CAS NO 28553–12–0 AND 68515–48–0 EINECS NO 249–079–5 AND 271–090–9. Review Report. European Chemicals Agency. July 2010. *https://echa.europa.eu/documents/10162/13641/dinp_echa_review_report_2010_6_en.pdf.*

ECHA (2013) Evaluation of new scientific evidence concerning DINP and DIDP in

relation to entry 52 of Annex XVII to REACH Regulation (EC) No 1907/2006. European Chemicals Agency. Helsinki, Finland. ECHA–13–R–07–EN. August 2013. ISBN: 978–92–9244–001–5. *https://echa.europa.eu/documents/10162/31b4067e-de40-4044-93e8-9c9ff1960715.*

Eisenberg ML, Hsieh MH, Walters RC, Krasnow R, Lipshultz LI (2011) The relationship between anogenital distance, fatherhood, and fertility in adult men. PLoS One 6(5):e18973.

Eisenberg ML, Shy M, Walters RC, Lipshultz LI (2012a) The relationship between anogenital distance and azoospermia in adult men. Asian Journal of Aandrology 35:726–730.

Eisenberg ML, T.K. J, Walters RC, Skakkebaek NE., Lipshultz LI (2012b) The relationship between anogenital distance and reproductive hormone levels in adult men. Journal of Urology 187:594–598.

EPA (1986) Guidelines for the Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC. September 1986. EPA/630/R–98/002. *https://www.epa.gov/sites/production/files/2014-11/documents/chem_mix_1986.pdf.*

EPA (1991) Guidelines for Developmental Toxicity Risk Assessment. Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC. December 1991. EPA/600/FR–91/001.

EPA (1993) Provisional Guidance for Quantitative Risk Assessment of Polycyclic Aromatic Hydrocarbons. Office of Research and Development, Environmental Protection Agency, Washington, DC. EPA/600/R–93/089. *http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=466885.*

EPA (2000a) Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern. Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460. March 16, 2000. *https://www.epa.gov/sites/production/files/2015-07/documents/trac2b054_0.pdf.*

EPA (2000b) Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC 20460. August 2000. EPA/630/R–00/002. *http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=4486.*

EPA (2002a) Consideration of the FQPA Safety Factor and Other Uncertainty Factors in Cumulative Risk Assessment off Chemicals Sharing a Common Mechanism of Toxicity. Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC. February 28, 2002. *https://www.epa.gov/sites/production/files/2015-07/documents/apps-10x-sf-for-cra.pdf.*

EPA (2002b) Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity. Office of Pesticide Programs U.S. Environmental Protection Agency Washington, DC 20460 January 14, 2002. *http://www2.epa.gov/sites/production/files/2015-07/documents/guidance_on_common_mechanism.pdf.*

EPA (2005) Guidelines for Carcinogen Risk Assessment. Risk Assessment Forum, U.S. Environmental Protection Agency (EPA. Washington, DC. March 2005. EPA/630/P–03/001F. *https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf.*

EPA (2006) Organophosphorus Cumulative Risk Assessment: 2006 Update. Office of Pesticide Programs, U.S. Environmental Protection Agency. July 31, 2006.

EPA (2008) Child-Specific Exposure Factors Handbook. U.S. Environmental Protection Agency (EPA), National Center for Environmental Assessment, Office of Research and Development. Washington, DC. EPA/600/R–06/096F. September 2008.

EPA (2010) Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds. Risk Assessment Forum, Environmental Protection Agency, Washington, DC. December 2010. EPA/100/R–10/005. *https://www.epa.gov/sites/production/files/2013-09/documents/hhtef_draft_090109.pdf.*

EPA (2011) Exposure Factors Handbook: 2011 Edition. U.S. Environmental Protection Agency, Office of Research and Development, Washington, DC 20460. EPA/600/R–090/052F. September 2011. *http://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252.*

EPA (2012a) Benchmark Dose Technical Guidance. Risk Assessment Forum, Environmental Protection Agency, Washington, DC. EPA/100/R–12/001. June 2012. *https://www.epa.gov/sites/production/files/2015-01/documents/benchmark_dose_guidance.pdf.*

EPA (2012b) Guidance for Considering and Using Open Literature Toxicity Studies to Support Human Health Risk Assessment. U.S. Environmental Protection Agency, Office of Pesticide Programs. August 28, 2012. *https://www.epa.gov/sites/production/files/2015-07/documents/lit-studies.pdf.*

EPA (2013) America's Children and the Environment. Third Edition. U.S. Environmental Protection Agency, Washington, DC. January 2013. EPA 240–R–13–001. Pages 176–179, p 176–179.

EPA (2015a) Advancing Systematic Review Workshop. In: U.S. Environmental Protection Agency. Washington, DC. EPA (2015) Advancing Systematic Review Workshop. December 2015. *https://www.epa.gov/iris/advancing-systematic-review-workshop-december-2015.*

EPA (2015b) Cumulative Assessment of Risk from Pesticides In: U.S. Environmental Protection Agency. Accessed November 20, 2015. *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

EPA (2015c) Reregistration Eligibility Decision for Ziram; PC Code: 034805 Case: 2180. U.S. Environmental Protection Agency. Accessed December 14, 2015. *https://www3.epa.gov/pesticides/chem_search/reg_actions/reregistration/red_PC-034805_12-Jul-04.pdf* .

EPA (2017) Superfund Risk Assessment. In: National Center for Environmental Assessment. Office of Research and Development, United States Environmental Protection Agency, Arlington, VA. Accessed January 12, 2017. *https://www.epa.gov/risk/superfund-risk-assessment.*

FDA (2009) Guidance for Industry: Recommendations for Submission of Chemical and Technological Data for Direct Food Additive Petitions. Office of Food Additive Safety, Division of Petition Review, Center for Food Safety and Applied Nutrition, Food and Drug Administration. March 2006; Revised March 2009. *http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/ucm124917.htm.*

Ferrara D, Hallmark N, Scott H, et al. (2006) Acute and long-term effects of in utero exposure of rats to di(n-butyl) phthalate on testicular germ cell development and proliferation. Endocrinology 147(11):5352–62.

Fisher JS (2004) Environmental anti-androgens and male reproductive health: focus on phthalates and testicular dysgenesis syndrome. Reproduction 127(3):305–15.

Foster PM (2006) Disruption of reproductive development in male rat offspring following in utero exposure to phthalate esters. Int J Androl 29(1):140–7; discussion 181–5.

Foster PM, McIntyre BS, Gray LE (2002) Response to comments of Richard H. McKee, Toxicol Pathol 30(6): 755–756. Toxicologic Pathology 30(6):757.

Foster PMD (2005) Mode of action: Impaired fetal Leydig cell function—Effects on male reproductive development produced by certain phthalate esters. Critical Reviews in Toxicology 35:713–719.

Foster PMD, McIntyre BS (2002) Endocrine active agents: Implications of adverse and non-adverse changes. Toxicologic Pathology 30:59–65.

Foster PMD, Mylchreest E, Gaido KW, Sar M (2001) Effects of phthalate esters on the developing reproductive tract of male rats. Human Reproduction Update 7:231–235.

Frederiksen H, Sorensen K, Mouritsen A, et al. (2012) High urinary phthalate concentration associated with delayed pubarche in girls. Int J Androl 35(3):216–26.

Furr JR, Lambright CS, Wilson VS, Foster PM, Gray LE, Jr. (2014) A short-term in vivo screen using fetal testosterone production, a key event in the phthalate adverse outcome pathway, to predict disruption of sexual differentiation. Toxicol Sci 140(2):403–24.

Gaido KW, Hensley JB, Liu D, et al. (2007) Fetal mouse phthalate exposure shows

that gonocyte multinucleation is not associated with decreased testicular testosterone. Toxicol Sci 97(2):491–503.
Gallagher SS, Rice GE, Scarano LJ, Teuschler LK, Bollweg G, Martin L (2015) Cumulative risk assessment lessons learned: A review of case studies and issue papers. Chemosphere 120:697–205.
Gallinger ZR, Nguyen GC (2013) Presence of phthalates in gastrointestinal medications: is there a hidden danger? World journal of gastroenterology 19(41):7042–7.
Ge J, Han BS, Hu H, Liu J, Liu Y (2015) Epigallocatechin-3-)-gallate protects against hepatic damage and tesicular toxicity in male mice exposed to di-(2-ethylhexyl) phthalate. Journal of Medicinal Food 18:753–761.
Goen T, Dobler L, Koschorreck J, et al. (2011) Trends of the internal phthalate exposure of young adults in Germany—follow-up of a retrospective human biomonitoring study. Int J Hyg Environ Health 215(1):36–45.
Gold LS, Slone TH, Manley NB, Garfinkel GB, Hudes ES, Ames BN (1991) The carcinogenic potency database: Analyses of 4000 chronic animal cancer experiments published in the general literature and by the U.S. National Cancer Institute/National Toxicology Program. Envionmental Health Perspectives 96:11–15.
Grady R, Sathyanarayana S (2012) An update on phthalates and male reproductive development and function. Curr Urol Rep 13(4):307–10.
Gray LE, Jr., Kelce WR (1996) Latent effects of pesticides and toxic substances on sexual differentiation of rodents. Toxicol Ind Health 12(3–4):515–31.
Gray LE, Jr., Ostby J, Furr J, Price M, Veeramachaneni DN, Parks L (2000) Perinatal exposure to the phthalates DEHP, BBP, and DINP, but not DEP, DMP, or DOTP, alters sexual differentiation of the male rat. Toxicol Sci 58(2):350–65.
Gray LE, Jr., Ostby J, Monosson E, Kelce WR (1999) Environmental antiandrogens: low doses of the fungicide vinclozolin alter sexual differentiation of the male rat. Toxicol Ind Health 15(1–2):48–64.
Gray TJ, Rowland IR, Foster PM, Gangolli SD (1982) Species differences in the testicular toxicity of phthalate esters. Toxicol Lett 11(1–2):141–7.
Greene MA (2002) Mouthing times from the observational study. CPSC 2002. U.S. Consumer Product Safety Commission, Bethesda, MD. In, CPSC 2002. June 17, 2002.
Greenlee RT, Hill-Harmon MB, Murray T, Thun M (2001) Cancer statistics, 2001. CA: a cancer journal for clinicians 51(1):15–36.
Groot ME, Lekkerkerk MC, Steenbekkers LPA (1998) Mouthing Behaviour of Young Children: An Observational Study. Wageningen: Agricultural University, Waginen, The Netherlands. Household and Consumer Studies report #3. September 1998. ISBN 90–6754–548–1.
Habert R, Muczynski V, Grisin T, et al. (2014) Concerns about the widespread use of rodent models for human risk assessments of endocrine disruptors. Reproduction 147(R119–R129).
Hallmark N, Walker M, McKinnell C, et al. (2007) Effects of monobutyl and di(n-butyl) phthalate in vitro on steroidogenesis and Leydig cell aggregation in fetal testis explants from the rat: comparison with effects in vivo in the fetal rat and neonatal marmoset and in vitro in the human. Environ Health Perspect 115(3):390–6.
Hannas BR, Lambright C, Furr J, et al. (2012) Evaluation of genomic biomarkers and relative potency of phthalate-induced male reproductive developmental toxicity using a targeted RTPCR array approach. Toxicologist 126:2338.
Hannas BR, Lambright CS, Furr J, Howdeshell KL, Wilson VS, Gray LE, Jr. (2011) Dose-response assessment of fetal testosterone production and gene expression levels in rat testes following in utero exposure to diethylhexyl phthalate, diisobutyl phthalate, diisoheptyl phthalate, and diisononyl phthalate. Toxicol Sci 123(1):206–16.
Hatch EE, Nelson JW, Stahlhut RW, Webster TF (2010) Association of endocrine disruptors and obesity: perspectives from epidemiological studies. Int J Androl 33(2):324–32.
Hattis D, Banati P, Goble R, D.E. B (1999) Human interindividual variability in parameters related to health risks. Risk Analysis 19:711–726.
Heger NE., Hall SJ, Sandrof MA, et al. (2012) Human fetal testis xenografts are resistant to phthalate-induced endocrine disruption. Environ Health Perspect In press.
Hellwig J, Freudenberger H, Jackh R (1997) Differential prenatal toxicity of branched phthalate esters in rats. Food Chem Toxicol 35(5):501–12.
Higuchi TT, Palmer JS, Gray LE, Jr., Veeramachaneni DN (2003) Effects of dibutyl phthalate in male rabbits following in utero, adolescent, or postpubertal exposure. Toxicol Sci 72(2):301–13.
Hotchkiss AK, Parks-Saldutti LG, Ostby JS, et al. (2004) A mixture of the ''antiandrogens'' linuron and butyl benzyl phthalate alters sexual differentiation of the male rat in a cumulative fashion. Biol Reprod 71(6):1852–61.
Howdeshell KL, Furr J, Lambright CR, Rider CV, Wilson VS, Gray LE, Jr. (2007) Cumulative effects of dibutyl phthalate and diethylhexyl phthalate on male rat reproductive tract development: altered fetal steroid hormones and genes. Toxicol Sci 99(1):190–202.
Howdeshell KL, Hotchkiss AK, Gray LE, Jr. (2016) Cumulative effects of antiandrogenic chemical mixtures and their relevance to human health risk assessment. International Journal of Hygiene and Environmental Health *http://dx.doi.org/10.1016/j.ijheh.2016.11.007.*
Howdeshell KL, Wilson VS, Furr J, et al. (2008) A mixture of five phthalate esters inhibits fetal testicular testosterone production in the sprague-dawley rat in a cumulative, dose-additive manner. Toxicol Sci 105(1):153–65.
Huang PC, Kuo PL, Chou YY, Lin SJ, Lee CC (2009) Association between prenatal exposure to phthalates and the health of newborns. Environ Int 35(1):14–20.
Hushka LJ, Waterman SJ, Keller LH, et al. (2001) Two-generation reproduction studies in Rats fed di-isodecyl phthalate. Reprod Toxicol 15(2):153–69.
Huyghe E, Matsuda T, Thonneau P (2003) Increasing incidence of testicular cancer worldwide: a review. J Urol 170(1):5–11.
IARC (2002) Preamble. IARC Monographs on the evaluation of carcinogenic risks to humans 81:9–31S.
Jaeger RJ, Weiss AL, Brown K (2005) Infusion of di-2-ethylhexylphthalate for neonates: a review of potential health risk. Journal of infusion nursing: the official publication of the Infusion Nurses Society 28(1):54–60.
Jain VG, Singal AK (2013) Shorter anogenital distance correlates with undescended testis: a detailed genital anthropometric analysis in human newborns. Hum Reprod 28(9):2343–9.
James-Todd TM, Meeker JD, Huang T, et al. (2017) Racial and ethnic variations in phthalate metabolite concentration changes across full-term pregnancies. J Expo Sci Environ Epidemiol 27(2):160–166.
Jobling MS, Hutchison GR, van den Driesche S, Sharpe RM (2011) Effects of di(n-butyl) phthalate exposure on foetal rat germ-cell number and differentiation: identification of age-specific windows of vulnerability. Int J Androl 34(5 Pt 2):e386–96.
Joensen UN, Frederiksen H, Blomberg Jensen M, et al. (2012) Phthalate excretion pattern and testicular function: a study of 881 healthy Danish men. Environ Health Perspect 120(10):1397–403.
Johnson K, Heger N, Boekelheide K (2012) Of mice and men (and rats): phthalate-induced fetal testis endocrine disruption is species-dependent. Toxicological Sciences 129:235–248.
Jones HB, Garside DA, Liu R, Roberts JC (1993) The influence of phthalate esters on Leydig cell structure and function in vitro and in vivo. Exp Mol Pathol 58(3):179–93.
Juberg DR, Alfano K, Coughlin RJ, Thompson KM (2001) An observational study of object mouthing behavior by young children. Pediatrics 107(1):135–42.
Jurewicz J, Hanke W (2011) Exposure to phthalates: reproductive outcome and children health. A review of epidemiological studies. International journal of occupational medicine and environmental health 24(2):115–41.
Jurewicz J, Radwan M, Sobala W, et al. (2013) Human urinary phthalate metabolites level and main semen parameters, sperm chromatin structure, sperm aneuploidy and reproductive hormones. Reprod Toxicol 42:232–41.
Kamrin MA (2009) Phthalate risks, phthalate regulation, and public health: a review. J Toxicol Environ Health B Crit Rev 12(2):157–74.

Kay VR, Chambers C, Foster WG (2013) Reproductive and developmental effects of phthalate diesters in females. Crit Rev Toxicol 43(3):200–19.

Kiss C (2002) A Mouthing Observation Study of Children Under 6 Years. U.S. Consumer Product Safety Commission, Bethesda, MD 20814. June 14, 2002.

Klaassen CD, ed. (2001) Casarett and Doull's Toxicology. The Basic Science of Poisons. Sixth Edition. McGraw-Hill.

Klaunig JE, Babich MA, Baetcke KP, et al. (2003) PPARalpha agonist-induced rodent tumors: modes of action and human relevance. Crit Rev Toxicol 33(6):655–780.

Koch HM, Angerer J (2007) Di-iso-nonylphthalate (DINP) metabolites in human urine after a single oral dose of deuterium-labelled DINP. Int J Hyg Environ Health 210(1):9–19.

Koch HM, Bolt HM, Preuss R, Angerer J (2005) New metabolites of di(2-ethylhexyl)phthalate (DEHP) in human urine and serum after single oral doses of deuterium-labelled DEHP. Arch Toxicol 79(7):367–76.

Koch HM, Drexler H, Angerer J (2004) Internal exposure of nursery-school children and their parents and teachers to di(2-ethylhexyl)phthalate (DEHP). International Journal of Hygiene and Environmental Health 207:15–22.

Koch HM, Lorber M, Christensen KL, Palmke C, Koslitz S, Bruning T (2013) Identifying sources of phthalate exposure with human biomonitoring: results of a 48h fasting study with urine collection and personal activity patterns. Int J Hyg Environ Health 216(6):672–81.

Kolon TF, Herndon CD, Baker LA, et al. (2014) Evaluation and treatment of cryptorchidism: AUA guideline. J Urol 192(2):337–45.

Kortenkamp A, Faust M (2010) Combined exposures to anti-androgenic chemicals: steps towards cumulative risk assessment. Int J Androl 33(2):463–74.

Krausz C (2011) Male infertility: pathogenesis and clinical diagnosis. Best practice & research Clinical endocrinology & metabolism 25(2):271–85.

Krewski D, Gaylor DW, Lutz WK (1995) Additivity to background and linear extrapolation. In: Olin S, Park C, Farland W, et al. (eds) Low-Dose Extrapolation of Cancer Risks Issues and Perspectives. International Life Sciences Institute, Washington, DC., p 105–121.

Kwack SJ, Kim KB, Kim HS, Lee BM (2009) Comparative toxicological evaluation of phthalate diesters and metabolites in Sprague-Dawley male rats for risk assessment. J Toxicol Environ Health A 72:1446–1454.

Lake BG, Brantom PG, Gangolli SD, Butterworth KR, Grasso P (1976) Studies on the effects of orally administered di-(2-ethylhexyl) phthalate in the ferret. Toxicology 6:341–356.

Lambright CS, Furr J, Cardon M, et al. (2011) Fetal phthalate screen: Assessment of several phthalate esters (PE) on fetal rodent testosterone (T) production and gene expression following in utero exposure. The Toxicologist 120:1022.

Lambrot R, Muczynski V, Lécureuil C, et al. (2009) Phthalates impair germ cell development in the human fetal testis in vitro without change in testosterone production. Environ Health Perspect 117:32–37.

Latini G, De Felice C, Verrotti A (2004) Plasticizers, infant nutrition and reproductive health. Reprod Toxicol 19(1):27–33.

Laursen SE., Hansen J, Drøjdahl A, et al. (2003) Survey of chemical compounds in textile fabrics. Danish Environmental Protection Agency. Danish Ministry of the Environment. Survey of chemicals in consumer products no. 23. 2003.

Lee BM, Koo HJ (2007) Hershberger assay for antiandrogenic effects of phthalates. ournal of Toxicology and Environmental Health-Part A 70:1336–1370.

Lee HC, Ko YG, Im GS, et al. (2006a) Effects of phthalate/adipate ester exposure during perinatal period on reproductive function after maturation in rats. Journal of Animal Science and Technology 48:651–662.

Lee HC, Yamanouchi K, Nishihara M (2006b) Effects of perinatal exposure to phthalate/adipate esters on hypothalamic gene expression and sexual behavior in rats. J Reprod Dev 52(3):343–52.

Lehraiki A, Racine C, Krust A, Habert R, Levacher C (2009) Phthalates impair germ cell number in the mouse fetal testis by an androgen- and estrogen-independent mechanism. Toxicological Sciences 111:372–383.

Levin BC, Paabo M, Gurman JL, Harris SE (1987) Effects of exposure to single or multiple combinations of the predominant toxic gases and low oxygen atmospheres produced in fires. Fundamental and Applied Toxicology 9:236–250.

Li L, Bu T, Su H, Chen Z, Liang Y, Zhang G, Zhu D, Shan Y, Xu R, Hu Y, Li J, Hu G, Lian Q, Ge RS (2015) In utero exposure to diisononyl phthalate caused testicular dysgenesis of rat fetal testis. Toxicol. Lett. 232(2):466–474.

Li LH, Jester WF, Jr., Laslett AL, Orth JM (2000) A single dose of Di-(2-ethylhexyl) phthalate in neonatal rats alters gonocytes, reduces sertoli cell proliferation, and decreases cyclin D2 expression. Toxicol Appl Pharmacol 166(3):222–9.

Lin LC, Wang SL, Chang YC, et al. (2011) Associations between maternal phthalate exposure and cord sex hormones in human infants. Chemosphere 83(8):1192–9.

Lomenick JP, Calafat AM, Melguizo Castro MS, et al. (2009) Phthalate exposure and precocious puberty in females. J Pediatr 156(2):221–5.

Lotti F, Maggi M (2015) Ultrasound of the male genital tract in relation to male reproductive health. Hum Reprod Update 21(1):56–83.

Lottrup G, Andersson AM, Leffers H, et al. (2006) Possible impact of phthalates on infant reproductive health. Int J Androl 29(1):172–80; discussion 181–5.

Lutz WK (1990) Dose-response relationship and low dose extrapolation in chemical carcinogenesis. Carcinogenesis 11(8):1243–7.

Lutz WK (2001) Susceptibility differences in chemical carcinogenesis linearize the dose-response relationship: threshold doses can be defined only for individuals. Mutation research 482(1–2):71–6.

Lyche JL, Gutleb AC, Bergman A, et al. (2009) Reproductive and developmental toxicity of phthalates. J Toxicol Environ Health B Crit Rev 12(4):225–49.

Mai CT, Isenburg J, Langlois PH, et al. (2015) Population-based birth defects data in the United States, 2008 to 2012: Presentation of state-specific data and descriptive brief on variability of prevalence. Birth defects research Part A, Clinical and molecular teratology 103(11):972–93.

Main KM (2008) Phthalate monoesters and infant reproductive health. Gesundheitswesen (Bundesverband der Arzte des Offentlichen Gesundheitsdienstes (Germany)) 70 Suppl 1:S46–8.

Main KM, Mortensen GK, Kaleva MM, et al. (2006) Human breast milk contamination with phthalates and alterations of endogenous reproductive hormones in infants three months of age. Environ Health Perspect 114(2):270–6.

Mage, D.T., Allen, R.H., and A. Dodali. 2008. Creatinine corrections for estimating children's and adult's pesticide intake doses in equilibrium with urinary pesticide and creatinine concentrations. Journal of Exposure Science and Environmental Epidemiology. 18. 360–368.

Martino-Andrade AJ, Chahoud I (2010) Reproductive toxicity of phthalate esters. Mol Nutr Food Res 54(1):148–57.

Masutomi N, Shibutani M, Takagi H, Uneyama C, Takahashi N, Hirose M (2003) Impact of dietary exposure to methoxychlor, genistein, or diisononyl phthalate during the perinatal period on the development of the rat endocrine/reproductive systems in later life. Toxicology 192(2–3):149–70.

Masutomi N, Shibutani M, Takigami S, Uneyama C, Lee K–Y, Hirose M (2004) Alteration of pituitary hormone-immunoreactive cell populations in rat offspring after maternal dietary exposure to endocrine-active chemicals. Archives of Toxicology 78:232–240.

Matsumoto M, Hirata-Koizumi M, Ema M (2008) Potential adverse effects of phthalic acid esters on human health: A review of recent studies on reproduction. Regul Toxicol Pharmacol 50(1):37–49.

McEwen GNJ, Renner G (2006) Validity of anogenital distance as a marker of in utero phthalate exposure. Environmental Health Perspectives 114:A19–A20.

McKinnell C, Mitchell RT, Walker M, et al. (2009) Effect of fetal or neonatal exposure to monobutyl phthalate (MBP) on testicular development and function in the marmoset. Hum Reprod 24(9):2244–54.

Meek ME, Boobis AR, Crofton KM, Heinemeyer G, Van Raaij M, Vickers C (2011) Risk assessment of combined

exposure to multiple chemicals: A WHO/IPCS framework. Regulatory Toxicology and Pharmacology 60(2 Suppl 1):S1–S14.

Mendiola J, Stahlhut RW, Jorgensen N, Liu F, Swan SH (2011) Shorter anogenital distance predicts poorer semen quality in young men in Rochester, New York. Environ Health Perspect 119(7):958–63.

Mieritz MG, Frederiksen H, Sorensen K, et al. (2012) Urinary phthalate excretion in 555 healthy Danish boys with and without pubertal gynaecomastia. Int J Androl 35(3):227–35.

Mitchell RT, Childs AJ, Anderson RA, et al. (2012) Do phthalates affect steroidogenesis by the human fetal testis? Exposure of human fetal testis xenografts to di-n-butyl phthalate. J Clin Endocrinol Metab 97(3):E341–8.

Moody S, Goh H, Bielanowicz A, Rippon P, Loveland KL, Itman C (2013) Prepubertal mouse testis growth and maturation and androgen production are acutely sensitive to di-n-butyl phthalate. Endocrinology 154(9):3460–75.

Mylchreest E, Cattley RC, Foster PM (1998) Male reproductive tract malformations in rats following gestational and lactational exposure to Di(n-butyl) phthalate: An antiandrogenic mechanism? Toxicol Sci 43(1):47–60.

NAS (2017) Application of Systematic Review Methods in an Overall Strategy for Evaluating Low-Dose Toxicity from Endocrine Active Chemicals. National Academies of Sciences, Engineering, and Medicine, National Research Council. Washington, DC: The National Academies Press. doi: *https://doi.org/10.17226/24758.*

NCHS, 2012. The National Health and Nutrition Examination Survey: Sample Design, 1999–2006, Vital and Health Statistics, Series 2, Number 155. May 2012. Download from *http://www.cdc.gov/nchs/data/series/sr_02/sr02_155.pdf* on January 15, 2015.

NCHS (2013a) The National Health and Nutrition Examination Survey: Estimation Procedures, 2007–2010, Vital and Health Statistics, Series 2, Number 159. National Center for Health Statistics. August 2013. Download from *http://www.cdc.gov/nchs/data/series/sr_02/sr02_159.pdf* on January 15, 2015.

NCHS (2013b) The National Health and Nutrition Examination Survey: Sample Design, 2007–2010, Vital and Health Statistics, Series 2, Number 160. National Center for Health Statistics. August 2013. Download from *http://www.cdc.gov/nchs/data/series/sr_02/sr02_160.pdf* on January 15, 2015.

NCHS, (2013c) The National Health and Nutrition Examination Survey: Analytic Guidelines, 1999–2010, Vital and Health Statistics, Series 2, Number 161. September 2013 Download from *http://www.cdc.gov/nchs/data/series/sr_02/sr02_161.pdf* on January 15, 2015.

NCHS, 2014. The National Health and Nutrition Examination Survey: Sample Design, 2011–2014. Vital and Health Statistics, Series 2, Number 162. March 2014. Download from *http://www.cdc.gov/nchs/data/series/sr_02/sr02_162.pdf* on January 15, 2015.

NICNAS (2012) Priority Existing Chemical Assessment Report No. 35. Diisononyl Phthalate. Australian Government, Department of Health, National Industrial Chemicals Notificatin and Assessment Scheme (NICNAS), Sydney, Australia. September 2012. *https://www.nicnas.gov.au/__data/assets/word_doc/0008/34838/PEC35-DINP.docx.*

NLM (2017) PubMed Database. In: National Library of Medicine (NLM), National Institutes of Health, Bethesda, MD. *https://www.ncbi.nlm.nih.gov/pubmed.* Accessed March 2017 2017.

NRC (2008) Phthalates and Cumulative Risk Assessment. The Task Ahead. Committee on the Health Risks of Phthalates, National Research Council, National Academy Press, Washington, DC.

NRC (2009) Science and Decisions. Advancing Risk Assessment. Committee on Improving Risk Analysis Approaches used by the U.S. EPA, National Research Council, National Academy Press, Washington, DC.

NTP (2015) Handbook for Conducting a Literature-Based Health Assessment Using OHAT Approach for Systematic Review and Evidence Integration. National Toxicology Program, National Institute of Environmental Health Sciences, Research Triangle Park, NC. January 2015. *https://ntp.niehs.nih.gov/ntp/ohat/pubs/handbookjan2015_508.pdf.*

NTP (2016) Report on Carcinogens, Fourteenth Edition. National Toxicology Program, U.S. Department of Health and Human Services, Public Health Service. Research Triangle Park, NC: *https://ntp.niehs.nih.gov/pubhealth/roc/index-1.html.*

O'Leary, P.O., Boyne, P., Flett, P., Beilby, J., and I. James. 1991. Longitudinal assessment of changes in reproductive hormones during normal pregnancy. Clinical Chemistry. 37(5). 667–672.

OMB (2004) Final Information Quality Bulletin for Peer Review. Office of Management and Budget (OMB), Executive Office of the President, Washington, DC. December 16, 2004 *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2005/m05-03.pdf.*

Pak VM, McCauley LA, Pinto-Martin J (2011) Phthalate exposures and human health concerns: A review and implications for practice. AAOHN journal: Official journal of the American Association of Occupational Health Nurses 59(5):228–33; quiz 234–5.

