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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Doc. No. AMS-SC-16-0088; SC16-966-1 FR]

#### Tomatoes Grown in Florida; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Florida Tomato Committee (Committee) for an increase in the assessment rate established for the 2016–17 and subsequent fiscal periods from \$0.03 to \$0.035 per 25-pound carton of tomatoes handled under the marketing order (order). The Committee locally administers the order and is comprised of producers of tomatoes operating within the area of production. Assessments upon Florida tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective March 16, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Steven W. Kauffman, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: [Steven.Kauffman@ams.usda.gov](mailto:Steven.Kauffman@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington,

DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Florida tomatoes beginning on August 1, 2016, and continue until amended, suspended, or terminated.

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

This rule increases the assessment rate established for the Committee for the 2016–17 and subsequent fiscal periods from \$0.03 to \$0.035 per 25-pound carton of tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to

administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee’s needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2015–16 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 16, 2016, and unanimously recommended 2016–17 expenditures of \$1,494,600 and an assessment rate of \$0.035 per 25-pound carton of tomatoes. In comparison, last year’s budgeted expenditures were \$1,513,177. The assessment rate of \$0.035 is \$0.005 higher than the rate currently in effect. At the current assessment rate, assessment income would equal only \$990,000, an amount insufficient to cover the Committee’s anticipated expenditures of \$1,494,600. The Committee considered the proposed expenses and recommended increasing the assessment rate.

The major expenditures recommended by the Committee for the 2016–17 year include \$450,000 for salaries, \$400,000 for research, and \$400,000 for education and promotion. Budgeted expenses for these items in 2015–16 were \$435,377, \$400,000, and \$400,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Florida tomato shipments for the 2016–17 year are estimated at 33 million 25-pound cartons, which should provide \$1,155,000 in assessment income. Income derived from handler assessments, along with interest income, block grants, and funds from the Committee’s authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (approximately \$999,361) will be kept within the maximum permitted by the order of no



more than approximately one fiscal period's expenses as stated in § 966.44.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2016–17 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 100 producers of tomatoes in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2015–16 season was approximately \$11.27 per 25-pound carton, and total fresh

shipments were approximately 28.2 million cartons. Using the average price and shipment information, number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts below \$7,500,000. In addition, based on production data, an estimated grower price of \$6.25, and the total number of Florida tomato growers, the average annual grower revenue is above \$750,000. Thus, a majority of the handlers of Florida tomatoes may be classified as small entities while a majority of the producers may be classified as large entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2016–17 and subsequent fiscal periods from \$0.03 to \$0.035 per 25-pound carton of tomatoes. The Committee unanimously recommended 2016–17 expenditures of \$1,494,600 and an assessment rate of \$0.035 per 25-pound carton handled. The assessment rate of \$0.035 is \$.005 higher than the 2015–16 rate. The quantity of assessable tomatoes for the 2016–17 season is estimated at 33 million 25-pound cartons. Thus, the \$0.035 rate should provide \$1,155,000 in assessment income. Income derived from handler assessments, along with funds from interest income, MAP funds, and block grants, should provide sufficient funds to meet this year's anticipated expenses.

The major expenditures recommended by the Committee for the 2016–17 year include \$450,000 for salaries, \$400,000 for research, and \$400,000 for education and promotion. Budgeted expenses for these items in 2015–16 were \$435,377, \$400,000, and \$400,000, respectively.

At the current assessment rate, assessment income would equal only \$990,000, an amount insufficient to cover the Committee's anticipated expenditures of \$1,494,600. The Committee considered the proposed expenses and recommended increasing the assessment rate.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various activities to the tomato industry. The Committee determined that 2016–17 expenditures of \$1,494,600 were appropriate, and the recommended assessment rate, along with funds from interest income, block grants, and funds

from reserves, should be adequate to cover budgeted expenses.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2016–17 season could be approximately \$6.50 per 25-pound carton of tomatoes. Therefore, the estimated assessment revenue for the 2016–17 crop year as a percentage of total grower revenue could be approximately 0.5 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 16, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on November 23, 2016 (81 FR 84507). Copies of the proposed rule were also mailed or sent via facsimile to all Florida tomato handlers. Finally, the

proposal was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending December 8, 2016, was provided for interested persons to respond to the proposal. One comment was received. The commenter opposes the assessment rate and stated the government should not raise the assessment. The marketing order for Florida tomatoes was established at the request of the industry and is locally administered by the Committee, which is made up of growers nominated by their peers. The Committee requires funds to operate the program. The current assessment rate will not provide sufficient funds to cover anticipated expenses and the Committee voted unanimously to increase the assessment rate. Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2016–17 crop tomatoes from growers. The crop year began August 1, 2016, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida tomatoes handled during such fiscal period. Also, the Committee incurs expenses on a continuing basis. Further, handlers are aware of this rule, which was unanimously recommended at a public meeting, and a 15-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

#### PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 966.234 is revised to read as follows:

##### § 966