Parks LG, Ostby JS, Lambright CR, et al. (2000) The plasticizer diethylhexyl phthalate induces malformations by decreasing fetal testosterone synthesis during sexual differentiation in the male rat. Toxicol Sci 58(2):339–49.

Patton DE (2010) CPSC Staff Toxicity Review of 17 Phthalates for Consideration by the Chronic Hazard Advisory Panel—2010. U.S. Consumer Product Safety Commission, Bethesda, MD 20814 *https://www.cpsc.gov/PageFiles/126213/toxreview.pdf.*

Picciano, M.F. Pregnancy and lactation: Physiological adjustments, nutritional requirements and the role of dietary supplements. Journal of Nutrition. 133. 1997S–2002S.

Pohl HR, Abadin HG (1995) Utilizing uncertainty factors in minimal risk levels derivation. Regul Toxicol Pharmacol 22(2):180–8.

Polanska K, Jurewicz J, Hanke W (2012) Exposure to environmental and lifestyle factors and attention-deficit/hyperactivity disorder in children—a review of epidemiological studies. International journal of occupational medicine and environmental health 25(4):330–55.

Preau JL, Jr., Wong LY, Silva MJ, Needham LL, Calafat AM (2010) Variability over 1 week in the urinary concentrations of metabolites of diethyl phthalate and di(2-ethylhexyl) phthalate among eight adults: An observational study. Environ Health Perspect 118(12):1748–54.

Rais-Bahrami K, Nunez S, Revenis ME, Luban NL, Short BL (2004) Follow-up study of adolescents exposed to di(2-ethylhexyl) phthalate (DEHP) as neonates on extracorporeal membrane oxygenation (ECMO) support. Environ Health Perspect 112(13):1339–40.

Renwick AG, Lazarus NR (1998) An Analysis of the Default Uncertainty Factor. Regulatory Toxicology and Pharmacology 27(3–29).

Rhomberg LR, Goodman JE, Haber LT, et al. (2011) Linear low-dose extrapolation for noncancer heath effects is the exception, not the rule. Crit Rev Toxicol 41(1):1–19.

Rider CV, Furr J, Wilson VS, Gray LE, Jr. (2008) A mixture of seven antiandrogens induces reproductive malformations in rats. Int J Androl 31(2):249–62.

Rider CV, Furr JR, Wilson VS, Gray LE, Jr. (2010) Cumulative effects of in utero administration of mixtures of reproductive toxicants that disrupt common target tissues via diverse mechanisms of toxicity. Int J Androl 33(2):443–62.

Rider CV, Wilson VS, Howdeshell KL, et al. (2009) Cumulative effects of in utero administration of mixtures of ''antiandrogens'' on male rat reproductive development. Toxicol Pathol 37(1):100–13.

RIVM (1998) Phthalate Release from Soft PVC Baby Toys, Report from the Dutch Consensus Group. Rijksinstituut voor Volksgesondheid en Milieu (National Institute of Public Health and Environment) (RIVM, 1998). Könemann W.H. ed. RIVM, Bilthoven, The Netherlands. RIVM report 61 3320 002. September 1998.

Rooney AA, Boyles AL, Wolfe MS, Bucher JR, Thayer KA (2014) Systematic review and evidence integration for literature-based environmental health science assessments. Environmental Health Perspectives 122:711–718.

Saillenfait AM, Payan JP, Fabry JP, et al. (1998) Assessment of the developmental toxicity, metabolism, and placental transfer of di-n-butyl phthalate administered to pregnant rats. Toxicol Sci 45(2):212–24.

Saitoh Y, Usumi K, Nagata T, Marumo H, Imai K, Masanobu K (1997) Early

changes in the rat testis induced by di-(2-ethylhexyl) phthalate and 2,5-hexanedione—Ultrastructure and lanthanum trace study. Journal of Toxicologic Pathology 10:51–57.
Sargent E, Golden R, Dietrich D, Casella G, Borgert C (2011) The human-relevant-potency-threshold: uncertainty analysis and human calibration for cumulative risk assessments. The Toxicologist 120(2):47.
Sathyanarayana S (2008) Phthalates and children's health. Current problems in pediatric and adolescent health care 38(2):34–49.
Sathyanarayana S, Calafat AM, Liu F, Swan SH (2008a) Maternal and infant urinary phthalate metabolite concentrations: Are they related? Environ Res 108(3):413–8.
Sathyanarayana S, Karr CJ, Lozano P, et al. (2008b) Baby care products: possible sources of infant phthalate exposure. Pediatrics 121(2):e260–8.
Sathyanarayana S, Grady R, Redmon JB, et al. (2015) Anogenital distance and penile width measurements in The Infant Development and the Environment Study (TIDES): Methods and predictors. Journal of Pediatric Urology 11:76.e1–76.e6.
Sathyanarayana S, Grady R, Barrett ES, et al. (2016) First trimester phthalate exposure and male newborn genital anomalies. Environ Res 151:777–782.
Scott HM, GR H, Mahood IK, et al. (2007) Role of androgens in fetal testis development and dysgenesis. Endocrinology 148:2027–2036.
Scott HM, Mason JI, Sharpe RM (2009) Steroidogenesis in the fetal testis and its susceptibility to disruption by exongenous compounds. Endocrine Reviews 30:883–925.
Shea KM (2003) Pediatric exposure and potential toxicity of phthalate plasticizers. Pediatrics 111(6 Pt 1):1467–74.
Siegel RL, Miller KD, Jemal A (2017) Cancer Statistics, 2017. CA: a cancer journal for clinicians 67(1):7–30.
Skakkebaek NE., Rajpert-De Meyts E, Main KM (2001) Testicular dysgenesis syndrome: an increasingly common developmental disorder with environmental aspects. Hum Reprod 16(5):972–8.
Spade DJ, Hall SJ, Saffarini CM, Huse SM, McDonnell EV, Boekelheide K (2014) Differential response to abiraterone acetate and di-n-butyl phthalate in an androgen-sensitive human fetal testis xenograft bioassay. Toxicol Sci 138(1):148–60.
Spade DJ, Hall SJ, Wilson S, Boekelheide K (2015) Di-n-butyl phthalate induces multinucleated germ cells in the rat fetal testis through a nonproliferative mechanism. Biol Reprod 93(5):110.
Suzuki Y, Yoshinaga J, Mizumoto Y, Serizawa S, Shiraishi H (2012) Foetal exposure to phthalate esters and anogenital distance in male newborns. Int J Androl 35(3):236–44.
Swan SH (2008) Environmental phthalate exposure in relation to reproductive outcomes and other health endpoints in humans. Environ Res 108(2):177–84.
Swan SH, Main KM, Liu F, et al. (2005) Decrease in anogenital distance among male infants with prenatal phthalate exposure. Environ Health Perspect 113(8):1056–61.
Swan SH, Sathyanarayana S, Barrett ES, et al. (2015) First trimester phthalate exposure and anogenital distance in newborns. Human Reproduction 30:963–972.
Talsness CE, Andrade AJ, Kuriyama SN, Taylor JA, vom Saal FS (2009) Components of plastic: experimental studies in animals and relevance for human health. Philos Trans R Soc Lond B Biol Sci 364(1526):2079–96.
TERA (2013) Peer Review of the CHAP Draft Report on Phthalates and Phthalate Substances. Toxicology Excellence for Risk Assessment (TERA). Cincinnati, OH. Prepared for the U.S. Consumer Product Safety Commission. August 13, 2013. *https://www.cpsc.gov/s3fs-public/Peer-Review-Report-Comments.pdf.*
TERA (2016) Exposure Assessment: Potential for the Presence of Phthalates and Other Specified Elements in Undyed Manufactured Fibers and their Colorants. Toxicology Excellence For Risk Assessment (TERA). Task Order 17, Contract Number CPSC–D–12–0001. September 20, 2016. *https://www.cpsc.gov/s3fs-public/TERA%20Task17%20Report%20Phthalates%20and%20ASTM%20Elements%20in%20Manufactured%20Fibers.pdf.*
Teuschler LK, Hertzberg RC (1995) Current and future risk assessment guidelines, policy, and methods development for chemical mixtures. Toxicology 105(2–3):137–44.
Thankamony A, Lek N, Carroll D, et al. (2014) Anogenital distance and penile length in infants with hypospadias or cryptorchidism: comparison with normative data. Environ Health Perspect 122(2):207–11.
Thompson CJ, Ross SM, Gaido KW (2004) Di(n-butyl) phthalate impairs cholesterol transport and steroidogenesis in the fetal rat testis through a rapid and reversible mechanism. Endocrinology 145(3):1227–37.
Thompson CJ, Ross SM, Hensley J, et al. (2005) Differential steroidogenic gene expression in the fetal adrenal gland versus the testis and rapid and dynamic response of the fetal testis to di(n-butyl) phthalate. Biol Reprod 73(5):908–17.
Ting KC, Gill M, Garbin O (2009) GC/MS screening method for phthalate esters in children's toys. Journal of AOAC International 92(3):951–8.
Tønning K, Jacobsen E, Pedersen E, Nilsson NH (2010a) Phthalates in products that children are in direct contact with. Danish Environmental Protection Agency. Danish Ministry of the Environment. Survey of Chemical Substances in Consumer Products, No. 109.
Tønning K, Jacobsen E, Pedersen E, Nilsson NH (2010b) Phthalates in products with large surfaces. Danish Environmental Protection Agency. Danish Ministry of the Environment. Survey of Chemical Substances in Consumer Products, No. 108.
Tønning K, Jacobsen E, Pedersen E, et al. (2009) Survey and Health Assessment of the exposure of 2 year-olds to chemical substances in Consumer Products. Danish Environmental Protection Agency. Danish Ministry of the Environment. Survey of Chemical Substances in Consumer Products, No. 102.
Tønning K, Malmgren-Hansen B, Jacobsen E, Pedersen E, Nilsson NH (2010c) Phthalates in plastic sandals. Danish Environmental Protection Agency. Danish Ministry of the Environment. Survey of Chemical Substances in Consumer Products, No. 107.
Verbeke, W. and I. De Bourdeaudhuij. 2007. Dietary behavior of pregnant versus non-pregnant women. Appetite. 48. 78–86.
Veeramachaneni DNR, Klinefelter GR (2014) Phthalate-induced pathology in the foetal testis involves more than decreased testosterone production. Reproduction 147:435–442.
Versar (2010) Review of Exposure Data and Assessments for Select Dialkyl Ortho-Phthalates. Versar, Inc., Springfield, VA. February 24, 2010. Contract no. CPSC–D–06–0006.
Ward JM, Peters JM, Perella CM, Gonzalez FJ (1998) Receptor and nonreceptor-mediated organ-specific toxicity of di(2-ethylhexyl)phthalate (DEHP) in peroxisome proliferator-activated receptor alpha-null mice. Toxicol Pathol 26(2):240–6.
Waterman SJ, Ambroso JL, Keller LH, Trimmer GW, Nikiforov AI, Harris SB (1999) Developmental toxicity of di-isodecyl and di-isononyl phthalates in rats. Reprod Toxicol 13(2):131–6.
Waterman SJ, Keller LH, Trimmer GW, et al. (2000) Two-generation reproduction study in rats given di-isononyl phthalate in the diet. Reprod Toxicol 14(1):21–36.
Weiss B (2006) Anogenital distance: defining ''normal''. Environmental Health Perspectives 114:A399.
White PD, Spassova MA, Subramaniam RP, Kopylev L (2011) Non-threshold biological processed and the assumption of low-dose linearity: consideration of receptor-mediated events in risk assessment. The Toxicologist 102(2):475.
WHO (2000) Evaluation and Use of Epidemiological Evidence for Environmental Health Risk Assessment World Health Organization (WHO), Copenhagen, Denmark. EUR/00/5020369. E68940. *http://www.euro.who.int/__data/assets/pdf_file/0006/74733/E68940.pdf.*
Wigle DT, Arbuckle TE, Turner MC, et al. (2008) Epidemiologic evidence of relationships between reproductive and child health outcomes and environmental chemical contaminants. J Toxicol Environ Health B Crit Rev 11(5–6):373–517.
Wilson VS, Lambright C, Furr J, et al. (2004) Phthalate ester-induced gubernacular lesions are associated with reduced insl3 gene expression in the fetal rat testis. Toxicol Lett 146(3):207–15.

Won Han S, Lee H, Han SY, et al. (2009) An exposure assessment of di-(2-ethylhexyl) phthalate (DEHP) and di-n-butyl phthalate (DBP) in human semen. J Toxicol Environ Health A 72(21–22):1463–9.

Woodruff TJ, Zota AR, Schwartz JM (2011) Environmental Chemicals in Pregnant Women in the US: NHANES 2003–2004. Environmental Health Perspectives 119:878–885.

Wormuth M, Scheringer M, Vollenweider M, Hungerbuhler K (2006) What are the sources of exposure to eight frequently used phthalic acid esters in Europeans? Risk Anal 26(3):803–24.

Xie M, Wu Y, Little JC, Marr LC (2016) Phthalates and alternative plasticizers and potential for contact exposure from children's backpacks and toys. J Expo Sci Environ Epidemiol 26(1):119–24.

Yen TH, Lin-Tan DT, Lin JL (2011) Food safety involving ingestion of foods and beverages prepared with phthalate-plasticizer-containing clouding agents. Journal of the Formosan Medical Association = Taiwan yi zhi 110(11):671–84.

Yiee JH, Baskin LS (2010) Environmental factors in genitourinary development. J Urol 184(1):34–41.

Zota AR, Calafat AM, Woodruff TJ (2014) Temporal trends in phthalate exposures: Findings from the National Health and Nutrition Examination Survey, 2001–2010. Environmental Health Perspectives 122:235–241.

List of Subjects in 16 CFR Part 1307

Consumer protection, Imports, Infants and children, Law enforcement, Toys.

■ For the reasons discussed in the preamble, the Commission amends title 16 of the Code of Federal Regulations by adding part 1307 to read as follows:

PART 1307—PROHIBITION OF CHILDREN'S TOYS AND CHILD CARE ARTICLES CONTAINING SPECIFIED PHTHALATES

Sec.

Authority: Sec. 108, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

§ 1307.1 Scope and application.

This part prohibits the manufacture for sale, offer for sale, distribution in commerce or importation into the United States of any children's toy or child care article containing any of the phthalates specified in § 1307.3.

§ 1307.2 Definitions.

The definitions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2052(a)) and the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314, sec. 108(g)) apply to this part. Specifically, as defined in the CPSIA:

(a) *Children's toy* means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.

(b) *Child care article* means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.

§ 1307.3 Prohibition of children's toys and child care articles containing specified phthalates.

(a) As provided in section 108(a) of the CPSIA, the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any children's toy or child care article that contains concentrations of more than 0.1 percent of di-(2-ethyhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP) is prohibited.

(b) In accordance with section 108(b)(3) of the CPSIA, the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any children's toy or child care article that contains concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisobutyl phthalate (DIBP), di-*n*-pentyl phthalate (DPENP), di-*n*-hexyl phthalate (DHEXP), and dicyclohexly phthalate (DCHP) is prohibited.

(c) In accordance with section 108(c) of the CPSIA, the restrictions stated in paragraphs (a) and (b) of this section apply to any plasticized component part of a children's toy or child care article or any other component part of a children's toy or child care article that is made of other materials that may contain phthalates.

Alberta E. Mills,

Acting Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2017–23267 Filed 10–26–17; 8:45 am]

BILLING CODE 6355–01–P

FEDERAL REGISTER

Vol. 82 Friday,
No. 207 October 27, 2017

Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Part 217

Federal Deposit Insurance Corporation

12 CFR Part 324

Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2017–0018]

RIN 1557–AE10

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1576]

RIN 7100 AE–74

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE59

Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In March 2017, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) submitted a report to Congress pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, in which they committed to meaningfully reduce regulatory burden, especially on community banking organizations. Consistent with that commitment, the agencies are inviting public comment on a notice of proposed rulemaking that would simplify compliance with certain aspects of the capital rule. A majority of the proposed simplifications would apply solely to banking organizations that are not subject to the advanced approaches capital rule (non-advanced approaches banking organizations). Specifically, the agencies are proposing that non-advanced approaches banking organizations apply a simpler regulatory capital treatment for: Mortgage servicing assets; certain deferred tax assets arising from temporary differences; investments in the capital of unconsolidated financial institutions; and capital issued by a consolidated subsidiary of a banking organization and held by third parties (minority interest). More generally, the proposal also includes revisions to the treatment of certain acquisition, development, or construction exposures that are designed to address comments regarding the current definition of high volatility commercial real estate exposure under the capital rule's standardized approach. Under the standardized approach, the proposed revisions to the treatment of acquisition, development, or construction exposures would not apply to existing exposures that are outstanding or committed prior to any final rule's effective date.

In addition to the proposed simplifications, the agencies also are proposing various additional clarifications and technical amendments to the agencies' capital rule, which would apply to both non-advanced approaches banking organizations and advanced approaches banking organizations.

DATES: Comments must be received by December 26, 2017.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2017–0018'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2017–0018'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2017–0018'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen and then ''Comments.'' Comments can be filtered by clicking on ''View All'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* Supporting materials may be viewed by clicking on ''Open Docket Folder'' and then clicking on ''Supporting Documents.'' The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by Docket No. R–1576; RIN 7100 AE–74, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal

Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. FDIC: You may submit comments, identified by RIN 3064–AE59 by any of the following methods:

- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.* Include the RIN 3064–AE59 on the subject line of the message.
- *Public Inspection:* All comments received must include the agency name and RIN 3064–AE66 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Mark Ginsberg, Senior Risk Expert (202) 649–6983; or Benjamin Pegg, Risk Expert (202) 649–7146, Capital and Regulatory Policy; or Carl Kaminski, Special Counsel, or Rima Kundnani, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Juan Climent, Manager, (202) 872–7526; Elizabeth MacDonald, Manager, (202) 475–6316; Andrew Willis, Supervisory Financial Analyst, (202) 912–4323; Sean Healey, Supervisory Financial Analyst, (202) 912–4611 or Matthew McQueeney, Senior Financial Analyst, (202) 452–2942, Division of Supervision and Regulation; or Benjamin McDonough, Assistant General Counsel (202) 452–2036; David W. Alexander, Counsel (202) 452–2877, or Mark Buresh, Senior Attorney (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section; *bbosco@fdic.gov;* David Riley, Senior Policy Analyst, Capital Policy Section; *dariley@fdic.gov;* Michael Maloney, Senior Policy Analyst, *mmaloney@fdic.gov;* Stephanie Efron, Senior Policy Analyst, *sefron@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Catherine Wood, Counsel, *cawood@fdic.gov;* Rachel Ackmann, Counsel, *rackmann@fdic.gov;* Michael Phillips, Counsel, *mphillips@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Summary of the Proposed Simplifications of the Capital Rule

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are issuing this notice of proposed rulemaking (proposal or proposed rule) with the goal of reducing regulatory compliance burden, particularly on community banking organizations, by simplifying certain aspects of the agencies' rules revising their risk-based and leverage capital requirements (capital rule).[1]

In 2013, the agencies adopted the capital rule to address weaknesses that became apparent during the financial crisis of 2007–08. Principally, the capital rule strengthened the capital requirements applicable to banking organizations [2] supervised by the agencies by improving both the quality and quantity of banking organizations' regulatory capital, and increasing the risk-sensitivity of the capital rule.[3]

The capital rule provides two methodologies for determining risk-weighted assets: (i) The standardized approach and (ii) the advanced approaches, which include both the internal ratings-based approach and the advanced measurement approach (the

[1] The Board and the OCC issued a joint final rule on October 11, 2013 (78 FR 62018) and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). In April 2014, the FDIC adopted the interim final rule as a final rule with no substantive changes. 79 FR 20754 (April 14, 2014).

[2] Banking organizations subject to the agencies' capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), but excluding certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[3] 12 CFR part 217 (Board); 12 CFR part 3 (OCC); 12 CFR part 324 (FDIC).

advanced approaches).[4] The standardized approach applies to all banking organizations that are subject to the agencies' risk-based capital regulations, whereas the advanced approaches apply only to certain large or internationally active banking organizations (advanced approaches banking organizations).[5]

The agencies have received numerous questions regarding various aspects of the capital rule since its adoption in 2013. In addition, in connection with the agencies' review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[6] for which the agencies sought comment through **Federal Register** notices published in 2014 and 2015, the agencies received over 230 comment letters from insured depository institutions, trade associations, consumer and community groups, and other interested parties.[7] The agencies also received numerous oral and written comments from panelists and the public at outreach meetings.[8] Some of these comments were similar to the comments that the agencies had already received regarding the capital rule, including, for example, that the capital rule is unduly burdensome and complex. The agencies thoroughly reviewed these comments and issued a Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act (the 2017 EGRPRA report) in March 2017.[9] In the 2017 EGRPRA report, the agencies highlighted their intent to meaningfully reduce regulatory burden, especially on community banking organizations, while at the same time maintaining safety and soundness and the quality and quantity of regulatory capital in the banking system.

In particular, the agencies indicated in the 2017 EGRPRA report that they would develop a proposed rule to simplify the capital rule by considering amendments to (i) replace the standardized approach's treatment of high volatility commercial real estate (HVCRE) exposures with a simpler treatment for most acquisition, development, or construction exposures; and, for non-advanced approaches banking organizations, to (ii) simplify the current regulatory capital treatment for mortgage servicing assets (MSAs), deferred tax assets (DTAs) arising from temporary differences that an institution could not realize through net operating loss carrybacks (temporary difference DTAs), and investments in the capital of unconsolidated financial institutions; and (iii) simplify the calculation for the amount of capital that can count toward regulatory requirements in cases in which a banking organization's consolidated subsidiary has issued capital that is held by third parties (minority interest).

Consistent with the 2017 EGRPRA report, the agencies are proposing a number of modifications to the capital rule that are aimed at reducing regulatory burden. First, the agencies are proposing to replace the existing HVCRE exposure category as applied in the standardized approach with a newly defined exposure category called high volatility acquisition, development, or construction (HVADC) exposure. The proposed HVADC exposure definition is intended to be substantially simpler to implement as it removes the most complex exclusion contained in the current HVCRE exposure definition. In addition, the proposed rule simplifies and clarifies certain exemptions, and clarifies the scope of exposures captured by the HVADC exposure definition. While some of the simplifications and clarifications may increase the scope and others may decrease it, in the aggregate, it is likely that more acquisition, development, or construction loans would be captured under the proposed HVADC exposure definition than under the current HVCRE exposure definition. Accordingly, the agencies are proposing to apply a lower risk weight to the proposed HVADC exposure category. The proposed risk weight for HVADC exposures would be 130 percent, a reduction from the 150 percent risk weight that currently applies to HVCRE exposures under the capital rule's standardized approach. The new HVADC exposure definition would only apply to exposures originated on or after the final rule's effective date. As described further below, the proposed rule would not revise the treatment of HVCRE exposures for purposes of calculating the amount of capital required under the advanced approaches. However, for purposes of calculating their capital requirements going forward under the standardized approach, advanced approaches banking organizations would use the proposed HVADC exposure category.

Second, the agencies are proposing to simplify the current regulatory capital treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions for non-advanced approaches banking organizations. As explained further below, for these banking organizations, the proposal would eliminate (i) the capital rule's 10 percent common equity tier 1 capital deduction threshold that applies individually to MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock; (ii) the aggregate 15 percent common equity tier 1 capital deduction threshold that subsequently applies on a collective basis across such items; (iii) the 10 percent common equity tier 1 capital deduction threshold for non-significant investments in the capital of unconsolidated financial institutions; and (iv) the deduction treatment for significant investments in the capital of unconsolidated financial institutions not in the form of common stock.[10] Under the proposal, for non-advanced approaches banking organizations, the capital rule would no longer have distinct treatments for significant and non-significant investments in the capital of unconsolidated financial institutions.

Instead of imposing these complex treatments for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions, the proposal would require that non-advanced approaches banking organizations deduct from common equity tier 1 capital any amount of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that individually exceeds 25 percent of common equity tier 1 capital (the 25 percent common equity tier 1 capital deduction threshold). Consistent with the capital rule, under the proposal, a banking organization would continue to

[4] 12 CFR part 217, subparts D & E; 12 CFR part 3 (OCC), Subparts D & E; 12 CFR part 324, subparts D & E (FDIC).

[5] 12 CFR 217.1(c), 12 CFR 217.100(b) (Board); 12 CFR 3.1(c), 12 CFR 3.100(b) (OCC); 12 CFR 324.1(c), 12 CFR 324.100(b) (FDIC). Those smaller and less complex banking organizations that do not apply the advanced approaches are referred to as ''non-advanced approaches banking organizations'' in this proposal.

[6] EGRPRA requires that regulations prescribed by the agencies be reviewed at least once every 10 years. The purpose of this review is to identify, with input from the public, outdated or unnecessary regulations and consider how to reduce regulatory burden on insured depository institutions while, at the same time, ensuring their safety and soundness and the safety and soundness of the financial system. Public Law 104–208, 110 Stat. 3009 (1996).

[7] 79 FR 32172 (June 4, 2014); 80 FR 7980 (February 13, 2015); 80 FR 32046 (June 5, 2015); and 80 FR 79724 (December 23, 2015).

[8] Comments received during the EGRPRA review process and transcripts of outreach meetings can be found at *http://egrpra.ffiec.gov/.*

[9] 82 FR 15900 (March 30, 2017).

[10] 12 CFR 217.22(c) and (d) (Board); 12 CFR 3.22(c) and (d) (OCC); 12 CFR 324.22 (c) and (d) (FDIC).

apply a 250 percent risk weight to any MSAs or temporary DTAs not deducted.[11] However, for investments in the capital of unconsolidated financial institutions that are not deducted, the proposal would require a banking organization to risk weight each non-deducted exposure according to the exposure category of the investment. Advanced approaches banking organizations, however, would be required to continue to apply the deduction and risk-weighting treatments in the capital rule for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions.

Third, the agencies are proposing a significantly simpler methodology for non-advanced approaches banking organizations to calculate minority interest limitations.[12] The existing capital rule's limitations for common equity tier 1 minority interest, tier 1 minority interest, and total capital minority interest are based on the capital requirements and capital ratios of each of a banking organization's consolidated subsidiaries that has issued capital instruments that are held by third parties. The proposal would require that non-advanced approaches banking organizations limit minority interest based on the banking organization's capital levels rather than on its subsidiaries' capital ratios. Specifically, a non-advanced approaches banking organization would be allowed to include common equity tier 1, tier 1, and total capital minority interest up to and including 10 percent of the banking organization's common equity tier 1, tier 1, and total capital (before the inclusion of any minority interest), respectively. Advanced approaches banking organizations, however, would be required to continue to apply the treatment of minority interest provided in the existing capital rule.

The agencies anticipate that the simplifications described above would lead to a reduction of regulatory reporting burden for non-advanced approaches banking organizations. Following the publication of this proposed rule, the agencies would propose for public comment corresponding changes to regulatory reporting forms and instructions.

[11] The agencies note that they are not proposing to change the current treatment of DTAs arising from timing differences that could be realized through net operating loss carrybacks. Such DTAs are not subject to deduction and are assigned a 100 percent risk weight.

[12] 12 CFR 217.21(Board); 12 CFR 3.21 (OCC); 12 CFR 324.21 (FDIC).

The proposed rule would also make certain technical changes to the capital rule, including some changes to the advanced approaches rule, such as clarifying revisions, updating cross-references, and correcting typographical errors.

In August 2017, in anticipation of this proposal, the agencies invited public comment on a proposed rule to extend the capital rule's transitional provisions for MSAs, temporary difference DTAs, and investments in the capital of consolidated financial institutions and certain minority interest requirements (transitions NPR).[13] If the transitions NPR is finalized substantially as proposed, the capital treatment proposed in the transitions NPR would remain effective until such time as the changes proposed in this proposal would be finalized and become effective or the finalized transitions NPR is otherwise superseded.

II. Proposed Simplifications of and Revisions to the Capital Rule

A. HVADC Exposures

1. Background

The capital rule currently defines an HVCRE exposure as any credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction of real property, unless the facility finances one- to four-family residential properties, certain agricultural or community development exposures, or commercial real estate projects where the borrower meets certain contributed capital requirements and other prudential criteria. In the preamble to the capital rule, the agencies noted that their supervisory experience had demonstrated that these exposures, compared to other commercial real estate exposures, presented heightened risks for which banking organizations should hold additional capital, and accordingly adopted a 150 percent risk weight for HVCRE exposures under the standardized approach.

Since the adoption of the capital rule, the agencies have received numerous questions regarding various aspects of the HVCRE exposure definition. Community banking organizations, in particular, have asserted that the definition is unclear, overly complex, burdensome to implement, and not applied consistently across banking organizations. For example, banking organizations submitted comments and questions to the agencies regarding the treatment of multi-purpose loan facilities under the HVCRE exposure definition, including loans used to finance both the purchase of equipment and the acquisition, development, or construction of real property. Banking organizations also asked for clarification regarding the various exemptions from the HVCRE exposure definition, including the exemptions for (i) one- to four-family residential properties, (ii) community development exposures, and (iii) exposures where borrowers met the contributed capital requirements (as discussed in more detail in section II.A.3.a. below).

After evaluating the comments and questions from the industry following the publication of the capital rule, as well as the feedback from the public received during the review process leading to the 2017 EGRPRA report, the agencies are proposing to amend the treatment in the standardized approach for credit facilities that finance acquisition, development, or construction activities, with the goal of simplifying the treatment of these exposures. The agencies are proposing to replace the HVCRE exposure category as applied in the standardized approach with a newly defined exposure category termed HVADC exposure that would apply to credit facilities that finance acquisition, development, or construction activities. As compared to the HVCRE exposure definition, the proposed HVADC exposure definition would not include the contributed capital exemption. Additionally, the proposed definition of HVADC exposure provides greater clarity on which acquisition, development, or construction exposures have relatively more risk and merit a higher risk weight than the current definition of HVCRE exposure by including a ''primarily finances'' test. The HVADC exposure definition also includes a definition of ''permanent loan'' to clearly articulate when an exposure ceases being an HVADC exposure under the propose rule. Both the ''primarily finances'' test and the definition of ''permanent loan'' are explained in more detail below. With the introduction of a ''primarily finances'' test and ''permanent loan'' definition, the scope of included or excluded exposures under the proposed HVADC exposure definition will likely be different from those captured under the current HVCRE exposure definition and will vary across individual banking organizations. In total, the agencies believe that the simpler HVADC exposure definition likely would capture more acquisition, development, or construction exposures than are currently captured by the definition of

[13] 82 FR 40495 (August 25, 2017).

HVCRE exposure. In recognition of the potentially expanded scope, the agencies are proposing to reduce the standardized approach risk weight for HVADC exposures, relative to the current risk weight for HVCRE exposures.

Under the proposed rule, an HVADC exposure would receive a 130 percent risk weight as opposed to the 150 percent risk weight assigned to HVCRE exposures under the existing standardized approach. The proposed rule would require higher risk weights for certain acquisition, development, or construction exposures and lower risk weights for others. Additionally, to mitigate the potential burden on banking organizations of having to re-evaluate all of their acquisition, development, or construction exposures against the new HVADC exposure definition, the proposal, under the standardized approach, would contain a grandfathering provision to retain the capital rule's treatment for acquisition, development, or construction exposures outstanding or committed as of the effective date of any final rule (as discussed in more detail in section II(A)(5)). The proposed revisions to the standardized approach are intended to be responsive to concerns about the difficulties of implementing the HVCRE exposure definition, while maintaining capital requirements commensurate with the risk profiles of different credit facilities that finance acquisition, development, or construction activities.

2. Scope of the HVADC Exposure Definition

Under the proposed rule, the capital rule would define an HVADC exposure as a credit facility that *primarily* finances or refinances: (i) The acquisition of vacant or developed land; (ii) the development of land to prepare to erect new structures, including, but not limited to, the laying of sewers or water pipes and demolishing existing structures; or (iii) the construction of buildings or dwellings, or other improvements including additions or alterations to existing structures. Like the current HVCRE exposure definition, the proposed HVADC exposure definition is purpose-based. Therefore, an acquisition, development, or construction exposure that is not secured by real property could be considered an HVADC exposure if the purpose of the facility is primarily to finance any of the aforementioned activities. For purposes of the proposed HVADC exposure definition, an exposure would be classified as an HVADC exposure only if the lending facility ''primarily finances'' acquisition, development, or construction activities, meaning that more than 50 percent of the funds (*e.g.,* loan proceeds) will be used for acquisition, development, or construction activities. In order to make this determination, a banking organization would review the proposed use of the funds, and if more than 50 percent of the funds is intended for acquisition, development, or construction activities, then the facility would meet the ''primarily finances'' requirement and would fall within the scope of the HVADC exposure definition, unless one or more of the exemption criteria are met.

For example, assume a borrower intends to use part of an $8 million loan to acquire and develop a tract of land for a real estate project. Of the $8 million total, $4.5 million will be disbursed for acquisition, development, or construction purposes (*e.g.,* buying and developing the land and building the structure) and $3.5 million will be used to purchase equipment to be used in the completed structure. Because more than half of the funds are used for acquisition, development, or construction purposes, the loan would be considered an HVADC exposure. Any funds or land contributed by the borrower would not impact this determination, as the determination is based on the use of the loan proceeds. The agencies note that the inclusion of the ''primarily finances'' test may also lead banking organizations to exclude certain multi-purpose credit facilities which finance construction and other activities, such as equipment financing, from the definition of an HVADC exposure. As a general matter, the agencies expect every acquisition, development, or construction transaction to be supported by the documentation of sources and uses of funds tailored to the specific project, and the agencies expect each banking organization to have a process in place to review the intended use of funds for an acquisition, development, or construction project, consistent with prudent underwriting practices.

Question 1: The agencies seek comment on whether the scope of the HVADC exposure definition presents operational concerns and is clear. Specifically, what, if any, operational challenges would banking organizations expect when determining whether more than 50 percent of the loan proceeds will be used for acquisition, development, or construction purposes?

3. Exemptions From the HVADC Exposure Definition

a. Removal of the Contributed Capital Exemption Under HVADC Exposure

Banking organizations have expressed concern regarding the contributed capital exemption under which exposures are not considered HVCRE exposures if (i) at the origination of the loan, the loan-to-value (LTV) ratio is less than or equal to the relevant supervisory LTV ratio standard; [14] (ii) before the advancement of funds, the borrower has contributed capital to the project in the form of cash (including cash paid for land) or readily marketable securities of at least 15 percent of the real estate's ''as-completed'' market value; and (iii) any internally generated capital must be contractually required to stay in the project for the life of the project. Banking organizations have asserted that the conditions for meeting this exemption are unclear, complex, and burdensome to implement. Further, the agencies have received numerous questions from banking organizations on the minimum 15 percent borrower capital contribution requirement, which is measured as a percentage of a project's ''as completed'' market value.

After considering comments from banking organizations regarding both the complexity of the contributed capital exemption, as well as the potential inconsistent application of the exemption that results, the agencies are proposing to not include a contributed capital exemption within the HVADC exposure definition. The agencies considered various means to clarify or modify the contributed capital exemption in a manner consistent with the goals of simplifying the capital rule. However, the agencies view the alternative approaches that retain the contributed capital exemption as comparably complex and inconsistent with the goal of simplifying the capital rule.

Question 2: The agencies seek comment on the degree to which the proposed HVADC exposure definition would simplify and enhance consistency in the treatment for credit facilities financing real estate acquisition, development, or construction. What other simplifications should the agencies consider to improve the simplicity and consistent treatment of these credit facilities?

[14] 12 CFR part 208, subpart J, Appendix C (Board); 12 CFR part 34, subpart D, Appendix A (OCC); 12 CFR part 365, subpart A, Appendix A (FDIC).

b. One- to Four-Family Residential Properties

The proposed definition of an HVADC exposure would exempt credit facilities that finance the acquisition, development, or construction of one- to four-family residential properties, similar to the exemption in the HVCRE exposure definition. For purposes of both HVADC and HVCRE exposures, the financing of one- to four-family residential properties would include both loans to construct one- to four-family residential structures and loans that combine the land acquisition, development, or construction of one- to four-family structures, either with or without a sales contract, including lot development loans. Therefore, credit facilities financing the construction of one- to four-family residential structures for which no buyer has been identified would be included in the exemption for one- to four-family residential properties.

In response to questions about whether the term ''residential properties'' for these purposes includes the acquisition, development, or construction of condominiums or cooperatives, the agencies are clarifying that, generally, a loan that finances the acquisition, development, or construction of condominiums and cooperatives would not qualify for the one- to four-family residential properties exemption, except in the instance where the project contains fewer than five individual dwelling units. Thus, condominiums, cooperatives, and apartment buildings would generally be treated as multifamily properties and would not qualify for the one- to four-family residential properties exemption. If each unit in a project is separated from other units by a dividing wall that extends from ground to roof (*e.g.,* row houses or townhouses), then each unit would be considered a single family residential property and thus exempt from the HVADC exposure category. Further, the acquisition, development, or construction of multiple residential properties, each containing a one- to four-family dwelling unit (such as a loan to finance tract development), would qualify for the one- to four-family residential property exemption. Loans used solely to acquire undeveloped land would not, however, qualify for the one-to four-family residential property exemption.

Question 3: The agencies request comment on whether the proposed exemption for one- to four-family residential properties in the HVADC exposure category is clear such that a banking organization could readily identify which residential loans would be exempt from the HVADC exposure category. What, if any, additional clarification would facilitate identifying one- to four-family residential properties for this purpose? The agencies also solicit comment on all aspects of the HVADC exposure category, including the proposed scope and exemptions.

c. Community Development Projects

The HVCRE exposure definition exempts community development projects.[15] The proposed HVADC exposure definition would continue to exempt community development projects. However, the agencies are proposing to simplify the definition by removing the reference to the broader statutory citations, 12 U.S.C. 24 (Eleventh) and 12 U.S.C. 338a. Under the proposed rule, all credit facilities financing the acquisition, development, or construction of real property projects for which the primary purpose is community development, as defined by the agencies' Community Reinvestment Act rules, would be exempt from the HVADC exposure category. In addition, the agencies are proposing to remove the exception to the exemption for activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's (SBA) Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less, unless they meet another exemption in the rule. Such loans are required to have a community development purpose under interagency guidance. The proposed simplified exemption for community development projects is not intended to substantively alter the scope of the exemption for community development projects set forth in the current HVCRE exposure definition.

Question 4: The agencies seek comment on whether the proposed community development exemption is clear. What, if any, additional clarification would help banking organizations identify exposures that meet the community development exemption? Please describe any implementation challenges with the exemption.

d. Agricultural Exposures

The proposed HVADC exposure definition would exclude credit facilities that finance the purchase or development of agricultural land and would not substantively modify the current exemption for agricultural land development set forth in the current HVCRE exposure definition.[16] The agencies note that the term ''agricultural'' is broadly defined and would include, for example, timberland or fish farms. However, the term ''agricultural,'' as it is used here, would not include manufacturing or processing plants related to agricultural products, such as a dairy processing plant.

4. Permanent Loans

The proposed HVADC exposure definition would exclude an exposure that is considered to be a permanent loan. In response to banking organizations' requests for clarification of the term ''permanent financing'' as it is used in the current HVCRE exposure definition, the proposed HVADC exposure definition includes a definition of ''permanent loan.'' A permanent loan for purposes of the proposed HVADC exposure definition would mean a prudently underwritten loan[17] that has a clearly identified ongoing source of repayment sufficient to service amortizing principal and interest payments aside from the sale of the property. The proposed rule would not require that the current loan payments be amortizing in order for a loan to meet the definition of a permanent loan.

For many acquisition, development, or construction projects, the source of repayment will be derived from the property once the project is completed and tenants begin paying rent or the property otherwise begins to produce income. Additionally, the agencies recognize that for loans financing owner-occupied acquisition, development, or construction projects, the owner may have sufficient capacity at origination to repay the loan from ongoing operations, without relying on proceeds from the sale or lease of the

[15] 12 CFR part 25 (national banks) (OCC); 12 CFR part 195 (federal savings associations) (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC).

[16] The proposed rule would make a minor clarification to the definition of HVCRE exposure by changing the term ''non-agricultural'' to ''commercial or residential development.''

[17] The agencies are clarifying that a loan is expected to be prudently underwritten in order to meet the definition of a permanent loan. The Interagency Guidelines for Real Estate Lending Policies provide standards for banking organizations in developing such written policies, limits, and standards. 12 CFR part 208, subpart J, Appendix C (Board); 12 CFR part 34, subpart D, Appendix A (OCC); 12 CFR part 365, subpart A, Appendix A (FDIC). Banking organizations are required to adopt and maintain written policies that establish appropriate limits and standards for extensions of credit related to real estate. 12 CFR 208.51 (Board); 12 CFR 34.62 (OCC); 12 CFR 365.2 (FDIC).

property, in which case the loan would be considered a permanent loan and thus excluded from the HVADC exposure definition, assuming it was prudently underwritten. For example, a prudently underwritten loan to a company that obtains financing to construct an additional facility that does not rely on the lease income from the facility to repay the loan, and instead relies on cash flows from other sources to cover amortizing principal and interest payments, may be considered a permanent loan and excluded from HVADC.

The agencies are also clarifying that bridge loans generally would not qualify as permanent loans as the property is not generating sufficient revenue to make amortizing principal and interest payments. The agencies believe financing for bridge loans poses greater credit risk than permanent loans, and, therefore, should be subject to a higher risk weight.

Finally, even if a credit facility does not meet the definition of a permanent loan at origination, it could subsequently meet the definition as the property generates additional revenue sufficient to service amortizing principal and interest payments. In such a case, the facility may become exempt from the HVADC exposure category, provided the loan was prudently underwritten at origination.

Question 5: The agencies seek comment on the clarity of the exemption for permanent loans in the proposed HVADC exposure definition and the ease with which banking organizations can determine whether an exposure qualifies for this exemption. What, if any, additional clarification would help banking organizations identify exposures that meet the permanent loan exemption?

5. Risk Weight for HVADC Exposures

Currently, under the standardized approach, an HVCRE exposure receives a 150 percent risk weight. Under the proposed rule, an HVADC exposure would receive a 130 percent risk weight. The agencies believe the reduced risk weight for HVADC exposures is appropriate in recognition of the potentially broader scope of the definition, and that this change would not result in a significant change in the aggregate minimum capital required under the capital rule. Specifically, by including exposures regardless of the amount of the borrower's contributed equity, some exposures that would be included in the HVADC exposure category may, while remaining riskier than other commercial real estate loans, have risk-reducing qualities, such as lower LTV ratios and higher borrower-contributed capital relative to exposures currently in the HVCRE exposures category.

However, to mitigate the potential burden on banking organizations of having to re-evaluate all of their acquisition, development, or construction exposures against the new HVADC exposure definition, the proposal, under the standardized approach, would contain a grandfathering provision for outstanding acquisition, development, or construction exposures. The proposal, under the standardized approach, would retain the capital rule's HVCRE exposure definition and exposure category treatment for all outstanding acquisition, development, or construction exposures as of the effective date of any final rule. Only new acquisition, development, or construction exposures originated on or after the effective date of a final rule would need to be evaluated against the new HVADC exposure definition. Therefore, a banking organization would maintain an exposure's risk weight as determined prior to the effective date of a final rule under the HVCRE exposure definition. For example, if an outstanding acquisition, development, or construction exposure is classified as an HVCRE exposure under the capital rule, then the exposure would continue to have a 150 percent risk weight until the exposure is converted to permanent financing or is sold or paid in full. For the purposes of this grandfathering provision, permanent financing refers to the existing HVCRE exposure definition, which relies on a banking organization's underwriting criteria for long-term mortgage loans. If an outstanding acquisition, development, or construction exposure is exempt from the HVCRE exposure category under the capital rule, then the exposure would continue to receive its applicable risk weight under the capital rule (*e.g.,* 100 percent risk weight), assuming the exposure is not past due.

Based upon data reported on the Consolidated Financial Statements for Holding Companies (FR Y–9C) and on Call Reports for insured depository institutions as of June 30, 2017, approximately 80 percent of banking organizations report holdings of acquisition, development, or construction exposures, excluding one-to four-family residential properties, and approximately 40 percent of banking organizations report some holdings of HVCRE exposures risk weighted at 150 percent. As highlighted above, the proposed treatment may result in a 130 percent risk weight for certain future exposures that would have received either a 100 or a 150 percent risk weight under the capital rule's treatment. It may also result in certain loans that would have received a 150 percent risk weight under the current rule receiving a 100 percent risk weight under the proposed rule. At the individual banking organization level, a banking organization currently with a higher proportion of HVCRE exposures relative to its total acquisition, development, or construction exposures may see a decrease in its capital requirements on new acquisition, development, or construction loans going forward. Conversely, a banking organization that currently has a higher proportion of acquisition, development, or construction exposures deemed to be excluded from the HVCRE exposure definition may see an increase in its capital requirements on new acquisition, development, or construction loans to the extent those exposures do not otherwise qualify for the exemptions under the proposed HVADC exposure definition going forward. Because of the lack of granular data on acquisition, development, or construction loans in the regulatory reports and since agencies cannot predict how banking organizations may structure such exposures in the future, the agencies cannot estimate with precision the future impact of the proposed HVADC exposure definition at an individual banking organization level. The agencies further note that the proposed grandfathering provision, which may lessen regulatory compliance burden by preventing banking organizations from having to re-evaluate their existing acquisition, development, or construction exposures under the new HVADC exposure definition, also would limit the potential impact of the treatment of acquisition, development, or construction exposures under the proposed HVADC exposures definition on banking organizations' regulatory capital.

Although the agencies anticipate that the proposed rule may lead to the assignment of higher risk weights to certain acquisition, development, or construction exposures going forward, the agencies believe that the simplified definition for HVADC exposures may lead to a reduced regulatory compliance burden in classifying acquisition, development, or construction exposures. The agencies also expect that the revised definition would result in increased consistency in the treatment of acquisition, development, or construction exposures. The agencies

believe that the proposed definition strikes an appropriate balance between risk-sensitivity and complexity.

Question 6: The agencies seek comment on the agencies' goal of achieving an appropriate balance between the proposed calibration and expanded scope of application for HVADC exposures. The agencies are interested in any additional data on the impact of the proposed rule's capital treatment of HVCRE exposures and the new capital treatment of HVADC exposures on bank holding companies, savings and loan holding companies, and insured depository institutions, both in the aggregate and on an individual banking organization level.

Question 7: What are the pros and cons of the grandfathering provision and does it sufficiently mitigate the compliance burden of having to re-evaluate all acquisition, development, or construction exposures against the new HVADC exposure definition? Are there alternatives to the proposed grandfathering provision that the agencies should consider?

6. Retaining the HVCRE Exposure Definition Under the Advanced Approaches

As noted above, the agencies are not proposing to make substantive revisions to the advanced approaches as part of this rulemaking. The proposed introduction of the HVADC exposure category would apply only to the calculation of risk-weighted assets under the standardized approach.

The HVCRE exposure category was introduced in the standardized approach as part of the revisions to the capital rule to address the agencies' concern that such exposures had been insufficiently capitalized prior to and during the financial crisis of 2007–2008. Banking organizations have commented on and raised concerns about this exposure category and its corresponding 150 percent risk weight in the standardized approach since its introduction, and specifically during the 2017 EGRPRA process. Because concerns expressed by banking organizations regarding the HVCRE exposure definition emanated primarily from its implementation in the standardized approach, the agencies do not believe it is necessary to make corresponding changes to the definition in the advanced approaches. The advanced approaches do not rely on a single risk weight for HVCRE exposure, instead requiring banking organizations to categorize and assign risk parameters to these exposures, as well as subject them to higher capital requirements through an asset value correlation factor. Thus, treatment of this exposure category in the advanced approaches diverges substantially from its treatment in the standardized approach, and the agencies are not proposing to replace the existing HVCRE exposure definition under the advanced approaches. Accordingly, advanced approaches banking organizations would continue to use the HVCRE exposure definition to calculate their advanced approaches risk-weighted assets, while using the HVADC exposure definition for the purpose of calculating their risk-weighted assets under the standardized approach.

Question 8: The agencies request comment on whether it would be appropriate to replace the HVCRE exposure definition, as it is used in the advanced approaches, with the proposed HVADC exposure definition. What, if any, challenges do advanced approaches banking organizations face as a result of the agencies maintaining the existing HVCRE exposure definition for purposes of the advanced approaches while also proposing to adopt the more expansive HVADC exposure definition for purposes of the standardized approach? What, if any, changes should the agencies consider to address these challenges?

7. Frequently Asked Questions (FAQs)

The agencies have previously issued FAQs to provide clarity on the existing HVCRE exposure definition. If the agencies adopt the proposal as final, they will consider whether to revise or rescind some or all of the HVCRE exposure-related FAQs. As the agencies are considering comments received on this proposal, the agencies would consider whether to issue any updated guidance related to the HVCRE exposure definition as it pertains to its use in the advanced approaches.[18]

B. MSAs, Temporary Difference DTAs, and Investments in the Capital of Unconsolidated Financial Institutions

1. Background

The capital rule currently requires that a banking organization deduct from common equity tier 1 capital the amounts of MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock that individually exceed 10 percent of the banking organization's common equity tier 1 capital.[19] In addition, any amount not deducted as a result of the individual 10 percent common equity tier 1 capital deduction threshold must be deducted from a banking organization's common equity tier 1 capital if that amount exceeds 15 percent of the banking organization's common equity tier 1 capital. Beginning January 1, 2018, any amount of these three items that a banking organization does not deduct from common equity tier 1 capital will be risk weighted at 250 percent (until that time, such items are risk weighted at 100 percent).[20] [21]

The capital rule further requires deductions from regulatory capital if a banking organization holds (i) non-significant investments in the capital of an unconsolidated financial institution above a certain threshold [22] or (ii) significant investments in the capital of an unconsolidated financial institution that are not in the form of common stock. Specifically, the capital rule requires that a banking organization deduct from its regulatory capital any amount of the organization's non-significant investments in the capital of unconsolidated financial institutions that exceeds 10 percent of the banking organization's common equity tier 1 capital (the 10 percent threshold for non-significant investments) [23] in

[18] ''Frequently Asked Questions on the Regulatory Capital Rule,'' OCC Bulletin 2015–23 (April 6, 2016), *available at: https://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-23.html*. ''SR 15–6: Interagency Frequently Asked Questions (FAQs) on the Regulatory Capital Rules'' (April 5, 2015), *available at: https://www.federalreserve.gov/supervisionreg/srletters/sr1506.htm*; FDIC FIL 16–2015, *available at https://www.fdic.gov/news/news/financial/2015/fil15016.html*.

[19] A significant investment in the capital of an unconsolidated financial institution is defined as an investment in the capital of an unconsolidated financial institution where the banking organization owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution (significant investment in the capital of an unconsolidated financial institution). 12 CFR 217.2 (Board); 12 CFR 3.2 (OCC); 12 CFR 324.2 (FDIC).

[20] Beginning on January 1, 2018, the calculation of the aggregate 15 percent common equity tier 1 capital deduction threshold for these items will become stricter as any amount above 15 percent of common equity tier 1, less the amount of those items already deducted as a result of the 10 percent common equity tier 1 capital deduction threshold, will be deducted from a banking organization's common equity tier 1. 12 CFR 217.22(d) (Board); 12 CFR 3.22(d) (OCC); 12 CFR 324.22(d) (FDIC).

[21] See the agencies' notice of proposed rulemaking that was issued on August 25, 2017 (82 FR 40495).

[22] A non-significant investment in the capital of an unconsolidated financial institution is defined as an investment in the capital of an unconsolidated financial institution where the institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution (non-significant investment in the capital of an unconsolidated financial institution). 12 CFR 217.2 (Board); 12 CFR 3.2 (OCC); 12 CFR 324.2 (FDIC).

[23] 12 CFR 217.22(c)(4) (Board); 12 CFR 3.22(c)(4) (OCC); 12 CFR 324.22(c)(4) (FDIC).

accordance with the corresponding deduction approach of the capital rule.[24] In addition, significant investments in the capital of unconsolidated financial institutions not in the form of common stock also must be deducted from regulatory capital in their entirety in accordance with the corresponding deduction approach.[25]

2. Simplifying the Capital Treatment for MSAs, Temporary Difference DTAs, and Investments in the Capital of Unconsolidated Financial Institutions

As highlighted in numerous questions and comments received by the agencies through both the EGRPRA process and their respective supervisory processes, community banking organizations have indicated that they find the deduction approach for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions to be complex and burdensome. In addition, two banking organization commenters asserted in the public comment period for the EGRPRA process that the revisions to the treatment of MSAs in the capital rule were unduly restrictive for community banks.[26]

The agencies are proposing changes applicable to MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions to simplify their treatment while at the same time ensuring an appropriate regulatory capital treatment to address safety and soundness concerns. Specifically, and consistent with the agencies' statements in the 2017 EGRPRA report, the proposed rule would, for non-advanced approaches banking organizations, replace the capital rule's individual 10 percent common equity tier 1 capital deduction thresholds for MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock and eliminate the aggregate 15 percent common equity tier 1 capital deduction threshold for such items. The proposal would require that a non-advanced approaches banking organization deduct from common equity tier 1 capital any amounts of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that, individually, exceed 25 percent of the banking organization's common equity tier 1 capital (after certain deductions and adjustments) (the 25 percent common equity tier 1 capital deduction threshold). The agencies believe that this change would appropriately balance risk-sensitivity and complexity for non-advanced approaches banking organizations. The imposition of the 25 percent common equity tier 1 capital deduction threshold is expected to avoid, in a simple manner, unsafe and unsound concentration levels of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions.

Although the agencies expect that the proposed simplifications for the treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions would reduce regulatory compliance burden, the agencies do not expect a significant impact on the capital ratios for most non-advanced approaches banking organizations as a result of these simplifications. Those non-advanced approaches banking organizations with relatively substantial holdings of MSAs or temporary difference DTAs could, however, experience a regulatory capital benefit as a result of the proposed simplifications.

a. MSAs and Temporary Difference DTAs

In addition to the proposed 25 percent common equity tier 1 capital deduction threshold, any amounts of MSAs or temporary difference DTAs that are not deducted would be risk weighted at 250 percent, consistent with the capital rule. The agencies note that some banking organizations suggested in the public comments associated with the revisions to the capital rule that the deductions for MSAs and temporary difference DTAs were unnecessarily burdensome, and urged the agencies to eliminate the requirements altogether and revert to the treatment for these items under the capital framework that was applicable before 2013. Additionally, through the EGRPRA comment process, two commenters suggested raising the deduction threshold for MSAs from 10 percent to 100 percent of common equity tier 1 capital.

The agencies have long limited the inclusion of intangible and higher-risk assets in regulatory capital due to the relatively high level of uncertainty regarding the ability of banking organizations to realize value from these assets, especially under adverse financial conditions. The agencies believe that it is therefore important to retain regulatory capital restrictions for MSAs and temporary difference DTAs. Temporary difference DTAs are assets from which banking organizations may not be able to realize value, especially under adverse financial conditions. A banking organization's ability to realize its temporary difference DTAs is dependent on future taxable income; thus, the proposed limitation would continue to protect against the possibility that the banking organization would need to establish or increase valuation allowances for DTAs during periods of financial stress. In the case of MSAs, the proposed treatment for MSAs would continue to protect banking organizations from sudden fluctuations in the value of MSAs and from the potential inability of such banking organizations to quickly divest of MSAs at their full estimated value during periods of financial stress.

Under section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1828 note), the amount of readily marketable purchased mortgage servicing assets (PMSAs) that an insured depository institution may include in regulatory capital cannot be more than 90 percent of the PMSAs' fair value. Section 475 of FDICIA provides the agencies with the authority to remove the 90 percent limitation on PMSAs, subject to a joint determination by the agencies that its removal would not have an adverse effect on the deposit insurance fund or the safety and soundness of insured depository institutions. The agencies determined that the treatment of MSAs (including PMSAs) under the capital rule was consistent with a determination that the 90 percent limitation could be removed because the treatment under the capital rule (that is, applying a 250 percent risk weight to any non-deducted MSAs) was more conservative than the FDICIA fair value limitation and a 100 percent risk weight, which was the risk weight applied to MSAs under the regulatory capital framework prior to 2013.[27] Because the proposed rule would require that MSAs above the 25 percent common equity tier 1 capital deduction threshold be deducted from common equity tier 1 capital and would maintain the 250 percent risk weight for non-deducted MSAs (including PMSAs), the agencies believe that the treatment of MSAs under the proposed rule would be consistent with a determination that the 90 percent fair value limitation is not necessary.

[24] 12 CFR 217.22(c)(2) (Board); 12 CFR 3.22(c)(2) (OCC); 12 CFR 324.22(c)(2) (FDIC).

[25] 12 CFR 217.22(c)(5) (Board); 12 CFR 3.22(c)(5) (OCC); 12 CFR 324.22(c)(5) (FDIC).

[26] 82 FR 15908 (March 30, 2017).

[27] 78 FR 62018, 62069–70 (October 13, 2013) (FRB, OCC); 78 FR 55340, 55388–89 (September 10, 2013) (FDIC).

b. Investments in the Capital of Unconsolidated Financial Institutions

As mentioned above, the proposal would impose the 25 percent common equity tier 1 capital deduction threshold on investments in the capital of unconsolidated financial institutions. A banking organization would make any required deduction under the corresponding deduction approach. This proposed treatment removes, for non-advanced approaches banking organizations, the distinctions among different categories of investments in the capital of unconsolidated financial institutions in the capital rule (namely non-significant investments in the capital of unconsolidated financial institutions, significant investment in the capital of unconsolidated financial institutions that are in the form of common stock, and significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock). In order to avoid added complexity and regulatory burden, the agencies are not proposing a specific methodology dictating which specific investments a non-advanced approaches banking organization must deduct and which it must risk weight in cases where the firm is exceeding the 25 percent common equity tier 1 capital deduction threshold for investments in the capital of unconsolidated financial institutions. The agencies believe that they can address any safety and soundness concerns that arise from this flexible treatment through the supervisory process. The agencies believe the proposed treatment for investments in the capital of unconsolidated financial institutions would reduce complexity while maintaining appropriate incentives to reduce interconnectedness among banking organizations.

Under the proposed rule, non-advanced approaches banking organizations would be required to risk weight any investments in the capital of unconsolidated financial institutions that are not deducted according to the relevant treatment for the exposure category of the investment. For example, the appropriate risk weight for equity exposures would generally be either 300 or 400 percent, depending on whether the equity exposures are publicly traded, unless such exposures are assigned a preferential risk weight of 100 percent, as described below.[28]

The capital rule allows banking organizations to apply a preferential risk weight of 100 percent to the aggregated adjusted carrying value of equity exposures that do not exceed 10 percent of a banking organization's total capital (non-significant equity exposures). The application of this risk weight (i) requires a banking organization to follow an enumerated process for calculating adjusted carrying value and (ii) mandates the equity exposures that must be included first in determining whether the threshold has been reached. The capital rule currently excludes significant investments in the capital of unconsolidated financial institutions in the form of common stock from being eligible for a 100 percent risk weight. The proposal would eliminate this exclusion for non-advanced approaches banking organizations.[29] The agencies believe that this revised approach would appropriately balance simplicity and risk-sensitivity for non-advanced approaches banking organizations by applying a single definition of investments in the capital of unconsolidated financial institutions and consolidating the different deduction treatments for investments in the capital of unconsolidated financial institutions.

c. Regulatory Treatment for Advanced Approaches Banking Organizations

Advanced approaches banking organizations would continue to apply the capital rule's current treatment for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions.[30] The agencies believe that the more complex capital deduction treatments in the capital rule are appropriate for advanced approaches banking organizations, because their size, complexity, and international exposure warrant a risk-sensitive treatment that more aggressively reduces potential interconnectedness among such firms. Accordingly, advanced approaches banking organizations would be required to continue applying the individual 10 percent common equity tier 1 capital deduction thresholds, as well as the aggregate 15 percent common equity tier 1 capital deduction threshold, for investments in MSAs, temporary difference DTAs, and significant investments in unconsolidated financial institutions in the form of common stock when calculating their capital requirements under the capital rule. Advanced approaches banking organizations would also continue to apply the capital rule's treatment for non-significant investments in the capital of unconsolidated financial institutions and significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.

Question 9: What impact would the agencies' proposed changes to the treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions for non-advanced approaches banking organizations have on (i) risks to the safety and soundness of the banking system and (ii) regulatory burden on non-advanced approaches banking organizations? If possible, please provide relevant data to support comments.

Question 10: What are the benefits and drawbacks of (i) the proposed elimination of the 250 percent risk weight for significant investments in the capital of unconsolidated financial institutions in the form of common stock and (ii) the proposed risk-weighting methodology for investments in the capital of unconsolidated financial institutions when such investments are in the form of equity exposures?

Question 11: What, if any, operational challenges does the proposed treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions pose? What, if any, modifications should the agencies consider to address such challenges?

C. Minority Interest

1. Background

The capital rule limits the amount of capital issued by consolidated subsidiaries and not owned by the parent banking organization (minority interest) that a banking organization may include in regulatory capital. For example, tier 1 minority interest is created when a consolidated subsidiary of the banking organization issues tier 1 capital to third parties. Given that minority interest is generally not available to absorb losses at the banking organization's consolidated level, the agencies strongly believe that inclusion of minority interest in a banking organization's regulatory capital should be limited. The restrictions in the

[28] 12 CFR 217.52 and 53 (Board); 12 CFR 3.52 and 53 (OCC); 12 CFR 324.52 and 53 (FDIC).

[29] Equity exposures that exceed, in the aggregate, 10 percent of a non-advanced approaches banking organization's total capital would then be assigned a risk weight based upon the approaches available in sections 52 and 53 of the capital rule. 12 CFR 217.52 and 53 (Board); 12 CFR 3.52 and 53 (OCC); 12 CFR 324.52 and 53 (FDIC).

[30] The agencies are making nonsubstantive changes to the definitions of *non-significant investment in the capital of an unconsolidated financial institution* and *significant investment in the capital of an unconsolidated financial institution* in section 2 of the capital rule in order to maintain the current treatment of these items for advanced approaches banking organizations.

capital rule relating to minority interest are currently based on the amount of capital held by the consolidated subsidiary relative to the amount of capital the subsidiary would need to hold to avoid any restrictions on capital distributions and discretionary bonus payments under the capital rule's capital conservation buffer framework. Many community banking organizations have asserted that the capital rule's current calculation of the minority interest limitation is complex and results in burdensome and confusing regulatory capital reporting instructions.

2. Simplifying the Regulatory Capital Limitations for Minority Interest

Under the proposal, the agencies would replace for non-advanced approaches banking organizations the existing calculations limiting the inclusion of minority interest in regulatory capital with a simpler calculation. Specifically, the proposed rule would allow non-advanced approaches banking organizations to include: (i) Common equity tier 1 minority interest up to 10 percent of the parent banking organization's common equity tier 1 capital; (ii) tier 1 minority interest up to 10 percent of the parent banking organization's tier 1 capital; and (iii) total capital minority interest up to 10 percent of the parent banking organization's total capital. In each case, the parent banking organization's regulatory capital for purposes of these limitations would be measured before the inclusion of any minority interest and after the deductions from and adjustments to the regulatory capital of the parent banking organization described in sections 22(a) and (b) of the capital rule.[31] The agencies believe that removing the current complex calculation for the amount of includable minority interest reduces regulatory burden without reducing the safety and soundness of non-advanced approaches banking organizations because the proposed minority interest limitations are simpler to calculate and still appropriately restrictive. The agencies do not expect a significant impact on the capital ratios for most non-advanced approaches banking organizations as a result of these simplifications.

The agencies remain focused on ensuring that the capital requirements applied to banking organizations are appropriately tailored to an organization's size, complexity, and risk profile. Accordingly, the largest and most internationally active banking organizations should be required to comply with stricter or more complex regulations, where appropriate, commensurate with their size, complexity, and risk profile. The agencies are therefore not proposing to change the more risk-sensitive minority interest calculation for advanced approaches banking organizations. Given the potential complexity in the capital structure of the largest and most systemically important institutions, the agencies believe that maintaining the more risk-sensitive approach for these firms better ensures they do not overstate capital ratios at the consolidated level as a result of overcapitalized subsidiaries, thereby protecting the safety and soundness of the banking sector.

Question 12: What would be (i) the benefits and drawbacks and (ii) effects on regulatory burden of the agencies' proposed revisions to the quantitative limits for including minority interests in regulatory capital for non-advanced approaches banking organizations? The agencies solicit comment on all aspects of the proposed changes to the inclusion of minority interests in regulatory capital for non-advanced approaches banking organizations. If possible, please provide relevant data to support comments.

III. Technical Amendments to the Capital Rule

The proposed rule would make certain technical corrections and clarifications to the capital rule. The agencies have identified typographical and technical errors in several provisions of the capital rule that warrant clarification or updating. The agencies are, therefore, proposing to revise the capital rule as described below. Most of the proposed corrections or technical changes are self-explanatory. In addition, there are several incorrect or imprecise cross-references that the agencies propose to change in an effort to better clarify the capital rule's requirements, as well as other changes to references necessary to implement the simplifications described previously in this preamble.

In section 1, the proposed rule would clarify that the capital adequacy standards do not apply to Federal branches and agencies of foreign banks that are regulated by the OCC. The OCC regulates Federal branches and agencies of foreign banks.[32]

In section 2, the proposed rule would correct an error in the definition of *investment in the capital of an unconsolidated financial institution* by changing the word ''and'' to ''or.'' This would clarify that an instrument qualifying for the definition can be either recognized as capital for regulatory purposes by a primary supervisor of an unconsolidated financial institution or can be part of the equity under U.S. generally accepted accounting principles (GAAP) of an unconsolidated unregulated financial institution.

The proposed rule would add ''the European Stability Mechanism'' and ''the European Financial Stability Facility'' to the capital rule with respect to (i) the definition of *eligible guarantor* in section 2, (ii) the list of entities eligible for a zero percent risk weight in section 32(b), (iii) the list of equity exposures eligible for a zero percent risk weight in section 52(b)(1), (iv) the list of entities eligible for assignment of a rating grade associated with a probability of default of less than 0.03 percent in section 131(d)(2), and (v) certain supranational entities and multilateral development bank debt positions eligible for assignment of a 0.0 percent specific risk weighting factor in section 210(b)(2)(ii). The proposed rule would also exclude such entities from the definition of (i) *corporate exposure* in section 2, (ii) *private sector credit exposure* in section 11, and (iii) *corporate debt position* in section 202. The agencies are making this change because the European Stability Mechanism and the European Financial Stability Facility were in early stages of operation and excluded from the capital rule when it was finalized in 2013. The proposal would update the list of entities included or excluded, as applicable, for these purposes in the standardized approach and advanced approaches of the capital rule and the market risk capital rule.

The agencies are making technical amendments to section 11(a) of the capital rule, on the capital conservation buffer, to clarify the calculation of a banking organization's maximum payout amount for a specific calendar quarter. First, the proposal would clarify that the eligible retained income during a specific current calendar quarter is the banking organization's net income, calculated in accordance with the instructions for the Call Report or the FR Y–9C, as appropriate, for the four calendar quarters preceding the current calendar quarter.[33] Second, the proposal would clarify that the key inputs for the calculation of a banking organization's capital conservation buffer during the current calendar quarter are the banking

[31] 12 CFR 217.22(a) and (b) (Board); 12 CFR 3.22(a) and (b) (OCC); 12 CFR 324.22(a) and (b) (FDIC).

[32] 12 U.S.C. 3101–3111.

[33] 12 CFR 217.11(a)(2)(i); 12 CFR 3.11(a)(2)(i); and 12 CFR 324.11(a)(2)(i).

organization's regulatory capital ratios as of the last day of the previous calendar quarter.[34]

In section 20(d)(5) for the Board's and OCC's capital rule, the proposed rule would provide that the reference to AOCI opt-out election is section 22(b)(2) instead of section 20(b)(2).

In section 20(c) of the capital rule, the OCC's and FDIC's regulations mistakenly provide that cash dividend payments on additional tier 1 capital instruments may not be subject to a ''limit'' imposed by the contractual terms governing the instrument. This requirement was intended to apply only to common equity tier 1 capital instruments, and not to additional tier 1 capital instruments. The proposed rule would harmonize the language of the agencies' capital rule in section 20(c) by removing this requirement for additional tier 1 instruments.

In a new section 20(f) of the Board's capital rule, for purposes of clarity and enforceability, the proposed rule would create a stand-alone requirement that a Board-regulated banking organization may not repurchase or redeem any common equity tier 1 capital, additional tier 1, or tier 2 capital instrument without the prior approval of the Board. This requirement already exists in the capital rule as a requirement for each definition of common equity tier 1, additional tier 1, and tier 2 capital instruments in sections 20(b)(iii), 20(c)(iv), and 20(d)(x), respectively.

In section 22(g) of the capital rule, the proposed rule would remove specific references to assets to exclude from risk weighting if already deducted from regulatory capital. The effect of this proposed change would be to exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any items deducted from capital, not only the items specifically enumerated.

In section 22(h) of the capital rule, the proposed rule would replace inaccurate terminology with the properly defined terms ''investment in the capital of an unconsolidated financial institution'' and ''investment in the [AGENCY]-regulated institution's own capital instrument,'' as described in section 2.

The proposed rule would revise, for purposes of clarity, the capital rule's sections 32(d)(2)(iii) and (iv), and create a new section 32(d)(2)(v). The revised section 32(d)(2)(iii) would require banking organizations to ''assign a 20 percent risk weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.'' This requirement is currently embedded in section 32(d)(2)(iii) of the capital rule, together with rule text related to the risk weighting of exposures to a foreign bank whose home country is not a member of the OECD and does not have a CRC. This latter provision would become a stand-alone requirement in the revised section 32(d)(2)(iv) under the proposed rule. In addition, the proposed rule would reassign the current section 32(d)(2)(iv) text as a new section 32(d)(2)(v).

In sections 34(c)(1) and 34(c)(2)(i) of the capital rule, the proposed rule would provide that the counterparty credit risk capital requirement references subpart D of the capital rule in its entirety rather than just section 32 of subpart D.

In sections 35(b)(3)(ii), 35(b)(4)(ii), 35(c)(3)(ii), 35(c)(4)(ii), 36(c), 37(b)(2)(i), 38(e)(2), 42(j)(2)(ii)(A), 133(b)(3)(ii), and 133(c)(3)(ii) of the capital rule, the proposed rule would provide that the risk weight substitution references subpart D in its entirety rather than just section 32 of subpart D.

In section 61 of the capital rule, the proposed rule would clarify the requirement that a non-advanced approaches banking organization with $50 billion or more in total consolidated assets would need to complete the disclosure requirements described in sections 62 and 63, unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of section 62, or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

Table 8 of section 63 of the capital rule describes information related to securitization exposures that banking organizations are required to disclose. The capital rule revised the risk-based capital treatment of these items, including the regulatory capital treatment of after-tax gain-on-sale resulting from a securitization and credit-enhancing interest-only strips that do not constitute after-tax gain-on-sale. Because Table 8 does not properly reflect these revisions, the agencies propose to update line (i)(2) under quantitative disclosures to appropriately reflect these revisions.

In section 210(b)(2)(vii) of the Board's capital rule, the proposed rule would add references to U.S. intermediate holding companies to clarify for these firms how to calculate capital requirements related to securitization positions under the Board's market risk capital rule depending on whether they are using the advanced approaches to calculate risk-weighted assets.

In table 4 of section 300 of the capital rule, the proposed rule would revise the title ''Transition adjustments'' to reference section 22(b)(1)(iii) rather than section 22(b)(2).

In section 300(c)(2) of the Board's capital rule, the proposed rule would clarify that the mergers and acquisitions that can potentially affect the inclusion of certain non-qualifying capital instruments in a Board-regulated banking organization's regulatory capital would have occurred after December 31, 2013.

As discussed, the 2013 revisions to the capital rule required banking organizations to increase both the quality and quantity of regulatory capital. As a result, some items that previously were included in the calculation of regulatory capital became excluded, and the amounts of required regulatory capital relative to certain exposure types increased. As part of the capital rule rulemaking, the agencies established transition provisions to phase in many of these requirements over several years in order to give banking organizations sufficient time to adjust and adapt to the requirements of the rule. Many of the transition provisions continue to be in effect, and include ongoing phase-ins to the calculation of capital.

During the development of this proposal, the agencies recognized the capital rule would automatically enact stricter treatments for items potentially impacted by this proposal on January 1, 2018, while the agencies are simultaneously working through the rulemaking process to provide burden relief to non-advanced approaches banking organizations for the very same items. To address this concern, in August 2017, the agencies invited public comment on a proposed rule to extend the current treatment under the transition provisions of the capital rule for certain regulatory capital deductions and risk weights and certain minority interest requirements.[35] The comment

[34] 12 CFR 217.11(a)(3)(i); 12 CFR 3.11(a)(3)(i); and 12 CFR 324.11(a)(3)(i).

[35] 82 FR 40495 (August 25, 2017). Items impacted by the transition NPR include, for non-advanced approaches banking institutions, (i) MSAs; (ii) temporary difference DTAs; (iii) significant investments in the capital of unconsolidated financial institutions in the form of common stock; (iv) non-significant investments in the capital of unconsolidated financial institutions; (v) significant investments in the capital of unconsolidated financial institutions that are not in the form of

Continued

period for the transitions NPR expired on September 25, 2017.

In the transitions NPR, the agencies explained that the proposed extension was intended to limit burden on banking organizations by maintaining the transitions in effect for 2017 while the agencies developed potential simplifications to the treatment of affected items under the capital rule. The current proposal reflects the simplifications referenced by the agencies in the transitions NPR. If the transition extensions proposed in the transitions NPR are finalized, the scheduled recalibrations under the transition provisions of the capital rule would be halted for the affected items and the treatment in effect for 2017 would continue until further action by the agencies. As described in the transitions NPR, the agencies expect that the transition extensions would cease to be appropriate upon completion of the agencies' simplifications rulemaking process.

If the transition extensions are not finalized, all the transition provisions currently in the capital rule would remain in effect, including a final, stricter recalibration to the treatment of items discussed in the transitions NPR beginning January 1, 2018, for all banking organizations covered by the agencies' capital rule. Thus, whether or not the transition extensions in the transitions NPR are implemented, the agencies believe that the transitions would cease to be appropriate upon the agencies' adoption of a final rule in conjunction with the rulemaking process for the proposed simplifications. Accordingly, in connection with this simplification proposal, the agencies propose to remove the transition provisions applicable to MSAs, temporary difference DTAs, investments in the capital of unconsolidated financial institutions, and minority interest, all of which are currently scheduled to end in 2018.

Question 13: The agencies solicit comments on the proposed technical amendments to the capital rule. What, if any, potentially unintended consequences do the proposed changes pose and how should the agencies consider addressing such consequences? What, if any, additional technical amendments not already identified by the agencies in this proposed rule would be appropriate for the agencies to consider and why?

Question 14: While the proposed rule addresses comments received during the EGRPRA review regarding the complexity of the risk based capital standards, the agencies seek comment on additional alternatives to simplify and streamline the regulatory capital rules. The agencies recognize the difficulties in achieving simplification of the risk based capital standards, particularly the burden related to their calculation and reporting, and the potential disparate impact to smaller and medium sized banks relative to their GSIB counterparts.

Therefore, the agencies seek comment on whether they should consider a fundamental change to the manner in which banking organizations calculate and comply with minimum capital standards such as through the use of a simple U.S. GAAP based equity to assets ratio (leverage ratio) for non-GSIB banks. If so, what would be the appropriate definition and level for the ratio? Also, what relief should be realized upon implementation of this capital standard relative to changes in the call report and other reporting standards?

Question 15: The agencies also seek comment on whether they should consider more comprehensive simplifications to the capital rule for small and medium-sized banking organizations by, for example, further simplifying risk-weighted assets and the definition of capital, or reducing the number of regulatory capital ratios, consistent with legal requirements. What specific simplifications should the agencies consider and why?

IV. Abbreviations

ADC Acquisition, Development, or Construction
BHC Bank Holding Company
CFR Code of Federal Regulations
CRC Country Risk Classification
DTA Deferred Tax Asset
EGRPRA Economic Growth and Regulatory Paperwork Reduction Act of 1996
FAQ Frequently Asked Question
FR Federal Register
FDIC Federal Deposit Insurance Corporation
FDICIA Federal Deposit Insurance Corporation Improvement Act of 1991
GAAP U.S. Generally Accepted Accounting Principles
GSIB Global Systemically Important Bank Holding Company
HVADC High Volatility Acquisition, Construction, or Development
HVCRE High Volatility Commercial Real Estate
IHC U.S. Intermediate Holding Company
LTV Loan-to-Value
MDB Multilateral Development Bank
MSA Mortgage Servicing Asset
NPR Notice of Proposed Rulemaking
OCC Office of the Comptroller of the Currency
OECD Organization for Economic Cooperation and Development
OMB Office of Management and Budget
PD Probability of Default
PMSA Purchased Mortgage Servicing Asset
PRA Paperwork Reduction Act
RCDRIA Riegle Community Development and Regulatory Improvement Act of 1994
RFA Regulatory Flexibility Act
RIN Regulation Identifier Number
SBA Small Business Administration
SLHC Savings and Loan Holding Company
SMB State Member Banks
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code

V. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The revised disclosure requirements are found in section _.63 of the proposed rule. The OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. These information collections will be extended for three years, with revision. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance,

common stock; and (vi) common equity tier 1 minority interest, tier 1 minority interest, and total capital minority interest exceeding the limitations on minority interest in the capital rule.

and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov*, Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping and Disclosure Requirements Associated with Capital Adequacy.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks, state member banks, state nonmember banks, and state and Federal savings associations.

Board: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).

FDIC: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

Current Actions: Section _.63 of the proposed rule would (1) replace the standardized approach's treatment of high volatility commercial real estate (HVCRE) exposures with a simpler treatment for most high volatility acquisition, development, or construction (HVADC) exposures and (2) break out the disclosures in Table 8 to include (i) after-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital and (ii) credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight. There are no changes in burden associated with the proposed rulemaking. However, in order to be consistent across the agencies, the agencies are applying a conforming methodology for calculating the burden estimates. The agencies believe that any changes to the information collections associated with the proposed rule are the result of the conforming methodology and not the result of the proposed rule changes.

PRA Burden Estimates

OCC

OMB control number: 1557–0318.
Estimated number of respondents: 1,365.
Estimated average hours per response:

Minimum Capital Ratios

Recordkeeping (Ongoing)—16.

Standardized Approach

Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.

Advanced Approach

Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—280.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—35.
Estimated annual burden hours: 1,088 hours initial setup, 64,513 hours for ongoing.

Board

Agency form number: FR Q.
OMB control number: 7100–0313.
Estimated number of respondents: 1,431.
Estimated average hours per response:

Minimum Capital Ratios

Recordkeeping (Ongoing)—16.

Standardized Approach

Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.

Advanced Approach

Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—280.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—35.
Disclosure (Table 13 quarterly)—5.

Risk-based Capital Surcharge for GSIBs

Recordkeeping (Ongoing)—0.5.
Estimated annual burden hours: 1,088 hours initial setup, 78,183 hours for ongoing.

FDIC

OMB control number: 3064–0153.
Estimated annual burden hours: 1,088 hours initial setup, 138,391 hours for ongoing. Notably, the FDIC's estimated annual burden hours remain unchanged from its last OMB submission. A breakdown of the burden associated with the current information collection for 3064–0153 is contained in the FDIC's notice published on July 26, 2017 (82 FR 34668).

The proposed rule will also require changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 1557–0081, 7100–0036, and 3064–0052), Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), and Capital Assessments and Stress Testing (FR Y–14A and Q; OMB No. 7100–0341), which will be addressed in a separate **Federal Register** notice.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total assets of $38.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As of June 30, 2017, the OCC supervises 907 small entities.[36]

The rule would apply to all OCC-supervised entities that are not subject to the advanced approaches risk-based capital rules, and thus potentially affects a substantial number of small entities. The OCC has determined that 153 such entities engage in affected activities to an extent that they would be impacted directly by the proposed rule. Although a substantial number of small entities would be impacted by the proposed rule, the OCC does not find that this impact is economically significant. To determine whether a proposed rule would have a significant effect, the OCC considers whether projected cost increases associated with the proposed rule are greater than or equal to either 5 percent of a small bank's total annual salaries and benefits or 2.5 percent of an OCC-supervised small entity's total non-interest expense. The value of the change in capital

[36] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

exceeded these thresholds for 1 of the 907 OCC-supervised small entities.

Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed in the **SUPPLEMENTARY INFORMATION**, the proposal would revise the treatment of certain assets under the capital rule and would also make various corrections and clarifications to the capital rule to address issues that have been identified since the rule was issued. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking. Under regulations issued by the Small Business Administration, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking organization).[37] As of June 30, 2017, there were approximately 3,451 small bank holding companies, 224 small savings and loan holding companies, and 566 small state member banks.

Aspects of the proposed rule would apply to all state member banks, as well as all bank holding companies and savings and loan holding companies that are subject to the Board's regulatory capital rule. Certain portions of the proposed rule would not apply to state member banks, bank holding companies, and savings and loan holding companies that are subject to the advanced approaches. In general, the Board's capital rule only applies to bank holding companies and savings and loan holding companies that are not subject to the Board's Small Bank Holding Company Policy Statement, which applies to bank holding companies and savings and loan holding companies with less than $1 billion in total assets that also meet certain additional criteria.[38] Thus, most bank holding companies and savings and loan holding companies that would be subject to the proposed rule exceed the $550 million asset threshold at which a banking organization would qualify as a small banking organization.

Given that the proposed rule does not impact the recordkeeping and reporting requirements that affected small banking organizations are currently subject to, there would be no change to the information that small banking organizations must track and report. The agencies anticipate updating the relevant reporting forms at a later date to the extent necessary to align with the capital rule.

For purposes of the standardized approach, the proposal would replace the exposure category HVCRE with the exposure category HVADC. HVADC exposure is expected to generally cover a broader range of exposures than HVCRE exposure. However, the proposal would assign a 130 percent risk weight to HVADC exposures, as opposed to the 150 percent risk weight currently assigned to HVCRE exposures. Based upon data reported on the FR Y–9C and on Call Report information, as of June 30, 2017, about 80 percent of small state member banks, small bank holding companies, and small savings and loan holding companies report holdings of acquisition, development, or construction exposures, excluding one-to four-family residential properties, and about 30 percent of state member banks, small bank holding companies, and small savings and loan holding companies report some holdings of HVCRE exposures risk weighted at 150 percent. The Board expects that the expanded scope and reduced risk-weight of HVADC exposure relative to HVCRE exposure would result in roughly equivalent capital requirements under the proposal as currently provided by the capital rule.

For non-advanced approaches banking organizations, the proposal would revise the capital deductions for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions by raising the threshold at which such items must be deducted and simplifying the number and interaction of required deductions. The Board expects that the proposal would result in slightly lower capital requirements compared to the capital rule for a few small banking organizations that currently deduct MSAs, temporary difference DTAs, and/or investments in the capital of unconsolidated financial institutions. Because so few banking organizations are currently subject to these deductions, the number of affected banking organizations appears to be minimal.

Also for non-advanced approaches banking organizations, the proposal would simplify the requirements related to the inclusion of minority interest of subsidiaries in capital. The Board expects that the proposal would generally result in more minority interest being includable in capital than is permitted under the current rule. However, only a few small banking organizations currently include minority interest in capital and minority interest represents a significant portion of capital for very few banking organizations. As a result, the impact of this portion of the proposal is not expected to be significant.

The remaining proposed revisions to the capital rule consist of technical corrections and clarifications that have been identified since the rule was issued. None of these revisions constitutes a significant change to the capital rule and the impact of these revisions on banking organizations is expected to be immaterial.

The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In addition, there are no significant alternatives to the proposed rule other than retention of the current rule. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposed rule. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

FDIC: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities.[39] The Small Business Administration has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[40] The FDIC is providing an initial regulatory flexibility analysis with respect to this proposed rule.

The FDIC supervises 3,717 depository institutions,[41] of which, 2,990 are

[37] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

[38] *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

[39] 5 U.S.C. 601 *et seq.*

[40] 13 CFR 121.201 (as amended, effective December 2, 2014).

[41] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

defined as small banking entities by the terms of the RFA.[42] This proposed rule would replace the existing HVCRE exposure category with a new HVADC exposure category that would receive a 130 percent risk weight. The proposed rule also would remove the individual and aggregate deduction thresholds and replace them with individual, higher deduction thresholds for: (i) MSAs; (ii) temporary differences DTAs; and (iii) investments in the capital of unconsolidated financial institutions. Finally, the proposed rule would amend the methodology that determines the amount of minority interest that is includable in regulatory capital. According to Call Report data as of June 30, 2017, 2,589 FDIC-supervised small banking entities reported some amount of acquisition, development or construction loans, MSAs, DTAs, deductions related to investments in unconsolidated financial institutions, or minority interests that could be affected by this rule making.

HVADC

According to Call Report data as of June 30, 2017, there were 2,338 FDIC-supervised small banking entities that reported approximately $14.4 billion of acquisition, development or construction loans excluding one- to four-family residential projects (non-residential ADC loans). Of these entities, 817 FDIC-supervised small banking entities reported that approximately $3.6 billion of these non-residential ADC loans would meet the current definition of an HVCRE exposure and would qualify for the 150 percent risk weight. We assume that the remainder of the non-residential ADC loans received a 100 percent risk weight as a result of meeting one or more of the currently available exemptions from the current definition of HVCRE. These exemptions relate to either the amount of contributed capital or because the exposure is an agricultural or farm loan, community development loan, or permanent financing. The FDIC is unable to determine the mix of exemptions from the HVCRE definition that FDIC-supervised small banking entities rely upon when assigning the 100 percent risk weight because of limitations in the Call Report data.

Under the proposed rule some future non-residential ADC loans made by a small banking entity that are currently reported as an HVCRE exposure may receive a 100 percent risk weight or a 130 percent risk-weight treatment instead of the 150 percent risk-weight treatment under the current rule. Concurrently, some future non-residential ADC loans made by a small banking entity may receive a 130 percent risk-weight treatment instead of the 100 percent risk-weight treatment under the contributed capital exemption. These loans also may continue to receive a 100 percent risk weight if they qualify under other exemptions of the proposed rule as an agricultural or farm loan, community development loan, a permanent loan as that term is clarified in the proposal, or a loan that is not ''primarily'' to finance non-residential ADC as defined in the proposal. As with the current rule, all acquisition, development, or construction loans related to one- to four-family residential properties would continue to receive a 100 percent risk weight.

In the absence of Call Report information about the eligibility of current non-residential ADC loans for the various proposed exemptions or how the structure of future non-residential ADC loans will compare to current non-residential ADC loans, the FDIC estimates the maximum amount of capital that could be required under the proposed rule if it were applied to FDIC-supervised small banking entities' current portfolio of non-residential ADC loans (that is, ignoring the grandfathering provision and assuming FDIC-supervised small banking entities make no adjustments to their loan structures in response to the rule) and assuming that no non-residential ADC loans qualify for the exemptions as agricultural or farm loans, community development loans, or permanent loans, or are excluded due to the ''primarily finances'' test. Assuming that all currently held acquisition, development, or construction exposures excluding one- to four-family exposures, currently risk weighted at 100 percent will be risk-weighted at 130 percent (rather than remaining at 100 percent under potentially available exemptions), and that all HVCRE exposures risk weighted at 150 percent will be risk weighted at 130 percent (rather than 100 percent under potentially available exemptions), the FDIC estimates that there could be a maximum increase in risk weighted assets of approximately $2.6 billion, or less than one percent of the aggregate risk weighted assets for the 2,338 FDIC-supervised small banking entities. The FDIC believes that even this relatively small change to aggregate risk weighted assets is overstated because it is likely that a significant amount of small bank lending would meet one or more of the qualifying exemptions.[43] As such, the FDIC believes that any change in capital requirements under the proposed HVADC treatment compared to the current HVCRE treatment would be modest.

Threshold Deductions

The proposed rule would change the regulatory capital treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions for FDIC-supervised small banking entities. It does so by removing the individual and aggregate deduction thresholds for these assets and by adopting a single 25 percent common equity tier 1 capital deduction threshold for each type of asset. According to June 30, 2017 Call Report data, at least 1,618 FDIC-supervised small banking entities reported holding some MSAs, DTAs, and deductions due to investments in the capital of unconsolidated financial institutions. Only 45 small institutions reported deductions for holdings across these different assets. The FDIC estimates that the proposed rule would pose an immediate aggregated net benefit of $45.5 million in the form of an increase in tier 1 capital to those institutions that currently have to calculate a deduction. The FDIC expects that the proposed rule would yield future benefits to affected FDIC-supervised small banking entities by reducing the likelihood of a regulatory capital deduction due to holding these asset types. In particular, the proposal would remove a significant capital constraint on FDIC-supervised small banking entities that specialize in mortgage servicing. The proposed increase in threshold deduction makes it less likely that a small banking entity would exit or reduce its activity in the mortgage servicing market.

Minority Interest

The proposed rule would remove the capital rule's limitation on the inclusion of minority interest in regulatory capital. It does so by allowing FDIC-supervised small banking entities to

[42] FDIC Call Report, June 30, 2017.

[43] For example, for as of June 30, 2017 Call Report data, for the 2,338 FDIC-supervised small banking entities included in this analysis, approximately 24% of all non-ADC commercial real estate loans were secured by Farmland and approximately 36% were secured by Owner Occupied Nonfarm, Nonresidential properties (a proxy in this analysis for permanent loans as defined in the HVADC definition). If the proportion of non-ADC lending related to these exposure categories were to be assumed consistent with the amount of non-residential ADC lending to these exposure categories, then as much as 60% of all non-residential ADC loans would be excluded from the definition of HVADC solely based upon the agricultural and permanent loan exemptions alone.

include minority interest up to 10 percent of the parent banking organization's common equity tier 1, tier 1, or total capital, not including the minority interest. The FDIC estimates that 16 FDIC-supervised small banking entities would be affected by the proposed inclusion of minority interest in regulatory capital calculations. The FDIC estimates that these FDIC-supervised small banking entities will likely experience a net aggregated benefit of $2.5 million in the form of an increase in tier 1 capital due to the inclusion of minority interest. The FDIC expects that the proposed rule would yield future benefits for affected FDIC-supervised small banking entities by reducing the likelihood that minority interest would not be included in a small banking entity's regulatory capital.

Compliance Costs

Finally, FDIC-supervised small banking entities are likely to incur some implementation costs in order to comply with the proposed rule. These costs would encompass changes to their systems designed to calculate, manage, and report risk-weighted assets and regulatory capital. Given the limited nature of the changes necessary to comply with the proposed rule, the implementation costs are expected to be minimal. Additionally, the FDIC believes that the proposed changes would help reduce some of the compliance costs associated with these regulations in the long-term by making them easier to apply.

The proposed rule does not impact the recordkeeping and reporting requirements that affect FDIC-supervised small banking entities and there would be no change to the information that FDIC-supervised small banking entities must track and report. The FDIC anticipates updating the relevant reporting forms at a later date to the extent necessary to align with the capital rule.

Question 1. For FDIC-supervised small banking entities, would the proposed rule reduce the compliance costs associated with the capital rules? If so, how?

Conclusion

The threshold-deduction and minority-interest provisions of the proposed rule would increase the amount of eligible regulatory capital for a limited number of FDIC-supervised small banking entities currently subject to deductions or limitations on these items, as described above. The HVADC provisions of the proposed rules would affect far more FDIC-supervised small banking entities, with effects that will vary across institutions and are difficult to estimate. Risk weights for some new ADC exposures will be reduced from 150 percent under the current HVCRE treatment, to 130 percent or 100 percent under the proposed rule if certain exemptions apply. Risk weights for other new ADC exposures will either remain at the currently required 100 percent (if available exemptions apply) or increase to 130 percent. However, the Call Reports do not provide data about the volumes of ADC loans currently eligible for HVCRE exemptions for agriculture, community development or permanent financing, or that would be eligible going forward under the proposed clarification of the permanent financing exemption or the proposed ''primarily finances'' test. As a result, the net effect on regulatory capital requirements of the proposed HVADC treatment is difficult to estimate with any precision. As noted earlier, however, the FDIC's upper bound estimate (that ignores the grandfathering provision and gives no credit for all the HVADC exemptions previously described) is that risk-weighted assets of the FDIC-supervised small banking entities affected by the rule would increase less than one percent. This upper bound estimate gives some comfort that the actual regulatory capital effects of the proposed HVADC treatment are likely to be modest. The FDIC welcomes comments or data from the institutions it supervises that would enhance our ability to more precisely estimate the net effects of the proposed rule on regulatory capital ratios.

The FDIC does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In addition, there does not appear to be any significant alternatives to the proposed rule other than retention of the current rule. In light of the foregoing discussion, the FDIC does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the FDIC seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposed rule. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the agencies incorporate to make the regulation easier to understand?

D. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year.[44] Accordingly, the OCC has not prepared

[44] The OCC estimates that proposed rule would lead to an aggregate increase in reported regulatory capital of $4.7 billion for national banks and Federal savings associations compared to the amount they would report if they were required to continue to apply the capital requirements. The OCC estimates that this increase in reported regulatory capital—which could allow banking organizations to increase their leverage and thus increase their tax deductions for interest paid on debt—would have a total aggregate value of approximately $112.8 million per year across all directly impacted OCC-supervised entities (that is, national banks and federal savings associations not subject to the advanced approaches risk-based capital rule).

a written statement to accompany this proposal.

E. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[45]

The agencies note that comment on these matters has been solicited in other sections of this **SUPPLEMENTARY INFORMATION** section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC proposes to amend 12 CFR part 3 as follows.

[45] 12 U.S.C. 4802.

PART 3—CAPITAL ADEQUACY STANDARDS

Subpart A—General Provisions

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Section 3.1 is amended by revising paragraph (a) to read as follows:

§ 3.1 Purpose, applicability, reservation of authority, and timing.

(a) *Purpose.* This part establishes minimum capital requirements and overall capital adequacy standards for national banks and Federal savings associations. This part does not apply to Federal branches and agencies of foreign banks. This part includes methodologies for calculating minimum capital requirements, public disclosure requirements related to the capital requirements, and transition provisions for the application of this part.

* * * * *

■ 3. Section 3.2 is amended by revising the definitions of ''corporate exposure,'' ''eligible guarantor,'' ''high volatility commercial real estate (HVCRE) exposure,'' and ''International Lending Supervision Act,'' ''Investment in the capital of an unconsolidated financial institution,'' and ''Significant investment in the capital of an unconsolidated financial institution''; and adding in alphabetical order the definitions of ''high volatility acquisition, development, or construction (HVADC) exposure.'' and ''Nonsignificant investment in the capital of an unconsolidated financial institution,'' to read as follows:

§ 3.2 Definitions.

* * * * *

Corporate exposure means an exposure to a company that is not:

(1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);

(2) An exposure to a GSE;

(3) A residential mortgage exposure;

(4) A pre-sold construction loan;

(5) A statutory multifamily mortgage;

(6) A high volatility acquisition, development, or construction (HVADC) exposure or a *high volatility commercial real estate (HVCRE) exposure*;

(7) A cleared transaction;

(8) A default fund contribution;

(9) A securitization exposure;

(10) An equity exposure; or

(11) An unsettled transaction.

(12) A policy loan; or

(13) A separate account.

* * * * *

Eligible guarantor means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

* * * * *

High volatility acquisition, development, or construction (HVADC) exposure means a credit facility that is originated on or after [effective date] and that:

(1) Primarily finances or refinances the:

(i) Acquisition of vacant or developed land;

(ii) Development of land to prepare to erect new structures including, but not limited to, the laying of sewers or water pipes and demolishing existing structures; or

(iii) Construction of buildings, dwellings, or other improvements including additions or alterations to existing structures; and

(2) Is not a credit facility that finances or refinances:

(i) One- to four-family residential properties;

(ii) Real property projects that would have the primary purpose of ''community development'' as defined under 12 CFR part 25 (national banks) and 12 CFR part 195 (Federal savings associations); or

(iii) The purchase or development of agricultural land, including, but not

limited to, all land used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for commercial or residential development; and

(3) Is not a permanent loan. A permanent loan for purposes of this definition means a prudently underwritten loan that has a clearly identified ongoing source of repayment sufficient to service amortizing principal and interest payments aside from the sale of the property. For purposes of this section, a permanent loan does not include a loan that finances or refinances a stabilization period or unsold lots or units of for-sale projects.

High volatility commercial real estate (HVCRE) exposure, for purposes of Subpart D, means a credit facility that is either outstanding or committed prior to [effective date] and, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a ''qualified investment'' under 12 CFR part 25 (national bank), 12 CFR part 195 (Federal savings association) and

(ii) Is not an ADC loan to any entity described in 12 CFR 25.12(g)(3) (national banks) and 12 CFR 195.12(g)(3) (Federal savings associations), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the Board's real estate lending standards at 12 CFR part 34, subpart D (national banks) and 12 CFR part 160, subparts A and B (Federal savings associations);

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the Board-regulated institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the Board-regulated institution that provided the ADC facility as long as the permanent financing is subject to the Board-regulated institution's underwriting criteria for long-term mortgage loans.

* * * * *

International Lending Supervision Act means the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*).

* * * * *

Investment in the capital of an unconsolidated financial institution means a net long position calculated in accordance with § 3.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the national bank or Federal savings association for five or fewer business days.

* * * * *

Non-significant investment in the capital of an unconsolidated financial institution means an investment by an advanced approaches national bank or Federal savings association in the capital of an unconsolidated financial institution where the advanced approaches national bank or Federal savings association owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

* * * * *

Significant investment in the capital of an unconsolidated financial institution means an investment by an advanced approaches national bank or Federal savings association in the capital of an unconsolidated financial institution where the advanced approaches national bank or Federal savings association owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

* * * * *

■ 4. Section 3.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

§ 3.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(H) The credit equivalent amount of all off-balance sheet exposures of the national bank or Federal savings association, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under § 3.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

* * * * *

■ 5. Section 3.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and Table 1 to read as follows:

§ 3.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(a) * * *

(2) * * *

(i) *Eligible retained income.* The eligible retained income of a national bank or Federal savings association is the national bank's or Federal savings association's net income, calculated in accordance with the instructions to the Call Report, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income.

* * * * *

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) A national bank's or Federal savings association's capital

conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The national bank or Federal savings association's common equity tier 1 capital ratio minus the national bank or Federal savings association's minimum common equity tier 1 capital ratio requirement under § 3.10;

(B) The national bank or Federal savings association's tier 1 capital ratio minus the national bank or Federal savings association's minimum tier 1 capital ratio requirement under § 3.10; and

(C) The national bank or Federal savings association's total capital ratio minus the national bank or Federal savings association's minimum total capital ratio requirement under § 3.10; or

* * * * *

TABLE 1 TO § 3.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio
Greater than 2.5 percent plus 100 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount, *and* greater than 1.875 percent plus 75 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount, *and* greater than 1.25 percent plus 50 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount, *and* greater than 0.625 percent plus 25 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	0 percent.

* * * * *

■ 6. Section 3.20 is amended by revising paragraphs (b)(4), (c)(1)(viii), (c)(2), (d)(2), and (5) as follows:

§ 3.20 Capital components and eligibility criteria for regulatory capital instruments.

* * * * *

(b) * * *

(4) Any common equity tier 1 minority interest, subject to the limitations in § 3.21.

* * * * *

(c) * * *

(1) * * *

(viii) Any cash dividend payments on the instrument are paid out of the national bank's or Federal savings association's net income or retained earnings.

* * * * *

(2) Tier 1 minority interest, subject to the limitations in § 3.21, that is not included in the national bank's or Federal savings association's common equity tier 1 capital.

* * * * *

(d) * * *

(2) Total capital minority interest, subject to the limitations set forth in § 3.21, that is not included in the national bank's or Federal savings association's tier 1 capital.

* * * * *

(5) For a national bank or Federal savings association that makes an AOCI opt-out election (as defined in paragraph (b)(2) of § 3.22), 45 percent of pretax net unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

* * * * *

■ 7. Section 3.21 is revised to read as follows:

§ 3.21 Minority interest.

(a) (1) *Applicability.* For purposes of § 3.20, a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association is subject to the minority interest limitations in this paragraph (a) if a consolidated subsidiary of the national bank or Federal savings association has issued regulatory capital that is not owned by the national bank or Federal savings association.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the national bank or Federal savings association.* The amount of common equity tier 1 minority interest that a national bank or Federal savings association may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the national bank or Federal savings association (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital regulatory adjustments and deductions in accordance with § 3.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the national bank or Federal savings association.* The amount of tier 1 minority interest that a national bank or Federal savings association may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the national bank or Federal savings association (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with § 3.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the national bank or Federal savings association.* The amount of total capital minority interest that a national bank or Federal savings association may include in total capital must be no greater than 10 percent of the sum of all total capital elements of the national bank or Federal savings association (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with § 3.22 (a) and (b).

(b) (1) *Applicability.* For purposes of § 3.20, an advanced approaches national bank or Federal savings association is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches national bank or Federal savings association has issued regulatory capital that is not owned by the national bank or Federal savings association; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest

calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches national bank or Federal savings association, the advanced approaches national bank or Federal savings association must assume that the capital adequacy standards of the advanced approaches national bank or Federal savings association apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the national bank or Federal savings association.* For each consolidated subsidiary of an advanced approaches national bank or Federal savings association, the amount of common equity tier 1 minority interest the advanced approaches national bank or Federal savings association may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches national bank or Federal savings association, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 3.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(*2*) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 3.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches national bank or Federal savings association.* For each consolidated subsidiary of the advanced approaches national bank or Federal savings association, the amount of tier 1 minority interest the advanced approaches national bank or Federal savings association may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches national bank or Federal savings association multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 3.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(*2*) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 3.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the national bank or Federal savings association.* For each consolidated subsidiary of the advanced approaches national bank or Federal savings association, the amount of total capital minority interest the advanced approaches national bank or Federal savings association may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches national bank or Federal savings association multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 3.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(*2*) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 3.11 or equivalent standards established by the subsidiary's home country supervisor.

■ 8. Section 3.22 is amended by revising paragraphs (a)(1), (c), (d), (g), and (h) to read as follows:

§ 3.22 Regulatory capital adjustments and deductions.

(a) * * *

(1)(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches national bank or Federal savings association, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the advanced approaches national bank or Federal savings association), in accordance with paragraph (d) of this section;

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments* [23]—

(1) *Investment in the national bank's or Federal savings association's own capital instruments.* A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own capital instruments as follows:

(i) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 3.20(b)(1);

(ii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for a national bank or Federal savings

[23] The national bank or Federal savings association must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL includable in tier 2 capital under § 3.20(d)(3).

association that is not an advanced approaches national bank or Federal savings association (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated financial institutions for an advanced approaches national bank or Federal savings association (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches national bank or Federal savings association (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, a national bank or Federal savings association must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the national bank or Federal savings association itself, as described in paragraphs (c)(2)(i)–(iii) of this section. If the national bank or Federal savings association does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the national bank or Federal savings association must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under § 3.20, the national bank or Federal savings association must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in § 3.300(c)), the national bank or Federal savings association must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* A national bank or Federal savings association must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must deduct its investments in the capital of unconsolidated financial institutions (as defined in § 3.2) that exceed 25 percent of the sum of the national bank's or Federal savings association's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding deduction approach.[24] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, a national bank or Federal savings association that underwrites a failed underwriting, with the prior written approval of the OCC, for the period of time stipulated by the OCC, is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.[25]

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) An advanced approaches national bank or Federal savings association must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 3.2) that, in the aggregate, exceed 10 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.[26] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting, with the prior written approval of the OCC, for the period of time stipulated by the OCC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.[27]

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The advanced approaches national bank's or Federal savings association's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the advanced approaches national bank's or Federal

[24] With the prior written approval of the OCC, for the period of time stipulated by the OCC, a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the OCC.

[25] Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

[26] With the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the OCC.

[27] Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

savings association's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches national bank's or Federal savings association's total non-significant investments in unconsolidated financial institutions.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches national bank or Federal savings association must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.[28] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(d) *MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

(1) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must make deductions from regulatory capital as described in this paragraph (d)(1).

(i) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the national bank's or Federal savings association's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).[29]

(ii) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of DTAs arising from temporary differences that the national bank or Federal savings association could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. A national bank or Federal savings association is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with § 3.22(e)) arising from timing differences that the national bank or Federal savings association could realize through net operating loss carrybacks. The national bank or Federal savings association must risk weight these assets at 100 percent. For a national bank or Federal savings association that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the national bank or Federal savings association could reasonably expect to have refunded by its parent holding company.

(iii) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, a national bank or Federal savings association may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. A national bank or Federal savings association that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. A national bank or Federal savings association may change its exclusion preference only after obtaining the prior approval of the OCC.

(2) An advanced approaches national bank or Federal savings association must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches national bank or Federal savings association could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An advanced approaches national bank or Federal savings association is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with § 3.22(e)) arising from timing differences that the advanced approaches national bank or Federal savings association could realize through net operating loss carrybacks. The advanced approaches national bank or Federal savings association must risk weight these assets at 100 percent. For a national bank or Federal savings association that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the national bank or Federal savings association could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.[30] Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches national bank or Federal savings association pursuant to

[28] With prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the OCC.

[29] The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the national bank or Federal savings association and assigned a 250 percent risk weight.

[30] With the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the OCC.

paragraph (a)(1) of this section. In addition, with the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches national bank or Federal savings association must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.[31]

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches national bank or Federal savings association may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches national bank or Federal savings association that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches national bank or Federal savings association may change its exclusion preference only after obtaining the prior approval of the OCC.

* * * * *

(g) *Treatment of assets that are deducted.* A national bank or Federal savings association must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the national bank's or Federal savings association's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in § 3.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in § 3.2;

(iii) For an indirect exposure, the national bank's or Federal savings association's carrying value of the investment in the investment fund, provided that, alternatively:

(A) A national bank or Federal savings association may, with the prior approval of the Board, use a conservative estimate of the amount of its investment in the national bank's or Federal savings association's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) A national bank or Federal savings association may calculate the gross long position for investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the national bank's or Federal savings association's carrying value of its investment in the investment fund by either:

(*1*) The highest stated investment limit (in percent) for investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(*2*) The investment fund's actual holdings of investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the national bank's or Federal savings association's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the national bank's or Federal savings association 's Call Report, if the national bank or Federal savings association has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the national bank or Federal savings association exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the national bank's or Federal savings association's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) A national bank or Federal savings association may only net a short position against a long position in an investment in the national bank's or Federal savings association's own capital instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the national bank's or Federal savings association's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an investment in the national bank's or Federal savings association's own capital instrument or an investment in the capital of an

[31] The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches national bank or Federal savings association and assigned a 250 percent risk weight.

unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the national bank's or Federal savings association's Call Report, and the hedge is deemed effective by the national bank's or Federal savings association 's internal control processes, which have not been found to be inadequate by the OCC.

■ 9. Section 3.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (j), (k), (l) to read as follows:

§ 3.32 General risk weights.

* * * * *

(b) *Certain supranational entities and multilateral development banks (MDBs).* A national bank or Federal savings association must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

* * * * *

(d) * * *

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, a national bank or Federal savings association must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to § 3.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

TABLE 2 TO § 3.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

	Risk weight (in percent)
CRC:	
0–1	20
2	50
3	100
4–7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) A national bank or Federal savings association must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) A national bank or Federal savings association must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) A national bank or Federal savings association must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) A national bank or Federal savings association must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) * * *

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to § 3.22(d)(2)(1)(c);

* * * * *

(j)(1) *High volatility acquisition, development, or construction (HVADC) exposures.* A national bank or Federal savings association must assign a 130 percent risk weight to an HVADC exposure.

(2) *High-volatility commercial real estate (HVCRE) exposures.* A national bank or Federal savings association must assign a 150 percent risk weight to an HVCRE exposure.

(k) *Past due exposures.* Except for an exposure to a sovereign entity or a residential mortgage exposure or a policy loan, if an exposure is 90 days or more past due or on nonaccrual:

(1) A national bank or Federal savings association must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) A national bank or Federal savings association may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § 3.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) A national bank or Federal savings association may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § 3.37 if the collateral meets the requirements of that section.

(l) *Other assets.* (1)(i) A national bank or Federal savings association must assign a zero percent risk weight to cash owned and held in all offices of subsidiary depository institutions or in transit, and to gold bullion held in a subsidiary depository institution's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) A national bank or Federal savings association must assign a zero percent risk weight to cash owned and held in all offices of the national bank or Federal savings association or in transit; to gold bullion held in the national bank's or Federal savings association's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) A national bank or Federal savings association must assign a 20 percent risk weight to cash items in the process of collection.

(3) A national bank or Federal savings association must assign a 100 percent risk weight to DTAs arising from temporary differences that the national bank or Federal savings association could realize through net operating loss carrybacks.

(4) A national bank or Federal savings association must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to § 3.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the national bank or Federal savings association could not realize through net operating loss carrybacks.

(5) A national bank or Federal savings association must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 3.22.

(6) Notwithstanding the requirements of this section, a national bank or

Federal savings association may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies at 12 CFR part 217, provided that all of the following conditions apply:

(i) The national bank or Federal savings association is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

* * * * *

■ 10. Section 3.34 is amended by revising paragraph (c) to read as follows:

§ 3.34 OTC derivative contracts.

* * * * *

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* A national bank or Federal savings association that purchases an OTC credit derivative that is recognized under § 3.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the national bank or Federal savings association does so consistently for all such credit derivatives. The national bank or Federal savings association must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A national bank or Federal savings association that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The national bank or Federal savings association is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The national bank or Federal savings association must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the national bank or Federal savings association is treating the OTC credit derivative as a covered position under subpart F, in which case the national bank or Federal savings association must compute a supplemental counterparty credit risk capital requirement under this section.

* * * * *

■ 11. Section 3.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

§ 3.35 Cleared transactions.

* * * * *

(b) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight appropriate for the CCP according to this subpart D.

* * * * *

(4) * * *

(ii) A clearing member client national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

(c) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight appropriate for the CCP according to this subpart D.

* * * * *

(4) * * *

(ii) A clearing member national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

* * * * *

■ 12. Section 3.36 is amend by revising paragraph (c) to read as follows:

§ 3.36 Guarantees and credit derivatives: Substitution treatment.

* * * * *

(c) *Substitution approach*—(1) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a national bank or Federal savings association may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the national bank or Federal savings association must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The national bank or Federal savings association may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The national bank or Federal savings association must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

* * * * *

■ 13. Section 3.37 is amended by revising paragraph (b)(2)(i) and the paragraph headings for paragraphs (b) and (b)(2) are being reprinted for reader reference to read as follows:

§ 3.37 Collateralized transactions.

* * * * *

(b) *The simple approach.* * * *

(2) *Risk weight substitution.* (i) A national bank or Federal savings association may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the national bank or Federal savings association has borrowed,

purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

* * * * *

■ 14. Section 3.38 is amended by revising paragraph (e)(2) to read as follows:

§ 3.38 Unsettled transactions.

* * * * *

(e) * * *

(2) From the business day after the national bank or Federal savings association has made its delivery until five business days after the counterparty delivery is due, the national bank or Federal savings association must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the national bank or Federal savings association as an exposure to the counterparty and using the applicable counterparty risk weight under this subpart D.

* * * * *

■ 15. Section 3.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

§ 3.42 Risk-weighted assets for securitization exposures.

* * * * *

(j) * * *

(2) * * *

(ii) * * *

(A) If the national bank or Federal savings association purchases credit protection from a counterparty that is not a securitization SPE, the national bank or Federal savings association must determine the risk weight for the exposure according to this subpart D.

* * * * *

■ 16. Section 3.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

§ 3.52 Simple risk-weight approach (SRWA).

* * * * *

(b) * * *

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under § 3.32 may be assigned a zero percent risk weight.

* * * * *

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to § 3.22(d)(2) are assigned a 250 percent risk weight.

* * * * *

■ 17. Section 3.61 is amended to read as follows:

§ 3.61 Purpose and scope.

Sections 3.61 through 3.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for a national bank or Federal savings association with total consolidated assets of $50 billion or more as reported on the national bank's or Federal savings association's most recent year-end Call Report that is not an advanced approaches national bank or Federal savings association making public disclosures pursuant to § 3.172. An advanced approaches national bank or Federal savings association that has not received approval from the OCC to exit parallel run pursuant to § 3.121(d) is subject to the disclosure requirements described in §§ 3.62 and 3.63. A national bank or Federal savings association with total consolidated assets of $50 billion or more as reported on the national bank's or Federal savings association's most recent year-end Call Report that is not an advanced approaches national bank or Federal savings association making public disclosures subject to § 3.172 must comply with § 3.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of § 3.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the national bank's or Federal savings association 's total consolidated assets in the four most recent quarters as reported on the Call Report or the average of the national bank or Federal savings association's total consolidated assets in the most recent consecutive quarters as reported quarterly on the national bank's or Federal savings association 's Call Report if the national bank or Federal savings association has not filed such a report for each of the most recent four quarters.

■ 18. Section 3.63 is amended by revising Table 3 and Table 8 to read as follows:

§ 3.63 Disclosures by national bank or Federal savings associations described in § 3.61.

* * * * *

TABLE 3 TO § 3.63—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the national bank's or Federal savings association's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b) Risk-weighted assets for: (1) Exposures to sovereign entities; (2) Exposures to certain supranational entities and MDBs; (3) Exposures to depository institutions, foreign banks, and credit unions; (4) Exposures to PSEs; (5) Corporate exposures; (6) Residential mortgage exposures; (7) Statutory multifamily mortgages and pre-sold construction loans; (8) HVADC exposures and HVCRE exposures; (9) Past due loans; (10) Other assets; (11) Cleared transactions; (12) Default fund contributions; (13) Unsettled transactions; (14) Securitization exposures; and (15) Equity exposures. (c) Standardized market risk-weighted assets as calculated under subpart F of this part. (d) Common equity tier 1, tier 1 and total risk-based capital ratios:

TABLE 3 TO § 3.63—CAPITAL ADEQUACY—Continued

	(1) For the top consolidated group; and (2) For each depository institution subsidiary. Total standardized risk-weighted assets.

* * * * *

TABLE 8 TO § 3.63—SECURITIZATION

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of: (1) The national bank's or Federal savings association 's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the national bank or Federal savings association to other entities and including the type of risks assumed and retained with resecuritization activity; [1] (2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets; (3) The roles played by the national bank or Federal savings association in the securitization process [2] and an indication of the extent of the national bank's or Federal savings association 's involvement in each of them; (4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures; (5) The national bank's or Federal savings association's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the national bank or Federal savings association follows for its securitization exposures including the type of securitization exposure to which each approach applies. (b) A list of: (1) The type of securitization SPEs that the national bank or Federal savings association, as sponsor, uses to securitize third-party exposures. The national bank or Federal savings association must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and (2) Affiliated entities: (i) That the national bank or Federal savings association manages or advises; and (ii) That invest either in the securitization exposures that the national bank or Federal savings association has securitized or in securitization SPEs that the national bank or Federal savings association sponsors.[3] (c) Summary of the national bank's or Federal savings association's accounting policies for securitization activities, including: (1) Whether the transactions are treated as sales or financings; (2) Recognition of gain-on-sale; (3) Methods and key assumptions applied in valuing retained or purchased interests; (4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes; (5) Treatment of synthetic securitizations; (6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the national bank or Federal savings association to provide financial support for securitized assets. (d) An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e) The total outstanding exposures securitized by the national bank or Federal savings association in securitizations that meet the operational criteria provided in § 3.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor.[4] (f) For exposures securitized by the national bank or Federal savings association in securitizations that meet the operational criteria in § 3.41: (1) Amount of securitized assets that are impaired/past due categorized by exposure type; [5] and (2) Losses recognized by the national bank or Federal savings association during the current period categorized by exposure type.[6] (g) The total amount of outstanding exposures intended to be securitized categorized by exposure type. (h) Aggregate amount of: (1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and (2) Off-balance sheet securitization exposures categorized by exposure type. (i)(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and (2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any: (i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and (ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight. (j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type. (k) Aggregate amount of resecuritization exposures retained or purchased categorized according to: (1) Exposures to which credit risk mitigation is applied and those not applied; and

TABLE 8 TO § 3.63—SECURITIZATION—Continued

	(2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

[1] The national bank or Federal savings association should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the national bank or Federal savings association is active.

[2] For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

[3] Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

[4] ''Exposures securitized'' include underlying exposures originated by the national bank or Federal savings association, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the national bank's or Federal savings association's balance sheet and underlying exposures acquired by the national bank or Federal savings association from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. National banks and Federal savings associations are required to disclose exposures regardless of whether there is a capital charge under this part.

[5] Include credit-related other than temporary impairment (OTTI).

[6] For example, charge-offs/allowances (if the assets remain on the national bank's or Federal savings association's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the national bank or Federal savings association with respect to securitized assets.

* * * * *

■ 19. Section 3.101 is amended by adding to paragraph (b) in alphabetical order the definition of ''High volatility commercial real estate *(HVCRE) exposure*'' to read as follows:

§ 3.101 Definitions.

* * * * *

(b) * * *

High volatility commercial real estate (HVCRE) exposure, for purposes of Subpart E, means a credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a ''qualified investment'' under 12 CFR part 25 (national banks) and 195 (Federal savings associations), and

(ii) Is not an ADC loan to any entity described in 12 CFR 25.12(g)(3) (national banks) and 12 CFR 195.12(g)(3) (Federal savings associations), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the OCC's real estate lending standards at 12 CFR part 34, subpart D (national banks) and 12 CFR part 160 (Federal savings associations);

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the national bank or Federal savings association advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the national bank or Federal savings association that provided the ADC facility as long as the permanent financing is subject to the national bank's or Federal savings association 's underwriting criteria for long-term mortgage loans.

* * * * *

■ 20. Section 3.131 is amended by revising paragraph (d)(2) to read as follows:

§ 3.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(d) * * *

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the national bank or Federal savings association assigns a rating grade associated with a PD of less than 0.03 percent.

* * * * *

■ 21. Section 3.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

§ 3.133 Cleared transactions.

* * * * *

(b) *Clearing member client national banks or Federal savings associations*

* * * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight applicable to the CCP under subpart D of this part.

* * * * *

(c) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight applicable to the CCP according to subpart D of this part.

* * * * *

■ 22. Section 3.152 is amended by revising paragraph (b)(5) and (6) to read as follows:

§ 3.152 Simple risk weight approach (SRWA).

* * * * *

(b) * * *

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this

section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

* * * * *

■ 23. Section 3.202 is amended by revising the definition of ''Corporate debt position'' in paragraph (b) to read as follows:

§ 3.202 Definitions.

* * * * *

(b) * * *

Corporate debt position means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

* * * * *

■ 24. Section 3.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 3.210 Standardized measurement method for specific risk.

* * * * *

(b) * * *

(2) * * *

(ii) *Certain supranational entity and multilateral development bank debt positions.* A national bank or Federal savings association may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

* * * * *

■ 25. Section 3.300 is amended by revising paragraphs (b) and (d) to read as follows:

§ 3.300 Transitions.

* * * * *

(b) *Regulatory capital adjustments and deductions.* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association, and in each case through December 31, 2017, a national bank or Federal savings association must make the capital adjustments and deductions in § 3.22 in accordance with the transition requirements in this paragraph (b). Beginning January 1, 2018, a national bank or Federal savings association must make all regulatory capital adjustments and deductions in accordance with § 3.22.

(1) *Transition deductions from common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association, and in each case through December 31, 2017, a national bank or Federal savings association must make the deductions required under § 3.22(a)(1)–(7) from common equity tier 1 or tier 1 capital elements in accordance with the percentages set forth in Table 2 and Table 3 to § 3.300.

(i) A national bank or Federal savings association must deduct the following items from common equity tier 1 and additional tier 1 capital in accordance with the percentages set forth in Table 2 to § 3.300: Goodwill (§ 3.22(a)(1)), DTAs that arise from net operating loss and tax credit carryforwards (§ 3.22(a)(3)), a gain-on-sale in connection with a securitization exposure (§ 3.22(a)(4)), defined benefit pension fund assets (§ 3.22(a)(5)), expected credit loss that exceeds eligible credit reserves (for advanced approaches national banks and Federal savings associations that have completed the parallel run process and that have received notifications from the OCC pursuant to § 3.121(d) of subpart E) and financial subsidiaries (§ 3.22(a)(7)), and nonincludable subsidiaries of a Federal savings association (§ 3.22(a)(8)).

TABLE 2 TO § 3.300

Transition period	Transition deductions under § 3.22(a)(1) and (7)	Transition deductions under § 3.22(a)(3)–(6)	
	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from tier 1 capital
Calendar year 2014	100	20	80
Calendar year 2015	100	40	60
Calendar year 2016	100	60	40
Calendar year 2017	100	80	20
Calendar year 2018, and thereafter	100	100	0

(ii) A national bank or Federal savings association must deduct from common equity tier 1 capital any intangible assets other than goodwill and MSAs in accordance with the percentages set forth in Table 3 to § 3.300.

(iii) A national bank or Federal savings association must apply a 100 percent risk-weight to the aggregate amount of intangible assets other than goodwill and MSAs that are not required to be deducted from common equity tier 1 capital under this section.

TABLE 3 TO § 3.300

Transition period	Transition deductions under § 3.22(a)(2)—percentage of the deductions from common equity tier 1 capital
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60
Calendar year 2017	80
Calendar year 2018, and thereafter	100

(2) *Transition adjustments to common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association, and in each case through December 31, 2017, a national bank or Federal savings association must allocate the regulatory adjustments related to changes in the fair value of liabilities due to changes in the national bank's or Federal savings association's own credit risk (§ 3.22(b)(1)(iii)) between common equity tier 1 capital and tier 1 capital in accordance with the percentages set forth in Table 4 to § 3.300.

(i) If the aggregate amount of the adjustment is positive, the national bank or Federal savings association must allocate the deduction between common equity tier 1 and tier 1 capital in accordance with Table 4 to § 3.300.

(ii) If the aggregate amount of the adjustment is negative, the national bank or Federal savings association must add back the adjustment to common equity tier 1 capital or to tier 1 capital, in accordance with Table 4 to § 3.300.

TABLE 4 TO § 3.300

Transition period	Transition adjustments under § 3.22(b)(1)(iii)	
	Percentage of the adjustment applied to common equity tier 1 capital	Percentage of the adjustment applied to tier 1 capital
Calendar year 2014	20	80
Calendar year 2015	40	60
Calendar year 2016	60	40
Calendar year 2017	80	20
Calendar year 2018, and thereafter	100	0

(3) *Transition adjustments to AOCI for an advanced approaches national bank or Federal savings association and a national bank or Federal savings association that has not made an AOCI opt-out election under § 3.22(b)(2).* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association that has not made an AOCI opt-out election under § 3.22(b)(2), and in each case through December 31, 2017, a national bank or Federal savings association must adjust common equity tier 1 capital with respect to the transition AOCI adjustment amount (transition AOCI adjustment amount):

(i) The transition AOCI adjustment amount is the aggregate amount of a national bank's or Federal savings association's:

(A) Unrealized gains on available-for-sale securities that are preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(B) Net unrealized gains or losses on available-for-sale securities that are not preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(C) Any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the national bank's or Federal savings association's option, the portion relating to pension assets deducted under section 22(a)(5)), plus

(D) Accumulated net gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI, plus

(E) Net unrealized gains or losses on held-to-maturity securities that are included in AOCI.

(ii) A national bank or Federal savings association must make the following adjustment to its common equity tier 1 capital:

(A) If the transition AOCI adjustment amount is positive, the appropriate amount must be deducted from common equity tier 1 capital in accordance with Table 5 to § 3.300.

(B) If the transition AOCI adjustment amount is negative, the appropriate amount must be added back to common equity tier 1 capital in accordance with Table 5 to § 3.300.

TABLE 5 TO § 3.300

Transition period	Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(iii) A national bank or Federal savings association may include in tier 2 capital the percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures as set forth in Table 6 to § 3.300.

TABLE 6 TO § 3.300

Transition period	Percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures that may be included in tier 2 capital
Calendar year 2014	36
Calendar year 2015	27
Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

* * * * *

(d) *Minority interest*—(1) [Reserved]

(2) *Non-qualifying minority interest.* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association, and in each case through December 31, 2017, a national bank or federal savings association may include in tier 1 capital or total capital the percentage of the tier 1 minority interest and total capital minority interest outstanding as of January 1, 2014 that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § 3.20 (non-qualifying minority interest), as set forth in Table 10 to § 3.300.

TABLE 10 TO § 3.300

Transition period	Percentage of the amount of surplus or non-qualifying minority interest that can be included in regulatory capital during the transition period
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

* * * * *

Board of Governors of the Federal Reserve System

For the reasons set out in the joint preamble, part 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

Subpart A—General Provisions

■ 26. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 27. Section 217.2 is amended by (1) Removing the definitions of ''corporate exposure,'' ''eligible guarantor,'' ''high volatility commercial real estate (HVCRE),'' ''investment in the capital of an unconsolidated financial institution,'' ''non-significant investment in the capital of an unconsolidated financial institution,'' and ''significant investment in the capital of an unconsolidated financial institution,'' and (2) Adding the definitions of ''corporate exposure,'' ''eligible guarantor,'' ''high volatility acquisition, development, or construction (HVADC),'' ''high volatility commercial real estate (HVCRE),'' ''International Lending Supervision Act,'' ''investment in the capital of an unconsolidated financial institution,'' ''non-significant investment in the capital of an unconsolidated financial institution,'' and ''significant investment in the capital of an unconsolidated financial institution'' as follows:

§ 217.2 Definitions.

* * * * *

Corporate exposure means an exposure to a company that is not:

(1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);

(2) An exposure to a GSE;

(3) A residential mortgage exposure;

(4) A pre-sold construction loan;

(5) A statutory multifamily mortgage;

(6) A high volatility acquisition, development, or construction (HVADC) exposure or a *high volatility commercial real estate (HVCRE) exposure;*

(7) A cleared transaction;

(8) A default fund contribution;

(9) A securitization exposure;

(10) An equity exposure; or

(11) An unsettled transaction.

(12) A policy loan; or

(13) A separate account.

* * * * *

Eligible guarantor means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

* * * * *

High volatility acquisition, development, or construction (HVADC) exposure means a credit facility that is originated on or after [effective date] and that:

(1) Primarily finances or refinances the:

(i) Acquisition of vacant or developed land;

(ii) Development of land to prepare to erect new structures including, but not limited to, the laying of sewers or water pipes and demolishing existing structures; or

(iii) Construction of buildings, dwellings, or other improvements including additions or alterations to existing structures; and

(2) Is not a credit facility that finances or refinances:

(i) One- to four-family residential properties;

(ii) Real property projects that would have the primary purpose of ''community development'' as defined under [12 CFR part 25 (national bank), 12 CFR part 195 (Federal savings association) (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC)]; or

(iii) The purchase or development of agricultural land, including, but not limited to, all land used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for commercial or residential development; and

(3) Is not a permanent loan. A permanent loan for purposes of this definition means a prudently underwritten loan that has a clearly identified ongoing source of repayment sufficient to service amortizing principal and interest payments aside from the sale of the property. For purposes of this section, a permanent loan does not include a loan that finances or refinances a stabilization period or unsold lots or units of for-sale projects.

High volatility commercial real estate (HVCRE) exposure, for purposes of Subpart D, means a credit facility that is either outstanding or committed prior to [effective date] and, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a ''qualified investment'' under 12 CFR part 228, and

(ii) Is not an ADC loan to any entity described in 12 CFR 208.22(a)(3) or 228.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the Board's real estate lending standards at 12 CFR part 208, appendix C;

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the Board-regulated institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the Board-regulated institution that provided the ADC facility as long as the permanent financing is subject to the Board-regulated institution's underwriting criteria for long-term mortgage loans.

* * * * *

International Lending Supervision Act means the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*).

* * * * *

Investment in the capital of an unconsolidated financial institution means a net long position calculated in accordance with § 217.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the Board-regulated institution for five or fewer business days.

* * * * *

Non-significant investment in the capital of an unconsolidated financial institution means an investment by an advanced approaches Board-regulated institution in the capital of an unconsolidated financial institution where the advanced approaches Board-regulated institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

* * * * *

Significant investment in the capital of an unconsolidated financial institution means an investment by an advanced approaches Board-regulated institution in the capital of an unconsolidated financial institution where the advanced approaches Board-regulated institution owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

* * * * *

■ 28. Section 217.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(H) The credit equivalent amount of all off-balance sheet exposures of the Board-regulated institution, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under § 217.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

* * * * *

■ 29. Section 217.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and revise Table 1 to read as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

* * * * *

(a) * * *

(2) * * *

(i) *Eligible retained income.* The eligible retained income of a Board-regulated institution is the Board-regulated institution's net income, calculated in accordance with the instructions to the Call Report or the FR Y–9C, as applicable, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income.

* * * * *

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) * * * (i) A Board-regulated institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The Board-regulated institution's common equity tier 1 capital ratio minus the Board-regulated institution's minimum common equity tier 1 capital ratio requirement under § 217.10;

(B) The Board-regulated institution's tier 1 capital ratio minus the Board-regulated institution's minimum tier 1 capital ratio requirement under § 217.10; and

(C) The Board-regulated institution's total capital ratio minus the Board-regulated institution's minimum total capital ratio requirement under § 217.10; or

TABLE 1 TO § 217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio
Greater than 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 100 percent of the Board-regulated institution's applicable GSIB surcharge.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 100 percent of the Board-regulated institution's applicable GSIB surcharge, *and* greater than 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 75 percent of the Board-regulated institution's applicable GSIB surcharge.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 75 percent of the Board-regulated institution's applicable GSIB surcharge, *and* greater than 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 50 percent of the Board-regulated institution's applicable GSIB surcharge.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 50 percent of the Board-regulated institution's applicable GSIB surcharge, *and* greater than 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 25 percent of the Board-regulated institution's applicable GSIB surcharge.	20 percent.

TABLE 1 TO § 217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT—Continued

Capital conservation buffer	Maximum payout ratio
Less than or equal to 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 25 percent of the Board-regulated institution's applicable GSIB surcharge.	0 percent.

* * * * *

■ 30. Section 217.20 is amended by revising paragraphs (b)(4), (c)(2), (d)(2), (5) and adding a new paragraph (f) to read as follows:

§ 217.20 Capital components and eligibility criteria for regulatory capital instruments.

* * * * *

(b) * * *

(4) Any common equity tier 1 minority interest, subject to the limitations in § 217.21.

* * * * *

(c) * * *

(2) Tier 1 minority interest, subject to the limitations in § 217.21, that is not included in the Board-regulated institution's common equity tier 1 capital.

* * * * *

(d) * * *

(2) Total capital minority interest, subject to the limitations set forth in § 217.21, that is not included in the Board-regulated institution's tier 1 capital.

* * * * *

(5) For a Board-regulated institution that makes an AOCI opt-out election (as defined in paragraph (b)(2) of § 217.22), 45 percent of pretax net unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

* * * * *

(f) A Board-regulated institution may not repurchase or redeem any common equity tier 1 capital, additional tier 1, or tier 2 capital instrument without the prior approval of the Board.

■ 31. Section 217.21 is revised to reads as follows:

§ 217.21 Minority interest.

(a)(1) *Applicability.* For purposes of § 217.20, a Board-regulated institution that is not an advanced approaches Board-regulated institution is subject to the minority interest limitations in this paragraph (a) if a consolidated subsidiary of the Board-regulated institution has issued regulatory capital that is not owned by the Board-regulated institution.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the Board-regulated institution.* The amount of common equity tier 1 minority interest that a Board-regulated institution may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the Board-regulated institution (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital regulatory adjustments and deductions in accordance with § 217.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the Board-regulated institution.* The amount of tier 1 minority interest that a Board-regulated institution may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the Board-regulated institution (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with § 217.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the Board-regulated institution.* The amount of total capital minority interest that a Board-regulated institution may include in total capital must be no greater than 10 percent of the sum of all total capital elements of the Board-regulated institution (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with § 217.22 (a) and (b).

(b)(1) *Applicability.* For purposes of § 217.20, an advanced approaches Board-regulated institution is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches Board-regulated institution has issued regulatory capital that is not owned by the Board-regulated institution; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches Board-regulated institution, the advanced approaches Board-regulated institution must assume that the capital adequacy standards of the advanced approaches Board-regulated institution apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the Board-regulated institution.* For each consolidated subsidiary of an advanced approaches Board-regulated institution, the amount of common equity tier 1 minority interest the advanced approaches Board-regulated institution may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches Board-regulated institution, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 217.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(*2*) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 217.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches Board-regulated institution.* For each consolidated subsidiary of the advanced approaches Board-regulated institution, the amount of tier 1 minority interest the advanced approaches Board-regulated institution may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches Board-regulated

institution multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 217.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(*2*) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 217.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the Board-regulated institution.* For each consolidated subsidiary of the advanced approaches Board-regulated institution, the amount of total capital minority interest the advanced approaches Board-regulated institution may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches Board-regulated institution multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 217.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(*2*) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 217.11 or equivalent standards established by the subsidiary's home country supervisor.

■ 32. Section 217.22 is amended by revising paragraphs (a)(1)(i), paragraphs (c), (d), (g), and (h) to read as follows:

§ 217.22 Regulatory capital adjustments and deductions.

(a) * * *

(1) * * *

(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches Board-regulated institution, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the advanced approaches Board-regulated institution), in accordance with paragraph (d) of this section;

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments* [23]

(1) *Investment in the Board-regulated institution's own capital instruments.* A Board-regulated institution must deduct an investment in the Board-regulated institution's own capital instruments as follows:

(i) A Board-regulated institution must deduct an investment in the Board-regulated institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 217.20(b)(1);

(ii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for a Board-regulated institution that is not an advanced approaches Board-regulated institution (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated financial institutions for an advanced approaches Board-regulated institution (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches Board-regulated institution (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, a Board-regulated institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the Board-regulated institution itself, as described in paragraphs (c)(2)(i)–(iii) of this section. If the Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under § 217.20, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in § 217.300(c)), the Board-regulated institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

[23] The Board-regulated institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL includable in tier 2 capital under § 217.20(d)(3).

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* A Board-regulated institution must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* A Board-regulated institution that is not an advanced approaches Board-regulated institution must deduct its investments in the capital of unconsolidated financial institutions (as defined in § 217.2) that exceed 25 percent of the sum of the Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding deduction approach.[24] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, a Board-regulated institution that underwrites a failed underwriting, with the prior written approval of the Board, for the period of time stipulated by the Board, is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.[25]

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) An advanced approaches Board-regulated institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 217.2) that, in the aggregate, exceed 10 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.[26] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches Board-regulated institution that underwrites a failed underwriting, with the prior written approval of the Board, for the period of time stipulated by the Board, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.[27]

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The advanced approaches Board-regulated institution's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the advanced approaches Board-regulated institution's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches Board-regulated institution's total non-significant investments in unconsolidated financial institutions.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches Board-regulated institution must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.[28] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(d) *MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

(1) A Board-regulated institution that is not an advanced approaches Board-regulated institution must make deductions from regulatory capital as described in this paragraph (d)(1).

(i) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the Board-regulated institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).[29]

(ii) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of DTAs arising from temporary differences that the Board-regulated institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. A Board-regulated institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with § 217.22(e)) arising from timing differences that the Board-regulated institution could realize through net operating loss carrybacks. The Board-regulated institution must risk weight these assets at 100 percent. For a state member bank that is a member of a consolidated group for tax purposes, the amount of DTAs that

[24] With the prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution that is not an advanced approaches Board-regulated institution is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

[25] Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

[26] With the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

[27] Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

[28] With prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

[29] The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the Board-regulated institution and assigned a 250 percent risk weight.

could be realized through net operating loss carrybacks may not exceed the amount that the state member bank could reasonably expect to have refunded by its parent holding company.

(iii) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, a Board-regulated institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. A Board-regulated institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. A Board-regulated institution may change its exclusion preference only after obtaining the prior approval of the Board.

(2) An advanced approaches Board-regulated institution must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches Board-regulated institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches Board-regulated institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An advanced approaches Board-regulated institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with § 217.22(e)) arising from timing differences that the advanced approaches Board-regulated institution could realize through net operating loss carrybacks. The advanced approaches Board-regulated institution must risk weight these assets at 100 percent. For a state member bank that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the state member bank could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.[30] Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches Board-regulated institution pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches Board-regulated institution must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.[31]

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches Board-regulated institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches Board-regulated institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches Board-regulated institution may change its exclusion preference only after obtaining the prior approval of the Board.

* * * * *

(g) *Treatment of assets that are deducted.* A Board-regulated institution must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the Board-regulated institution's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in § 217.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in § 217.2;

(iii) For an indirect exposure, the Board-regulated institution's carrying value of the investment in the investment fund, provided that, alternatively:

(A) A Board-regulated institution may, with the prior approval of the Board, use a conservative estimate of the amount of its investment in the Board-

[30] With the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

[31] The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches Board-regulated institution and assigned a 250 percent risk weight.

regulated institution's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) A Board-regulated institution may calculate the gross long position for investments in the Board-regulated institution's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the Board-regulated institution's carrying value of its investment in the investment fund by either:

(*1*) The highest stated investment limit (in percent) for investments in the Board-regulated institution's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(*2*) The investment fund's actual holdings of investments in the Board-regulated institution's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the Board-regulated institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the Board-regulated institution's Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable, if the Board-regulated institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the Board-regulated institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the Board-regulated institution's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) A Board-regulated institution may only net a short position against a long position in an investment in the Board-regulated institution's own capital instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the Board-regulated institution's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an investment in the Board-regulated institution's own capital instrument or an investment in the capital of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the Board-regulated institution's Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable, and the hedge is deemed effective by the Board-regulated institution's internal control processes, which have not been found to be inadequate by the Board.

■ 33. Section 217.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (j), (k), (l) to read as follows:

§ 217.32 General risk weights.

* * * * *

(b) *Certain supranational entities and multilateral development banks (MDBs).* A Board-regulated institution must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

* * * * *

(d) * * *

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, a Board-regulated institution must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to § 217.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

TABLE 2 TO § 217.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

	Risk weight (in percent)
CRC:	
0–1	20
2	50
3	100
4–7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) A Board-regulated institution must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) A Board-regulated institution must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) A Board-regulated institution must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) A Board-regulated institution must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) * * *

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to § 217.22(d)(2)(1)(c);

(iii) and (iv) * * *

* * * * *

(j)(1) *High volatility acquisition, development, or construction (HVADC)*

exposures. A Board-regulated institution must assign a 130 percent risk weight to an HVADC exposure.

(2) *High-volatility commercial real estate (HVCRE) exposures.* A Board-regulated institution must assign a 150 percent risk weight to an HVCRE exposure.

(k) Past due exposures. Except for an exposure to a sovereign entity or a residential mortgage exposure or a policy loan, if an exposure is 90 days or more past due or on nonaccrual:

(1) A Board-regulated institution must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) A Board-regulated institution may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § 217.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) A Board-regulated institution may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § 217.37 if the collateral meets the requirements of that section.

(l) Other assets. (1)(i) A bank holding company or savings and loan holding company must assign a zero percent risk weight to cash owned and held in all offices of subsidiary depository institutions or in transit, and to gold bullion held in a subsidiary depository institution's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) A state member bank must assign a zero percent risk weight to cash owned and held in all offices of the state member bank or in transit; to gold bullion held in the state member bank's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) A Board-regulated institution must assign a 20 percent risk weight to cash items in the process of collection.

(3) A Board-regulated institution must assign a 100 percent risk weight to DTAs arising from temporary differences that the Board-regulated institution could realize through net operating loss carrybacks.

(4) A Board-regulated institution must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to § 217.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the Board-regulated institution could not realize through net operating loss carrybacks.

(5) A Board-regulated institution must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 217.22.

(6) Notwithstanding the requirements of this section, a state member bank may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies under this part, provided that all of the following conditions apply:

(i) The Board-regulated institution is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

* * * * *

■ 34. Section 217.34 is amended by revising paragraph (c) to read as follows:

§ 217.34 OTC derivative contracts.

* * * * *

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* A Board-regulated institution that purchases an OTC credit derivative that is recognized under § 217.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the Board-regulated institution does so consistently for all such credit derivatives. The Board-regulated institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A Board-regulated institution that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The Board-regulated institution is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The Board-regulated institution must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the Board-regulated institution is treating the OTC credit derivative as a covered position under subpart F, in which case the Board-regulated institution must compute a supplemental counterparty credit risk capital requirement under this section.

* * * * *

■ 35. Section 217.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

§ 217.35 Cleared transactions.

* * * * *

(b) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Board-regulated institution must apply the risk weight appropriate for the CCP according to this subpart D.

(4) * * *

(ii) A clearing member client Board-regulated institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

(c) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Board-regulated institution must apply the risk weight appropriate for the CCP according to this subpart D.

(4) * * *

(ii) A clearing member Board-regulated institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

* * * * *

■ 36. Section 217.36 is amend by revising paragraph (c) to read as follows:

§ 217.36 Guarantees and credit derivatives: Substitution treatment.

* * * * *

(c) *Substitution approach*—(1) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a Board-regulated institution may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the Board-regulated institution must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The Board-regulated institution may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The Board-regulated institution must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

* * * * *

■ 37. Section 217.37 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 217.37 Collateralized transactions.

* * * * *

(b) * * *

(2) * * * (i) A Board-regulated institution may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the Board-regulated institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

* * * * *

■ 38. Section 217.38 is amended by revising paragraph (e)(2) to read as follows:

§ 217.38 Unsettled transactions.

* * * * *

(e) * * *

(2) From the business day after the Board-regulated institution has made its delivery until five business days after the counterparty delivery is due, the Board-regulated institution must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the Board-regulated institution as an exposure to the counterparty and using the applicable counterparty risk weight under this subpart D.

* * * * *

■ 39. Section 217.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

§ 217.42 Risk-weighted assets for securitization exposures.

* * * * *

(j) * * *

(2) * * *

(ii) * * *

(A) If the Board-regulated institution purchases credit protection from a counterparty that is not a securitization SPE, the Board-regulated institution must determine the risk weight for the exposure according to this subpart D.

* * * * *

■ 40. Section 217.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

§ 217.52 Simple risk-weight approach (SRWA).

* * * * *

(b) * * *

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under § 217.32 may be assigned a zero percent risk weight.

* * * * *

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to § 217.22(d)(2) are assigned a 250 percent risk weight.

(5) through (7) (ii) * * *

* * * * *

■ 41. Section 217.61 is revised to read as follows:

§ 217.61 Purpose and scope.

Sections 217.61 through 217.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for a Board-regulated institution with total consolidated assets of $50 billion or more as reported on the Board-regulated institution's most recent year-end Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable that is not an advanced approaches Board-regulated institution making public disclosures pursuant to § 217.172. An advanced approaches Board-regulated institution that has not received approval from the Board to exit parallel run pursuant to § 217.121(d) is subject to the disclosure requirements described in §§ 217.62 and 217.63. A Board-regulated institution with total consolidated assets of $50 billion or more as reported on the Board-regulated institution's most recent year-end Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable, that is not an advanced approaches Board-regulated institution making public disclosures subject to § 217.172 must comply with § 217.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of § 217.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the Board-regulated institution's total consolidated assets in the four most recent quarters as reported on the Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable; or

the average of the Board-regulated institution's total consolidated assets in the most recent consecutive quarters as reported quarterly on the Board-regulated institution's Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable if the Board-regulated institution has not filed such a report for each of the most recent four quarters.

* * * * *

■ 42. Section 217.63 is amended by revising Tables 3 and 8 to read as follows:

§ 217.63 Disclosures by Board-regulated institutions described in § 217.61.

* * * * *

TABLE 3 TO § 217.63—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the Board-regulated institution's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b) Risk-weighted assets for: (1) Exposures to sovereign entities; (2) Exposures to certain supranational entities and MDBs; (3) Exposures to depository institutions, foreign banks, and credit unions; (4) Exposures to PSEs; (5) Corporate exposures; (6) Residential mortgage exposures; (7) Statutory multifamily mortgages and pre-sold construction loans; (8) HVADC exposures and HVCRE exposures; (9) Past due loans; (10) Other assets; (11) Cleared transactions; (12) Default fund contributions; (13) Unsettled transactions; (14) Securitization exposures; and (15) Equity exposures (c) Standardized market risk-weighted assets as calculated under subpart F of this part. (d) Common equity tier 1, tier 1 and total risk-based capital ratios: (1) For the top consolidated group; and (2) For each depository institution subsidiary. (e) Total standardized risk-weighted assets.

* * * * *

TABLE 8 TO § 217.63—SECURITIZATION

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of: (1) The Board-regulated institution's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the Board-regulated institution to other entities and including the type of risks assumed and retained with resecuritization activity; [1] (2) The nature of the risks (*e.g.* liquidity risk) inherent in the securitized assets; (3) The roles played by the Board-regulated institution in the securitization process [2] and an indication of the extent of the Board-regulated institution's involvement in each of them; (4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures; (5) The Board-regulated institution's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the Board-regulated institution follows for its securitization exposures including the type of securitization exposure to which each approach applies. (b) A list of: (1) The type of securitization SPEs that the Board-regulated institution, as sponsor, uses to securitize third-party exposures. The Board-regulated institution must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and (2) Affiliated entities: (i) That the Board-regulated institution manages or advises; and (ii) That invest either in the securitization exposures that the Board-regulated institution has securitized or in securitization SPEs that the Board-regulated institution sponsors.[3] (c) Summary of the Board-regulated institution's accounting policies for securitization activities, including: (1) Whether the transactions are treated as sales or financings; (2) Recognition of gain-on-sale; (3) Methods and key assumptions applied in valuing retained or purchased interests; (4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes; (5) Treatment of synthetic securitizations; (6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the Board-regulated institution to provide financial support for securitized assets. (d) An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e) The total outstanding exposures securitized by the Board-regulated institution in securitizations that meet the operational criteria provided in § 217.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor.[4] (f) For exposures securitized by the Board-regulated institution in securitizations that meet the operational criteria in § 217.41:

TABLE 8 TO § 217.63—SECURITIZATION—Continued

	(1) Amount of securitized assets that are impaired/past due categorized by exposure type; [5] and (2) Losses recognized by the Board-regulated institution during the current period categorized by exposure type.[6] (g) The total amount of outstanding exposures intended to be securitized categorized by exposure type. (h) Aggregate amount of: (1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and (2) Off-balance sheet securitization exposures categorized by exposure type. (i) (1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (*e.g.,* SSFA); and (2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any: (i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and (ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight. (j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type. (k) Aggregate amount of resecuritization exposures retained or purchased categorized according to: (1) Exposures to which credit risk mitigation is applied and those not applied; and (2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

[1] The Board-regulated institution should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the Board-regulated institution is active.

[2] For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

[3] Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

[4] ''Exposures securitized'' include underlying exposures originated by the bank, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the bank's balance sheet and underlying exposures acquired by the bank from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. Banks are required to disclose exposures regardless of whether there is a capital charge under this part.

[5] Include credit-related other than temporary impairment (OTTI).

[6] For example, charge-offs/allowances (if the assets remain on the bank's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the bank with respect to securitized assets.

* * * * *

■ 43. Section 217.101 paragraph (b) is amended by adding a definition for ''*high volatility commercial real estate (HVCRE) exposure*'' to read as follows:

§ 217.101 Definitions.

* * * * *

(b) * * *

High volatility commercial real estate (HVCRE) exposure, for purposes of Subpart E, means a credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a ''qualified investment'' under 12 CFR part 228, and

(ii) Is not an ADC loan to any entity described in 12 CFR 208.22(a)(3) or 228.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the Board's real estate lending standards at 12 CFR part 208, appendix C;

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the Board-regulated institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the Board-regulated institution that provided the ADC facility as long as the permanent financing is subject to the Board-regulated institution's underwriting criteria for long-term mortgage loans.

* * * * *

■ 44. Section 217.131 is amended by revising paragraph (d)(2) to read as follows:

§ 217.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(d) * * *

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the Board-regulated institution assigns a rating grade associated with a PD of less than 0.03 percent.

* * * * *

■ 45. Section 217.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

§ 217.133 Cleared transactions.

* * * * *

(b) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Board-regulated institution must apply the risk weight applicable to the CCP under subpart D of this part.

* * * * *

(c) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Board-regulated institution must apply the risk weight applicable to the CCP according to subpart D of this part.

* * * * *

■ 46. Section 217.152 is amended by revising paragraph (b)(5) and (6) to read as follows:

§ 217.152 Simple risk weight approach (SRWA).

* * * * *

(b) * * *

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

* * * * *

■ 47. Section 217.202, paragraph (b) is amended by revising the definition of ''Corporate debt position'' to read as follows:

§ 217.202 Definitions.

* * * * *

(b) * * *

Corporate debt position means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

* * * * *

■ 48. Section 217.210 is amended by revising paragraphs (b)(2)(ii) and (b)(2)(vii)(A) to read as follows:

§ 217.210 Standardized measurement method for specific risk.

* * * * *

(b) * * *

(2) * * *

(ii) *Certain supranational entity and multilateral development bank debt positions.* A Board-regulated institution may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

* * * * *

(vii) * * * (A) General requirements. (*1*) A Board-regulated institution that is not an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated pursuant to 12 CFR 252.153 and that is not calculating risk-weighted assets according to Subpart E must assign a specific risk-weighting factor to a securitization position using either the simplified supervisory formula approach (SSFA) in paragraph (b)(2)(vii)(C) of this section (and § 217.211) or assign a specific risk-weighting factor of 100 percent to the position.

(*2*) A Board-regulated institution that is an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated pursuant to 12 CFR 252.153 and that is calculating risk-weighted assets according to Subpart E must calculate a specific risk add-on for a securitization position in accordance with paragraph (b)(2)(vii)(B) of this section if the Board-regulated institution and the securitization position each qualifies to use the SFA in § 217.143. A Board-regulated institution that is an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated pursuant to 12 CFR 252.153 and that is calculating risk-weighted assets according to Subpart E with a securitization position that does not qualify for the SFA under paragraph (b)(2)(vii)(B) of this section may assign a specific risk-weighting factor to the securitization position using the SSFA in accordance with paragraph (b)(2)(vii)(C) of this section or assign a specific risk-weighting factor of 100 percent to the position.

(*3*) A Board-regulated institution must treat a short securitization position as if it is a long securitization position solely for calculation purposes when using the SFA in paragraph (b)(2)(vii)(B) of this section or the SSFA in paragraph (b)(2)(vii)(C) of this section.

* * * * *

■ 49. Section 217.300 is amended by revising paragraphs (b), (c)(2), (3), and (d) to read as follows:

§ 217.300 Transitions.

* * * * *

(b) *Regulatory capital adjustments and deductions.* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution, and in each case through December 31, 2017, a Board-regulated institution must make the capital adjustments and deductions in § 217.22 in accordance with the transition requirements in this paragraph (b). Beginning January 1, 2018, a Board-regulated institution must make all regulatory capital adjustments and deductions in accordance with § 217.22.

(1) *Transition deductions from common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution, and in each case through December 31, 2017, a Board-regulated institution, must make the deductions required under § 217.22(a)(1)–(7) from common equity tier 1 or tier 1 capital elements in accordance with the percentages set forth in Table 2 and Table 3 to § 217.300.

(i) A Board-regulated institution must deduct the following items from common equity tier 1 and additional tier 1 capital in accordance with the percentages set forth in Table 2 to § 217.300: Goodwill (§ 217.22(a)(1)), DTAs that arise from net operating loss and tax credit carryforwards (§ 217.22(a)(3)), a gain-on-sale in connection with a securitization exposure (§ 217.22(a)(4)), defined benefit pension fund assets (§ 217.22(a)(5)), expected credit loss that exceeds eligible credit reserves (for advanced approaches Board-regulated institutions that have completed the parallel run process and that have received notifications from the Board pursuant to § 217.121(d) of subpart E) (§ 217.22(a)(6)), and financial subsidiaries (§ 217.22(a)(7)).

TABLE 2 TO § 217.300

Transition period	Transition deductions under § 217.22(a)(1) and (7)	Transition deductions under § 217.22(a)(3)–(6)	
	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from tier 1 capital
Calendar year 2014	100	20	80
Calendar year 2015	100	40	60
Calendar year 2016	100	60	40
Calendar year 2017	100	80	20
Calendar year 2018, and thereafter	100	100	0

(ii) A Board-regulated institution must deduct from common equity tier 1 capital any intangible assets other than goodwill and MSAs in accordance with the percentages set forth in Table 3 to § 217.300.

(iii) A Board-regulated institution must apply a 100 percent risk-weight to the aggregate amount of intangible assets other than goodwill and MSAs that are not required to be deducted from common equity tier 1 capital under this section.

TABLE 3 TO § 217.300

Transition period	Transition deductions under § 217.22(a)(2)—percentage of the deductions from common equity tier 1 capital
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60
Calendar year 2017	80
Calendar year 2018, and thereafter	100

(2) *Transition adjustments to common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution, and in each case through December 31, 2017, a Board-regulated institution, must allocate the regulatory adjustments related to changes in the fair value of liabilities due to changes in the Board-regulated institution's own credit risk (§ 217.22(b)(1)(iii)) between common equity tier 1 capital and tier 1 capital in accordance with the percentages set forth in Table 4 to § 217.300.

(i) If the aggregate amount of the adjustment is positive, the Board-regulated institution must allocate the deduction between common equity tier 1 and tier 1 capital in accordance with Table 4 to § 217.300.

(ii) If the aggregate amount of the adjustment is negative, the Board-regulated institution must add back the adjustment to common equity tier 1 capital or to tier 1 capital, in accordance with Table 4 to § 217.300.

TABLE 4 TO § 217.300

Transition period	Transition adjustments under § 217.22(b)(1)(iii)	
	Percentage of the adjustment applied to common equity tier 1 capital	Percentage of the adjustment applied to tier 1 capital
Calendar year 2014	20	80
Calendar year 2015	40	60
Calendar year 2016	60	40
Calendar year 2017	80	20
Calendar year 2018, and thereafter	100	0

(3) *Transition adjustments to AOCI for an advanced approaches Board-regulated institution and a Board-regulated institution that has not made an AOCI opt-out election under § 217.22(b)(2).* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution that has not made an AOCI opt-out

election under § 217.22(b)(2), and in each case through December 31, 2017, a Board-regulated institution must adjust common equity tier 1 capital with respect to the transition AOCI adjustment amount (transition AOCI adjustment amount):

(i) The transition AOCI adjustment amount is the aggregate amount of a Board-regulated institution's:

(A) Unrealized gains on available-for-sale securities that are preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(B) Net unrealized gains or losses on available-for-sale securities that are not preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(C) Any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the Board-regulated institution's option, the portion relating to pension assets deducted under section 22(a)(5)), plus

(D) Accumulated net gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI, plus

(E) Net unrealized gains or losses on held-to-maturity securities that are included in AOCI.

(ii) A Board-regulated institution must make the following adjustment to its common equity tier 1 capital:

(A) If the transition AOCI adjustment amount is positive, the appropriate amount must be deducted from common equity tier 1 capital in accordance with Table 5 to § 217.300.

(B) If the transition AOCI adjustment amount is negative, the appropriate amount must be added back to common equity tier 1 capital in accordance with Table 5 to § 217.300.

TABLE 5 TO § 217.300

Transition period	Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(iii) A Board-regulated institution may include in tier 2 capital the percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures as set forth in Table 6 to § 217.300.

TABLE 6 TO § 217.300

Transition period	Percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures that may be included in tier 2 capital
Calendar year 2014	36
Calendar year 2015	27
Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

* * * * *

(c) * * *

(2) *Mergers and acquisitions.* (i) A depository institution holding company of $15 billion or more that acquires after December 31, 2013 either a depository institution holding company with total consolidated assets of less than $15 billion as of December 31, 2009 (depository institution holding company under $15 billion) or a depository institution holding company that is a 2010 MHC, may include in regulatory capital the non-qualifying capital instruments issued by the acquired organization up to the applicable percentages set forth in Table 8 to § 217.300.

(ii) If a depository institution holding company under $15 billion acquires after December 31, 2013 a depository institution holding company under $15 billion or a 2010 MHC, and the resulting organization has total consolidated assets of $15 billion or more as reported on the resulting organization's FR Y–9C for the period in which the transaction occurred, the resulting organization may include in regulatory capital non-qualifying instruments of the resulting organization up to the applicable percentages set forth in Table 8 to § 217.300.

TABLE 8 TO § 217.300

Transition period (calendar year)	Percentage of non-qualifying capital instruments includable in additional tier 1 or tier 2 capital for a depository institution holding company of $15 billion or more
Calendar year 2014	50
Calendar year 2015	25
Calendar year 2016 and thereafter	0

(3) *Depository institution holding companies under $15 billion and 2010 MHCs.* (i) Non-qualifying capital instruments issued by depository institution holding companies under $15 billion and 2010 MHCs prior to May 19, 2010, may be included in additional tier 1 or tier 2 capital if the instrument was included in tier 1 or tier 2 capital, respectively, as of January 1, 2014.

(ii) Non-qualifying capital instruments includable in tier 1 capital are subject to a limit of 25 percent of tier 1 capital elements, excluding any non-qualifying capital instruments and after applying all regulatory capital deductions and adjustments to tier 1 capital.

(iii) Non-qualifying capital instruments that are not included in tier 1 as a result of the limitation in paragraph (c)(3)(ii) of this section are includable in tier 2 capital.

* * * * *

(d) * * *

(1) [Reserved]

(2) *Non-qualifying minority interest.* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution, and in each case through December 31, 2017, a Board-regulated institution may include in tier 1 capital or total capital the percentage of the tier 1 minority interest and total capital minority interest outstanding as of January 1, 2014 that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § 217.20 (non-qualifying minority interest), as set forth in Table 10 to § 217.300.

TABLE 10 TO § 217.300

Transition period	Percentage of the amount of surplus or non-qualifying minority interest that can be included in regulatory capital during the transition period
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

* * * * *

12 CFR Part 324

Federal Deposit Insurance Corporation

For the reasons set out in the joint preamble, the FDIC proposes to amend 12 CFR part 324 as follows.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

Subpart A—General Provisions

■ 50. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 51. Section 324.2 is amended by removing the definitions of ''corporate exposure,'' ''eligible guarantor,'' ''high volatility commercial real estate (HVCRE) exposure,'' ''investment in the capital of an unconsolidated financial institution,'' ''non-significant investment in the capital of an unconsolidated financial institution,'' and ''significant investment in the capital of an unconsolidated financial institution,'' and adding the definitions of ''corporate exposure,'' ''eligible guarantor,'' ''high volatility acquisition, development, or construction (HVADC) exposure,'' ''high volatility commercial real estate (HVCRE) exposure,'' ''investment in the capital of an unconsolidated financial institution,'' ''non-significant investment in the capital of an unconsolidated financial institution,'' and ''significant investment in the capital of an unconsolidated financial institution'' as follows:

§ 324.2 Definitions.

* * * * *

Corporate exposure means an exposure to a company that is not:

(1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);

(2) An exposure to a GSE;

(3) A residential mortgage exposure;

(4) A pre-sold construction loan;
(5) A statutory multifamily mortgage;
(6) A high volatility acquisition, development, or construction (HVADC) exposure or a *high volatility commercial real estate (HVCRE) exposure;*
(7) A cleared transaction;
(8) A default fund contribution;
(9) A securitization exposure;
(10) An equity exposure; or
(11) An unsettled transaction.

* * * * *

Eligible guarantor means:
(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or
(2) An entity (other than a special purpose entity):
(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;
(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and
(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

* * * * *

High-volatility acquisition, development, or construction (HVADC) exposure means a credit facility that is originated on or after [effective date] and that:
(1) Primarily finances or refinances the:
(i) Acquisition of vacant or developed land;
(ii) Development of land to prepare to erect new structures including, but not limited to, the laying of sewers or water pipes and demolishing existing structures; or
(iii) Construction of buildings, dwellings, or other improvements including additions or alterations to existing structures; and
(2) Is not a credit facility that finances or refinances:
(i) One- to four-family residential properties;
(ii) Real property projects that would have the primary purpose of ''community development'' as defined under 12 CFR part 25 (national bank), 12 CFR part 195 (Federal savings association) (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC); or
(iii) The purchase or development of agricultural land, including, but not limited to, all land used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for commercial or residential development; and
(3) Is not a permanent loan. A permanent loan for purposes of this definition means a prudently underwritten loan that has a clearly identified ongoing source of repayment sufficient to service amortizing principal and interest payments aside from the sale of the property. For purposes of this section, a permanent loan does not include a loan that finances or refinances a stabilization period or unsold lots or units of for-sale projects.

High volatility commercial real estate (HVCRE) exposure, for purposes of Subpart D, means a credit facility that is either outstanding or committed prior to [effective date] and, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:
(1) One- to four-family residential properties;
(2) Real property that:
(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a ''qualified investment'' under 12 CFR part 345, and
(ii) Is not an ADC loan to any entity described in 12 CFR 345.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;
(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or
(4) Commercial real estate projects in which:
(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the FDIC's real estate lending standards at 12 CFR part 365, subpart A (state non-member banks), 12 CFR 390.264 and 390.265 (state savings associations);
(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and
(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the FDIC-supervised institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the FDIC-supervised institution that provided the ADC facility as long as the permanent financing is subject to the FDIC-supervised institution's underwriting criteria for long-term mortgage loans.

* * * * *

Investment in the capital of an unconsolidated financial institution means a net long position calculated in accordance with § 324.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the FDIC-supervised institution for five or fewer business days.

* * * * *

Non-significant investment in the capital of an unconsolidated financial institution means an investment by an advanced approaches FDIC-supervised institution in the capital of an unconsolidated financial institution where the advanced approaches FDIC-supervised institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

* * * * *

Significant investment in the capital of an unconsolidated financial institution means an investment by an advanced approaches FDIC-supervised institution in the capital of an unconsolidated financial institution where the advanced approaches FDIC-supervised institution owns more than 10 percent of the issued and outstanding

common stock of the unconsolidated financial institution.

* * * * *

■ 52. Section 324.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(H) The credit equivalent amount of all off-balance sheet exposures of the FDIC-supervised institution, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under § 324.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

* * * * *

■ 53. Section 324.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and Table 1 to read as follows:

§ 324.11 Capital conservation buffer and countercyclical capital buffer amount.

(a) * * *

(2) * * *

(i) *Eligible retained income.* The eligible retained income of an FDIC-supervised institution is the FDIC-supervised institution's net income, calculated in accordance with the instructions to the Call Report, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income.

* * * * *

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, an MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) An FDIC-supervised institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The FDIC-supervised institution's common equity tier 1 capital ratio minus the FDIC-supervised institution's minimum common equity tier 1 capital ratio requirement under § 324.10;

(B) The FDIC-supervised institution's tier 1 capital ratio minus the FDIC-supervised institution's minimum tier 1 capital ratio requirement under § 324.10; and

(C) The FDIC-supervised institution's total capital ratio minus the FDIC-supervised institution's minimum total capital ratio requirement under § 324.10; or

* * * * *

TABLE 1 TO § 324.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio
Greater than 2.5 percent plus 100 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, *and* greater than 1.875 percent plus 75 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, *and* greater than 1.25 percent plus 50 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, *and* greater than 0.625 percent plus 25 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount.	0 percent.

* * * * *

■ 54. Section 324.20 is amended by revising paragraphs (b)(4), (c)(1)(viii), (c)(2), and (d)(2) to read as follows:

§ 324.20 Capital components and eligibility criteria for regulatory capital instruments.

* * * * *

(b) * * *

(4) Any common equity tier 1 minority interest, subject to the limitations in § 324.21.

* * * * *

(c) * * *

(1) * * *

(viii) Any cash dividend payments on the instrument are paid out of the FDIC-supervised institution's net income or retained earnings. An FDIC-supervised institution must obtain prior FDIC approval for any dividend payment involving a reduction or retirement of capital stock in accordance with 12 CFR 303.241.

* * * * *

(2) Tier 1 minority interest, subject to the limitations in § 324.21, that is not included in the FDIC-supervised institution's common equity tier 1 capital.

* * * * *

(d) * * *

(2) Total capital minority interest, subject to the limitations set forth in § 324.21, that is not included in the FDIC-supervised institution's tier 1 capital.

* * * * *

■ 55. Section 324.21 is revised to reads as follows:

§ 324.21 Minority interest.

(a) (1) *Applicability.* For purposes of § 324.20, an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution is subject to the minority interest limitations in this paragraph (a) if a consolidated subsidiary of the FDIC-supervised institution has issued regulatory capital that is not owned by the FDIC-supervised institution.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the FDIC-supervised institution.* The amount of common equity tier 1 minority interest that an FDIC-supervised institution may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the FDIC-supervised institution (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital

regulatory adjustments and deductions in accordance with § 324.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the FDIC-supervised institution.* The amount of tier 1 minority interest that an FDIC-supervised may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the FDIC-supervised institution (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with § 324.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the FDIC-supervised institution.* The amount of total capital minority interest that an FDIC-supervised institution may include in total capital must be no greater than 10 percent of the sum of all total capital elements of the FDIC-supervised institution (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with § 324.22 (a) and (b).

(b) (1) *Applicability.* For purposes of § 324.20, an advanced approaches FDIC-supervised institution is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches FDIC-supervised institution has issued regulatory capital that is not owned by the FDIC-supervised institution; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches FDIC-supervised institution, the advanced approaches FDIC-supervised institution must assume that the capital adequacy standards of the advanced approaches FDIC-supervised institution apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the FDIC-supervised institution.* For each consolidated subsidiary of an advanced approaches FDIC-supervised institution, the amount of common equity tier 1 minority interest the advanced approaches FDIC-supervised institution may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches FDIC-supervised institution, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(*2*) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches FDIC-supervised institution.* For each consolidated subsidiary of the advanced approaches FDIC-supervised institution, the amount of tier 1 minority interest the advanced approaches FDIC-supervised institution may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches FDIC-supervised institution multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(*2*) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the FDIC-supervised institution.* For each consolidated subsidiary of the advanced approaches FDIC-supervised institution, the amount of total capital minority interest the advanced approaches FDIC-supervised institution may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches FDIC-supervised institution multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(*1*) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(*2*) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under § 324.11 or equivalent standards established by the subsidiary's home country supervisor.

■ 56. Section 324.22 is amended by revising paragraphs (a)(1), (c), (d), (g), and (h) to read as follows:

§ 324.22 Regulatory capital adjustments and deductions.

(a) * * *

(1)(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches FDIC-supervised institution, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the advanced approaches FDIC-supervised institution), in accordance with paragraph (d) of this section;

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments* [23]—

[23] The FDIC-supervised institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of

Continued

(1) *Investment in the FDIC-supervised institution's own capital instruments.* An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own capital instruments as follows:

(i) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 324.20(b)(1);

(ii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated financial institutions for an advanced approaches FDIC-supervised institution (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches FDIC-supervised institution (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, an FDIC-supervised institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the FDIC-supervised institution itself, as described in paragraphs (c)(2)(i)–(iii) of this section. If the FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the FDIC-supervised institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under § 324.20, the FDIC-supervised institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in § 324.300(c)), the FDIC-supervised institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* An FDIC-supervised institution must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must deduct its investments in the capital of unconsolidated financial institutions (as defined in § 324.2) that exceed 25 percent of the sum of the FDIC-supervised institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding deduction approach.[24] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an FDIC-supervised institution that underwrites a failed underwriting, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.[25]

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) An advanced approaches FDIC-supervised institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in § 324.2) that, in the aggregate, exceed 10 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.[26] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting,

ALLL includable in tier 2 capital under § 324.20(d)(3).

[24] With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

[25] Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

[26] With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.[27]

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The advanced approaches FDIC-supervised institution's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the advanced approaches FDIC-supervised institution's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches FDIC-supervised institution's total non-significant investments in unconsolidated financial institutions.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches FDIC-supervised institution must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.[28] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(d) *MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

(1) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must make deductions from regulatory capital as described in this paragraph (d)(1).

(i) The FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the FDIC-supervised institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).[29]

(ii) The FDIC-supervised institution must deduct from common equity tier 1 capital elements, as set forth in (d)(1), the amount of DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An FDIC-supervised institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with § 324.22(e)) arising from timing differences that the FDIC-supervised institution could realize through net operating loss carrybacks. The FDIC-supervised institution must risk weight these assets at 100 percent. For an FDIC-supervised institution that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the FDIC-supervised institution could reasonably expect to have refunded by its parent holding company.

(iii) The FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, an FDIC-supervised institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An FDIC-supervised institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An FDIC-supervised institution may change its exclusion preference only after obtaining the prior approval of the FDIC.

(2) An advanced approaches FDIC-supervised institution must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An advanced approaches FDIC-supervised institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with § 324.22(e)) arising from timing differences that the advanced approaches FDIC-supervised institution could realize through net operating loss carrybacks. The advanced approaches FDIC-supervised institution must risk weight these assets at 100 percent. For an FDIC-supervised institution that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the FDIC-supervised institution could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.[30] Significant investments in the

[27] Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

[28] With prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

[29] The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the FDIC-supervised institution and assigned a 250 percent risk weight.

[30] With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such

Continued

capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches FDIC-supervised institution pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches FDIC-supervised institution must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.[31]

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches FDIC-supervised institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches FDIC-supervised institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches FDIC-supervised institution may change its exclusion preference only after obtaining the prior approval of the FDIC.

* * * * *

(g) *Treatment of assets that are deducted.* An FDIC-supervised institution must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the FDIC-supervised institution's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in § 324.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in § 324.2;

(iii) For an indirect exposure, the FDIC-supervised institution's carrying value of the investment in the investment fund, provided that, alternatively:

(A) An FDIC-supervised institution may, with the prior approval of the FDIC, use a conservative estimate of the amount of its investment in the FDIC-supervised institution's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) An FDIC-supervised institution may calculate the gross long position for investments in the FDIC-supervised institution's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the FDIC-supervised institution's carrying value of its investment in the investment fund by either:

(*1*) The highest stated investment limit (in percent) for investments in the FDIC-supervised institution's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(*2*) The investment fund's actual holdings of investments in the FDIC-supervised institution's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the FDIC-supervised institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the FDIC-supervised institution's Call Report if the FDIC-supervised institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the FDIC-supervised institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the FDIC-supervised institution's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) An FDIC-supervised institution may only net a short position against a long position in an investment in the FDIC-supervised institution's own capital instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the FDIC-supervised institution's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic

investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

[31] The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches FDIC-supervised institution and assigned a 250 percent risk weight.

position in an investment in the FDIC-supervised institution's own capital instrument or an investment in the capital of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the FDIC-supervised institution's Call Report and the hedge is deemed effective by the FDIC-supervised institution's internal control processes, which have not been found to be inadequate by the FDIC.

* * * * *

■ 58. Section 324.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (j), (k), and (l) to read as follows:

§ 324.32 General risk weights.

* * * * *

(b) *Certain supranational entities and multilateral development banks (MDBs).* An FDIC-supervised institution must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

* * * * *

(d) * * *

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, an FDIC-supervised institution must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to § 324.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

TABLE 2 TO § 324.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

	Risk weight (in percent)
CRC:	
0–1	20
2	50
3	100
4–7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) An FDIC-supervised institution must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) An FDIC-supervised institution must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) An FDIC-supervised institution must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) An FDIC-supervised institution must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) * * *

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to § 324.22(d)(2)(i)(c);

* * * * *

(j)(1) *High-volatility acquisition, development, or construction (HVADC) exposures.* An FDIC-supervised institution must assign a 130 percent risk weight to an HVADC exposure.

(2) *High-volatility commercial real estate (HVCRE) exposures.* A FDIC-supervised institution must assign a 150 percent risk weight to an HVCRE exposure

(k) *Past due exposures.* Except for an exposure to a sovereign entity or a residential mortgage exposure, if an exposure is 90 days or more past due or on nonaccrual:

(1) An FDIC-supervised institution must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) An FDIC-supervised institution may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § 324.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) An FDIC-supervised institution may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § 324.37 if the collateral meets the requirements of that section.

(l) *Other assets.* (1) An FDIC-supervised institution must assign a zero percent risk weight to cash owned and held in all offices of the FDIC-supervised institution or in transit; to gold bullion held in the FDIC-supervised institution's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) An FDIC-supervised institution must assign a 20 percent risk weight to cash items in the process of collection.

(3) An FDIC-supervised institution must assign a 100 percent risk weight to DTAs arising from temporary differences that the FDIC-supervised institution could realize through net operating loss carrybacks.

(4) An FDIC-supervised institution must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to § 324.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks.

(5) An FDIC-supervised institution must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 324.22.

(6) Notwithstanding the requirements of this section, an FDIC-supervised institution may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies under 12 CFR part 217, provided that all of the following conditions apply:

(i) The FDIC-supervised institution is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a

risk weight category of less than 100 percent under this subpart.

* * * * *

■ 59. Section 324.34 is amended by revising paragraph (c) to read as follows:

§ 324.34 OTC derivative contracts.

* * * * *

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* An FDIC-supervised institution that purchases an OTC credit derivative that is recognized under § 324.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the FDIC-supervised institution does so consistently for all such credit derivatives. The FDIC-supervised institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) An FDIC-supervised institution that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The FDIC-supervised institution is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The FDIC-supervised institution must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the FDIC-supervised institution is treating the OTC credit derivative as a covered position under subpart F, in which case the FDIC-supervised institution must compute a supplemental counterparty credit risk capital requirement under this section.

* * * * *

■ 60. Section 324.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

§ 324.35 Cleared transactions.

* * * * *

(b) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight appropriate for the CCP according to this subpart D.

* * * * *

(4) * * *

(ii) A clearing member client FDIC-supervised institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

* * * * *

(c) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight appropriate for the CCP according to this subpart D.

* * * * *

(4) * * *

(ii) A clearing member FDIC-supervised institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

* * * * *

■ 61. Section 324.36 is amended by revising paragraph (c) to read as follows:

§ 324.36 Guarantees and credit derivatives: Substitution treatment.

* * * * *

(c) *Substitution approach*—(1) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, an FDIC-supervised institution may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the FDIC-supervised institution must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The FDIC-supervised institution may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The FDIC-supervised institution must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

* * * * *

■ 62. Section 324.37 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 324.37 Collateralized transactions.

* * * * *

(b) * * *

(2) *Risk weight substitution.* (i) An FDIC-supervised institution may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the FDIC-supervised institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

* * * * *

■ 63. Section 324.38 is amended by revising paragraph (e)(2) to read as follows:

§ 324.38 Unsettled transactions.

* * * * *

(e) * * *

(2) From the business day after the FDIC-supervised institution has made its delivery until five business days after the counterparty delivery is due, the FDIC-supervised institution must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the FDIC-supervised institution as an exposure to the counterparty and

using the applicable counterparty risk weight under this subpart D.

* * * * *

■ 64. Section 324.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

§ 324.42 Risk-weighted assets for securitization exposures.

* * * * *

(j) * * *

(2) * * *

(ii) * * *

(A) If the FDIC-supervised institution purchases credit protection from a counterparty that is not a securitization SPE, the FDIC-supervised institution must determine the risk weight for the exposure according to this subpart D.

* * * * *

■ 65. Section 324.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

§ 324.52 Simple risk-weight approach (SRWA).

* * * * *

(b) * * *

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under § 324.32 may be assigned a zero percent risk weight.

* * * * *

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to § 324.22(d)(2) are assigned a 250 percent risk weight.

* * * * *

■ 66. Section 324.61 is revised to read as follows:

§ 324.61 Purpose and scope.

Sections 324.61 through 324.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for an FDIC-supervised institution with total consolidated assets of $50 billion or more as reported on the FDIC-supervised institution's most recent year-end Call Report that is not an advanced approaches FDIC-supervised institution making public disclosures pursuant to § 324.172. An advanced approaches FDIC-supervised institution that has not received approval from the FDIC to exit parallel run pursuant to § 324.121(d) is subject to the disclosure requirements described in §§ 324.62 and 324.63. An FDIC-supervised institution with total consolidated assets of $50 billion or more as reported on the FDIC-supervised institution's most recent year-end Call Report that is not an advanced approaches FDIC-supervised institution making public disclosures subject to § 324.172 must comply with § 324.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of § 324.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the FDIC-supervised institution's total consolidated assets in the four most recent quarters as reported on the Call Report; or the average of the FDIC-supervised institution's total consolidated assets in the most recent consecutive quarters as reported quarterly on the FDIC-supervised institution's Call Report if the FDIC-supervised institution has not filed such a report for each of the most recent four quarters.

* * * * *

■ 67. Section 324.63 is amended by revising Table 3 and Table 8 to read as follows:

§ 324.63 Disclosures by FDIC-supervised institutions described in § 324.61.

* * * * *

TABLE 3 TO § 324.63—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the FDIC-supervised institution's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b) Risk-weighted assets for: (1) Exposures to sovereign entities; (2) Exposures to certain supranational entities and MDBs; (3) Exposures to depository institutions, foreign banks, and credit unions; (4) Exposures to PSEs; (5) Corporate exposures; (6) Residential mortgage exposures; (7) Statutory multifamily mortgages and pre-sold construction loans; (8) HVADC loans; (9) Past due loans; (10) Other assets; (11) Cleared transactions; (12) Default fund contributions; (13) Unsettled transactions; (14) Securitization exposures; and (15) Equity exposures. (c) Standardized market risk-weighted assets as calculated under subpart F of this part. (d) Common equity tier 1, tier 1 and total risk-based capital ratios: (1) For the top consolidated group; and (2) For each depository institution subsidiary. (e) Total standardized risk-weighted assets.

* * * * *

TABLE 8 TO § 324.63—SECURITIZATION

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of: (1) The FDIC-supervised institution's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the FDIC-supervised institution to other entities and including the type of risks assumed and retained with resecuritization activity; [1] (2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets; (3) The roles played by the FDIC-supervised institution in the securitization process [2] and an indication of the extent of the FDIC-supervised institution's involvement in each of them; (4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures; (5) The FDIC-supervised institution's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the FDIC-supervised institution follows for its securitization exposures including the type of securitization exposure to which each approach applies. (b) A list of: (1) The type of securitization SPEs that the FDIC-supervised institution, as sponsor, uses to securitize third-party exposures. The FDIC-supervised institution must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and (2) Affiliated entities: (i) That the FDIC-supervised institution manages or advises; and (ii) That invest either in the securitization exposures that the FDIC-supervised institution has securitized or in securitization SPEs that the FDIC-supervised institution sponsors.[3] (c) Summary of the FDIC-supervised institution's accounting policies for securitization activities, including: (1) Whether the transactions are treated as sales or financings; (2) Recognition of gain-on-sale; (3) Methods and key assumptions applied in valuing retained or purchased interests; (4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes; (5) Treatment of synthetic securitizations; (6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the FDIC-supervised institution to provide financial support for securitized assets. (d) An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e) The total outstanding exposures securitized by the FDIC-supervised institution in securitizations that meet the operational criteria provided in § 324.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor.[4] (f) For exposures securitized by the FDIC-supervised institution in securitizations that meet the operational criteria in § 324.41: (1) Amount of securitized assets that are impaired/past due categorized by exposure type; [5] and (2) Losses recognized by the FDIC-supervised institution during the current period categorized by exposure type.[6] (g) The total amount of outstanding exposures intended to be securitized categorized by exposure type. (h) Aggregate amount of: (1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and (2) Off-balance sheet securitization exposures categorized by exposure type. (i) (1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and (2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any: (i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and (ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight. (j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type. (k) Aggregate amount of resecuritization exposures retained or purchased categorized according to: (1) Exposures to which credit risk mitigation is applied and those not applied; and (2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

[1] The FDIC-supervised institution should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the FDIC-supervised institution is active.

[2] For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

[3] Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

[4] "Exposures securitized" include underlying exposures originated by the FDIC-supervised institution, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the FDIC-supervised institution's balance sheet and underlying exposures acquired by the FDIC-supervised institution from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. FDIC-supervised institutions are required to disclose exposures regardless of whether there is a capital charge under this part.

[5] Include credit-related other than temporary impairment (OTTI).
[6] For example, charge-offs/allowances (if the assets remain on the FDIC-supervised institution's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the FDIC-supervised institution with respect to securitized assets.

* * * * *

■ 68. Section 324.101 is amended by revising paragraph (b) adding a definition for ''*high volatility commercial real estate (HVCRE) exposure*'' to read as follows:

§ 324.101 Definitions.

* * * * *

(b) * * *

High volatility commercial real estate (HVCRE) exposure, for purposes of Subpart E, means a credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a ''qualified investment'' under 12 CFR part 345, and

(ii) Is not an ADC loan to any entity described in 12 CFR 345.12(g), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the FDIC's real estate lending standards at 12 CFR part 365, appendix C;

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised ''as completed'' value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the FDIC-supervised institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the FDIC-supervised institution that provided the ADC facility as long as the permanent financing is subject to the FDIC-supervised institution's underwriting criteria for long-term mortgage loans.

* * * * *

■ 69. Section 324.131 is amended by revising paragraph (d)(2) to read as follows:

§ 324.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(d) * * *

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the FDIC-supervised institution assigns a rating grade associated with a PD of less than 0.03 percent.

* * * * *

■ 70. Section 324.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

§ 324.133 Cleared transactions.

* * * * *

(b) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight applicable to the CCP under subpart D of this part.

* * * * *

(c) * * *

(3) * * *

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight applicable to the CCP according to subpart D of this part.

* * * * *

■ 71. Section 324.152 is amended by revising paragraph (b)(5) and (6) to read as follows:

§ 324.152 Simple risk weight approach (SRWA).

* * * * *

(b) * * *

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

* * * * *

■ 72. Section 324.202 is amended by revising paragraph (b) the definition of ''Corporate debt position'' to read as follows:

§ 324.202 Definitions.

* * * * *

(b) * * *

Corporate debt position means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

* * * * *

■ 73. Section 324.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 324.210 Standardized measurement method for specific risk.

* * * * *

(b) * * *

(2) * * *

(ii) *Certain supranational entity and multilateral development bank debt positions.* An FDIC-supervised institution may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

* * * * *

■ 74. Section 324.300 is amended by revising paragraphs (b) and (d) to read as follows:

§ 324.300 Transitions.

* * * * *

(b) *Regulatory capital adjustments and deductions.* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution must make the capital adjustments and deductions in § 324.22 in accordance with the transition requirements in this paragraph (b). Beginning January 1, 2018, an FDIC-supervised institution must make all regulatory capital adjustments and deductions in accordance with § 324.22.

(1) *Transition deductions from common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution, must make the deductions required under § 324.22(a)(1)–(7) from common equity tier 1 or tier 1 capital elements in accordance with the percentages set forth in Table 2 and Table 3 to § 324.300.

(i) An FDIC-supervised institution must deduct the following items from common equity tier 1 and additional tier 1 capital in accordance with the percentages set forth in Table 2 to § 324.300: Goodwill (§ 324.22(a)(1)), DTAs that arise from net operating loss and tax credit carryforwards (§ 324.22(a)(3)), a gain-on-sale in connection with a securitization exposure (§ 324.22(a)(4)), defined benefit pension fund assets (§ 324.22(a)(5)), expected credit loss that exceeds eligible credit reserves (for advanced approaches FDIC-supervised institutions that have completed the parallel run process and that have received notifications from the FDIC pursuant to § 324.121(d) of subpart E) (§ 324.22(a)(6)), and financial subsidiaries (§ 324.22(a)(7)).

TABLE 2 TO § 324.300

Transition period	Transition deductions under § 324.22(a)(1), (a)(7), (a)(8), and (a)(9)	Transition deductions under § 324.22(a)(3)–(6)	
	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from common equity tier 1 capital	Percentage of the deductions from tier 1 capital
Calendar year 2014	100	20	80
Calendar year 2015	100	40	60
Calendar year 2016	100	60	40
Calendar year 2017	100	80	20
Calendar year 2018, and thereafter	100	100	0

(ii) An FDIC-supervised institution must deduct from common equity tier 1 capital any intangible assets other than goodwill and MSAs in accordance with the percentages set forth in Table 3 to § 324.300.

(iii) An FDIC-supervised institution must apply a 100 percent risk-weight to the aggregate amount of intangible assets other than goodwill and MSAs that are not required to be deducted from common equity tier 1 capital under this section.

TABLE 3 TO § 324.300

Transition period	Transition deductions under § 324.22(a)(2)—percentage of the deductions from common equity tier 1 capital
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60
Calendar year 2017	80
Calendar year 2018, and thereafter	100

(2) *Transition adjustments to common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution, must allocate the regulatory adjustments related to changes in the fair value of liabilities due to changes in the FDIC-supervised institution's own credit risk (*§ 324.*22(b)(1)(iii)) between common equity tier 1 capital and tier 1 capital in accordance with the percentages set forth in Table 4 to § 324.300.

(i) If the aggregate amount of the adjustment is positive, the FDIC-supervised institution must allocate the deduction between common equity tier 1 and tier 1 capital in accordance with Table 4 to § 324.300.

(ii) If the aggregate amount of the adjustment is negative, the FDIC-supervised institution must add back

the adjustment to common equity tier 1 capital or to tier 1 capital, in accordance with Table 4 to § 324.300.

TABLE 4 TO § 324.300

Transition period	Transition adjustments under § 324.22(b)(1)(iii)	
	Percentage of the adjustment applied to common equity tier 1 capital	Percentage of the adjustment applied to tier 1 capital
Calendar year 2014	20	80
Calendar year 2015	40	60
Calendar year 2016	60	40
Calendar year 2017	80	20
Calendar year 2018, and thereafter	100	0

(3) *Transition adjustments to AOCI for an advanced approaches FDIC-supervised institution and an FDIC-supervised institution that has not made an AOCI opt-out election under § 324.22(b)(2).* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that has not made an AOCI opt-out election under § 324.22(b)(2), and in each case through December 31, 2017, an FDIC-supervised institution must adjust common equity tier 1 capital with respect to the transition AOCI adjustment amount (transition AOCI adjustment amount):

(i) The transition AOCI adjustment amount is the aggregate amount of an FDIC-supervised institution's:

(A) Unrealized gains on available-for-sale securities that are preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(B) Net unrealized gains or losses on available-for-sale securities that are not preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(C) Any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the FDIC-supervised institution's option, the portion relating to pension assets deducted under § 324.22(a)(5)), plus

(D) Accumulated net gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI, plus

(E) Net unrealized gains or losses on held-to-maturity securities that are included in AOCI.

(ii) An FDIC-supervised institution must make the following adjustment to its common equity tier 1 capital:

(A) If the transition AOCI adjustment amount is positive, the appropriate amount must be deducted from common equity tier 1 capital in accordance with Table 5 to § 324.300.

(B) If the transition AOCI adjustment amount is negative, the appropriate amount must be added back to common equity tier 1 capital in accordance with Table 5 to § 324.300.

TABLE 5 TO § 324.300

Transition period	Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(iii) An FDIC-supervised institution may include in tier 2 capital the percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures as set forth in Table 6 to § 324.300.

TABLE 6 TO § 324.300

Transition period	Percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures that may be included in tier 2 capital
Calendar year 2014	36
Calendar year 2015	27
Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

* * * * *

(d) *Minority interest*—

(1) [Reserved]

(2) *Non-qualifying minority interest.* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution may include in tier 1 capital or total capital the percentage of the tier 1 minority interest and total capital minority interest outstanding as of January 1, 2014 that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § 324.20 (non-qualifying minority interest), as set forth in Table 9 to § 324.300.

TABLE 9 TO § 324.300

Transition period	Percentage of the amount of surplus or non-qualifying minority interest that can be included in regulatory capital during the transition period
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

Dated: September 26, 2017.

Keith A. Noreika,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 27, 2017.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, this 27th day of September, 2017.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–22093 Filed 10–26–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 82 Friday,
No. 207 October 27, 2017

Part IV

The President

Federal Register
Vol. 82, No. 207
Friday, October 27, 2017

Presidential Documents

Title 3—

The President

Presidential Determination No. 2017–15 of September 30, 2017

Presidential Determination With Respect to the Efforts of Foreign Governments Regarding Trafficking in Persons

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107) (the ''Act''), as amended, I hereby determine as follows:

Section 1. As provided for in section 110(d)(1)(A)(i) of the Act, I determine that the United States will not provide nonhumanitarian, nontrade-related assistance to the governments of the Democratic Republic of the Congo (DRC), Equatorial Guinea, Iran, South Sudan, Sudan, and Venezuela during Fiscal Year (FY) 2018, except that such assistance may be provided to such a government if, in a report to the Congress under section 110(b) of the Act, the Secretary of State determines that the government complies with the Act's minimum standards or has made significant efforts to bring itself into compliance with the Act.

Sec. 2. As provided in section 110(d)(1)(A)(ii) of the Act, I determine that the United States will not provide nonhumanitarian, nontrade-related assistance to, or allow funding for participation in educational and cultural exchange programs by officials or employees of, the governments of Eritrea, Democratic People's Republic of Korea, Russia, and Syria for FY 2018, except that such assistance may be provided to, or such funding may be allowed for officials of, such a government if, in a report to the Congress under section 110(b) of the Act, the Secretary of State determines that the government complies with the Act's minimum standards or has made significant efforts to bring itself into compliance with the Act.

Sec. 3.. As provided in section 110(d)(1)(B) of the Act, I hereby instruct the United States Executive Director of each multilateral development bank, as defined in the Act, and of the International Monetary Fund to vote against and use best efforts to deny all loans to, and all other uses of those institutions' funds that benefit, the governments of Iran, the Democratic People's Republic of Korea, and Russia for FY 2018. Notwithstanding the foregoing, the Executive Directors may vote to allow loans to be made, and the institutions' funds to be used for, humanitarian assistance; trade-related assistance; and development assistance that directly addresses basic human needs, is not administered by the government of such country, and confers no benefit to such a government. They may also vote to allow loans to be made to, and the institutions' funds to be used to benefit, any such government that complies with the minimum standards of the Act or makes significant efforts to bring itself into compliance with the Act.

Sec. 4. Consistent with section 110(d)(4) of the Act, I determine that a partial waiver of the Act with respect to the DRC and South Sudan to allow assistance described in section 110(d)(1)(A)(i) of the Act—with exception for Foreign Military Financing (FMF), Foreign Military Sales (FMS), International Military Education and Training (IMET), and Excess Defense Articles (EDA)—would promote the purposes of the Act or is otherwise in the national interest of the United States.

Sec. 5. Consistent with section 110(d)(4) of the Act, I determine that a partial waiver of the Act with respect to Equatorial Guinea to allow assistance described in section 110(d)(1)(A)(i) of the Act for programs to promote

sustainable natural resource management and biodiversity and programs to advance energy access, support regional training to combat infectious diseases, and participation in the Young African Leaders Initiative would promote the purposes of the Act or is otherwise in the national interest of the United States.

Sec. 6. Consistent with section 110(d)(4) of the Act, I determine that a partial waiver of the Act with respect to Sudan to allow assistance described in section 110(d)(1)(A)(i) of the Act—with exception for FMF, FMS, IMET, and EDA—would promote the purposes of the Act or is otherwise in the national interest of the United States.

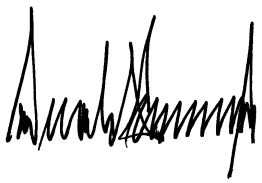
Sec. 7. Consistent with section 110(d)(4) of the Act, I determine that a partial waiver of the Act with respect to Venezuela to allow assistance described in section 110(d)(1)(A)(i) of the Act for health programs, programs designed to strengthen the democratic process in Venezuela, and for government officials and employees to participate in foreign assistance-funded programs related to democracy and the rule of law would promote the purposes of the Act or is otherwise in the national interest of the United States.

Sec. 8. Consistent with section 110(d)(4) of the Act, I determine that a partial waiver of the Act with respect to Eritrea, Russia, and Syria to allow assistance described in section 110(d)(1)(A)(ii) of the Act for educational and cultural exchange programs would promote the purposes of the Act or is otherwise in the national interest of the United States.

Sec. 9. Consistent with section 110(d)(4) of the Act, I determine that the provision of all programs, projects, and activities described in section 110(d)(1)(A)(i) of the Act to the governments of Belarus, Belize, Burundi, the Central African Republic, China, Comoros, Republic of the Congo, Guinea, Guinea-Bissau, Mali, Mauritania, Turkmenistan, and Uzbekistan would promote the purposes of the Act or is otherwise in the national interest of the United States.

Sec. 10. Consistent with section 110(d)(4) of the Act, I determine that providing the assistance described in section 110(d)(1)(B) of the Act to Belarus, Belize, Burundi, the Central African Republic, China, Comoros, DRC, Republic of the Congo, Equatorial Guinea, Eritrea, Guinea, Guinea-Bissau, Mali, Mauritania, South Sudan, Sudan, Syria, Turkmenistan, Uzbekistan, and Venezuela would promote the purposes of the Act or is otherwise in the national interest of the United States.

Sec. 11. You are authorized and directed to submit this determination, the certification required by section 110(e) of the Act, and the Department of State's Memorandum of Justification, on which I have relied, to the Congress, and to publish the determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 30, 2017

[FR Doc. 2017–23609
Filed 10–26–17; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of October 11, 2017

Delegation of Certain Functions and Authorities Under the Countering America's Adversaries Through Sanctions Act of 2017

Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

Section 1. (a) I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 110 of the Countering America's Adversaries Through Sanctions Act of 2017 (Public Law 115–44) (the ''Act'')

(b) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the functions and authorities vested in the President by the following provisions of the Act:

(i) section 104(b), with respect to a determination under the standard set forth in section 104(b)(1);

(ii) section 107(a), with respect to a determination under the standards set forth in section 107(a)(1) and (a)(2);

(iii) section 107(d), with respect to making the certification described therein;

(iv) section 108(b)(2);

(v) section 109; and

(vi) section 112.

(c) I hereby delegate to the Secretary of the Treasury the functions and authorities vested in the President by the following provisions of the Act:

(i) section 104(c)(1); and

(ii) section 107(b)(1).

(d) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by the following provisions of the Act:

(i) section 104(b), with respect to a determination under the standards set forth under section 104(b)(2) through (b)(6);

(ii) section 104(e);

(iii) section 106(b)(1);

(iv) section 108(a)(1); and

(v) section 108(b)(1).

(e) I hereby delegate to the Secretary of State and the Secretary of the Treasury the functions and authorities vested in the President by the following sections of the Act:

(i) section 105(b), to be exercised in consultation with each other and commensurate with their respective areas of responsibility set forth in previous Presidential actions under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), including Executive Order 13224

of September 23, 2001 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism);

(ii) section 108(a)(2), to be exercised in consultation with each other and commensurate with their respective areas of responsibility set forth in Executive Order 13382 of June 28, 2005 (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters) and Executive Order 13224; and

(iii) section 111(b), to be exercised commensurate with their respective areas of responsibility set forth in this memorandum.

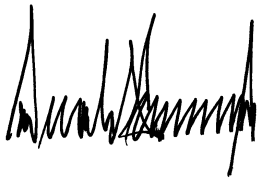
(f) I hereby delegate to the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security the functions and authorities vested in the President by the following sections of the Act:

(i) section 104(b), to be exercised commensurate with their respective areas of responsibility or delegated authority under section 104(c), with respect to the imposition of sanctions following a determination under section 104(b); and

(ii) section 107(a), to be exercised commensurate with their respective areas of responsibility or delegated authority under section 107(b), with respect to the imposition of sanctions following a determination under section 107(a).

Sec. 2. The delegations in this memorandum shall apply to any provisions of any future public laws that are the same or substantially the same as those provisions referenced in this memorandum.

Sec. 3. The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, October 11, 2017

[FR Doc. 2017–23617
Filed 10–26–17; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 9664 of October 23, 2017

United Nations Day, 2017

By the President of the United States of America

A Proclamation

On United Nations Day, we recognize the more than seven decades of contributions the United Nations has made to peace and security among nations. The United Nations was founded on the vision that diverse nations could cooperate to preserve sovereignty, enhance security, build prosperity, and promote human rights and fundamental freedoms. Its purpose remains as essential today as ever before. As the world faces increasing transnational threats—including the spread of terrorism and mass atrocities around the globe, the risk of famine and humanitarian crises, and nuclear proliferation by rogue regimes that threaten others with the most destructive weapons known to humanity—we call on all member states to reaffirm their commitments to the obligations and responsibilities enshrined in the United Nations Charter.

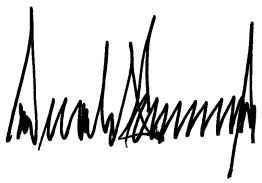
Member states should work together as the founders of the United Nations intended and confront those who threaten chaos, turmoil, and terror. We continue to believe that the United Nations can play an important role in resolving international disputes and that its success depends on a coalition of strong sovereign nations. This year alone, the United States has led efforts at the United Nations to strengthen and expand sanctions against North Korea, review the mandates of peacekeeping missions to make sure they are achievable, and promote an ambitious campaign of reform, including with respect to the United Nations Human Rights Council. The United Nations Security Council, of which the United States is a permanent member, remains, as ever, a valuable forum for responding to threats to international peace and security.

We remain hopeful that the United Nations can achieve its goals of maintaining international peace and security and developing friendly relations among nations. We expect member states to hold the United Nations accountable, just as we expect people around the world to hold their own governments accountable. Although a great deal of work remains to be done for the United Nations to realize its full potential, we reaffirm our commitment to its goals in order to build a better tomorrow for future generations.

On United Nations Day, we also pause to acknowledge the men and women who serve in faraway peacekeeping missions, who provide humanitarian assistance to people in war-torn countries, who endeavor to keep the world safe from weapons of mass destruction, and who protect innocent children. Through their effort and personal sacrifice, they bring hope and relief to countless people in need.

NOW, THEREFORE, I, DONALD J. TRUMP, 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 October 24, 2017, as United Nations Day. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of all other areas under the flag of the United States, to observe United Nations Day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2017–23622
Filed 10–26–17; 11:15 am]
Billing code 3295–F8–P

Presidential Documents

Executive Order 13815 of October 24, 2017

Resuming the United States Refugee Admissions Program With Enhanced Vetting Capabilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy*. (a) It is the policy of the United States to protect its people from terrorist attacks and other public-safety threats. Screening and vetting procedures associated with determining which foreign nationals may enter the United States, including through the U.S. Refugee Admissions Program (USRAP), play a critical role in implementing that policy. Those procedures enhance our ability to detect foreign nationals who might commit, aid, or support acts of terrorism, or otherwise pose a threat to the national security or public safety of the United States, and they bolster our efforts to prevent such individuals from entering the country.

(b) Section 5 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), directed the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence to develop a uniform baseline for screening and vetting standards and procedures applicable to all travelers who seek to enter the United States. A working group was established to satisfy this directive.

(c) Section 6(a) of Executive Order 13780 directed a review to strengthen the vetting process for the USRAP. It also instructed the Secretary of State to suspend the travel of refugees into the United States under that program, and the Secretary of Homeland Security to suspend decisions on applications for refugee status, subject to certain exceptions. Section 6(a) also required the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, to conduct a 120-day review of the USRAP application and adjudication process in order to determine, and implement, additional procedures to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States. Executive Order 13780 noted that terrorist groups have sought to infiltrate several nations through refugee programs and that the Attorney General had reported that more than 300 persons who had entered the United States as refugees were then the subjects of counterterrorism investigations by the Federal Bureau of Investigation.

(d) The Secretary of State convened a working group to implement the review process under section 6(a) of Executive Order 13780. This review was informed by the development of uniform baseline screening and vetting standards and procedures for all travelers under section 5 of Executive Order 13780. The section 6(a) working group compared the process for screening and vetting refugees with the uniform baseline standards and procedures established by the section 5 working group. The section 6(a) working group identified several ways to enhance the process for screening and vetting refugees and began implementing those improvements.

(e) The review process for refugees required by Executive Order 13780 has made our Nation safer. The improvements the section 6(a) working group has identified will strengthen the data-collection process for all refugee applicants considered for resettlement in the United States. They will also

bolster the process for interviewing refugees through improved training, fraud-detection procedures, and interagency information sharing. Further, they will enhance the ability of our systems to check biometric and biographic information against a broad range of threat information contained in various Federal watchlists and databases.

(f) Section 2 of Proclamation 9645 of September 24, 2017 (Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats), suspended and limited, subject to exceptions and case-by-case waivers, the entry into the United States of foreign nationals of eight countries. As noted in that Proclamation, those suspensions and limitations are in the interest of the United States because of certain deficiencies in those countries' identity-management and information-sharing protocols and procedures, and because of the national security and public-safety risks that emanate from their territory, including risks that result from the significant presence of terrorists within the territory of several of those countries.

(g) The entry restrictions and limitations in Proclamation 9645 apply to the immigrant and nonimmigrant visa application and adjudication processes, which foreign nationals use to seek authorization to travel to the United States and apply for admission. Pursuant to section 3(b)(iii) of Proclamation 9645, however, those restrictions and limitations do not apply to those who seek to enter the United States through the USRAP.

(h) Foreign nationals who seek to enter the United States with an immigrant or nonimmigrant visa stand in a different position from that of refugees who are considered for entry into this country under the USRAP. For a variety of reasons, including substantive differences in the risk factors presented by the refugee population and in the quality of information available to screen and vet refugees, the refugee screening and vetting process is different from the process that applies to most visa applicants. At the same time, the entry of certain refugees into the United States through the USRAP poses unique security risks and considerable domestic challenges that require the application of substantial resources.

Sec. 2. *Resumption of the U.S. Refugee Admissions Program*. (a) Section 6(a) of Executive Order 13780 provided for a temporary, 120-day review of the USRAP application and adjudication process and an accompanying worldwide suspension of refugee travel to the United States and of application decisions under the USRAP. That 120-day period expires on October 24, 2017. Section 6(a) further provided that refugee travel and application decisions could resume after 120 days for stateless persons and for the nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence jointly determine that the additional procedures identified through the USRAP review process are adequate to ensure the security and welfare of the United States. The Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have advised that the improvements to the USRAP vetting process are generally adequate to ensure the security and welfare of the United States, that the Secretary of State and Secretary of Homeland Security may resume that program, and that they will apply special measures to certain categories of refugees whose entry continues to pose potential threats to the security and welfare of the United States.

(b) With the improvements identified by the section 6(a) working group and implemented by the participating agencies, the refugee screening and vetting process generally meets the uniform baseline for immigration screening and vetting established by the section 5 working group. Accordingly, a general resumption of the USRAP, subject to the conditions set forth in section 3 of this order, is consistent with the security and welfare of the United States.

(c) The suspension of the USRAP and other processes specified in section 6(a) of Executive Order 13780 are no longer in effect. Subject to the conditions set forth in section 3 of this order, the Secretary of State may resume

travel of qualified and appropriately vetted refugees into the United States, and the Secretary of Homeland Security may resume adjudicating applications for refugee resettlement.

Sec. 3. *Addressing the Risks Presented by Certain Categories of Refugees*. (a) Based on the considerations outlined above, including the special measures referred to in subsection (a) of section 2 of this order, Presidential action to suspend the entry of refugees under the USRAP is not needed at this time to protect the security and interests of the United States and its people. The Secretary of State and the Secretary of Homeland Security, however, shall continue to assess and address any risks posed by particular refugees as follows:

(i) The Secretary of State and the Secretary of Homeland Security shall coordinate to assess any risks to the security and welfare of the United States that may be presented by the entry into the United States through the USRAP of stateless persons and foreign nationals. Under section 207(c) and applicable portions of section 212(a) of the INA, 8 U.S.C. 1157(c) and 1182(a), section 402(4) of the Homeland Security Act of 2002, 6 U.S.C. 202(4), and other applicable authorities, the Secretary of Homeland Security, in consultation with the Secretary of State, shall determine, as appropriate and consistent with applicable law, whether any actions should be taken to address the risks to the security and welfare of the United States presented by permitting any category of refugees to enter this country, and, if so, what those actions should be. The Secretary of State and the Secretary of Homeland Security shall administer the USRAP consistent with those determinations, and in consultation with the Attorney General and the Director of National Intelligence.

(ii) Within 90 days of the date of this order and annually thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall determine, as appropriate and consistent with applicable law, whether any actions taken to address the risks to the security and welfare of the United States presented by permitting any category of refugees to enter this country should be modified or terminated, and, if so, what those modifications or terminations should be. If the Secretary of Homeland Security, in consultation with the Secretary of State, determines, at any time, that any actions taken pursuant to section 3(a)(i) should be modified or terminated, the Secretary of Homeland Security may modify or terminate those actions accordingly. The Secretary of Homeland Security and the Secretary of State shall administer the USRAP consistent with the determinations made under this subsection, and in consultation with the Attorney General and the Director of National Intelligence.

(b) Within 180 days of the date of this order, the Attorney General shall, in consultation with the Secretary of State and the Secretary of Homeland Security, and in cooperation with the heads of other executive departments and agencies as he deems appropriate, provide a report to the President on the effect of refugee resettlement in the United States on the national security, public safety, and general welfare of the United States. The report shall include any recommendations the Attorney General deems necessary to advance those interests.

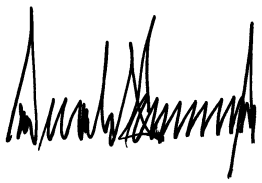
Sec. 4. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
October 24, 2017.

[FR Doc. 2017–23630
10–26–17; 11:15 am]
Billing code 3295–F8–P

Reader Aids

Federal Register

Vol. 82, No. 207

Friday, October 27, 2017

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, OCTOBER

45679–45954 2
45955–46122 3
46123–46368 4
46369–46654 5
46655–46892 6
46893–47082 10
47083–47362 11
47363–47610 12
47611–47952 13
47953–48192 16
48193–48388 17
48389–48608 18
48609–48748 19
48749–48901 20
48903–49086 23
49087–49274 24
49275–49484 25
49485–49736 26
49737–50058 27

CFR PARTS AFFECTED DURING OCTOBER

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.

1 CFR

601 48609
603 48609

2 CFR

Proposed Rules:
1201 46716

3 CFR

Proclamations:
9646 46353
9647 46355
9648 46357
9649 46359
9650 46361
9651 46653
9652 47361
9653 47943
9654 47945
9655 47947
9656 47949
9657 47951
9658 48191
9659 48383
9660 48749
9661 48751
9662 48753
9663 49735
9664 50053

Executive Orders:
13223 (Amended by EO 13814) 49273
13522 (Revoked by EO 13812) 46367
13708 (Superseded by EO 13811) 46363
13780 50055
13805 (Revoked by EO 13811) 46363
13811 46363
13812 46367
13813 48385
13814 49273
13815 50055

Administrative Orders:
Memorandums:
Memorandum of September 25, 2017 46649
Memorandum of October 11, 2017 50051
Notice of October 16, 2017 48607
Notice of October 23, 2017 49275
Presidential Determinations:
No. 2017–13 of September 29, 2017 49083
No. 2017–14 of September 30, 2017 49085
No. 2017–15 of September 30, 2017 50047

5 CFR

831 49277
839 49277
841 49277
842 49277
847 49277
1201 47083

7 CFR

15a 46655
319 45955
983 49087
996 48755
1217 49485
3560 49282

Proposed Rules:
33 46425
35 46425

9 CFR

201 48594

Proposed Rules:
1 48938
2 48938
201 48603

10 CFR

20 46666

Proposed Rules:
50 46717

11 CFR

Proposed Rules:
110 46937

12 CFR

34 49089
261 49286
271 45679
Ch. II 46668
225 49089
323 49089
Ch. V 47083
607 48758
722 49089
1002 45680
1024 47953
1101 45697

Proposed Rules:
3 49984
46 49764
211 47164
217 49984
238 47164
324 49984
740 46173

Subtitle B 49300
Ch. II 49300
Ch. III 49300
Ch. IV 49300
Ch. X 49300
Ch. XIII 49300
160 46182
162 46182

46 CFR

Proposed Rules:
Ch. II 45750

47 CFR

1 .....46688, 48773
2 .....46688, 47155, 48459
15 46688
20 48773
27 47155
36 48774
42 48774
51 47161
54 48774
63 48774
64 .....48203, 48774
80 48459
90 .....46688, 46690, 47400, 48005, 48459
95 46688
97 46688

Proposed Rules:
1 46011
20 .....46011, 47663
52 47669
64 49303
74 47683
76 47683
78 47683

48 CFR

Proposed Rules:
Ch. 12 45750

49 CFR

Ch. X 49295
174 48006
191 48655
192 48655
593 49132
831 47401

Proposed Rules:
Ch. I 45750
Ch. II 45750
Ch. III 45750
Ch. V 45750
Ch. VI 45750
Ch. VII 45750
Ch. VIII 45750
Ch. X 45750
395 .....49770, 49701
1102 45771
Ch. XI 45750

50 CFR

17 .....46691, 49751
622 .....46170, 47162, 47640, 47641, 49142
635 .....46000, 46934
648 .....46002, 46936, 48007, 48008, 48936, 49297
660 48656
665 .....47642, 49143
679 .....46171, 46422, 47162, 47402, 47403, 48204,48460, 48667, 49539

Proposed Rules:
17 .....45779, 46183, 46197, 46618, 46748
20 46011
36 45793
222 48674
223 48948
229 47424
300 46016
622 .....46205, 49167
635 .....49303, 49773
648 .....46749, 48781, 48967
660 46209
679 46016

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 24, 2017

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.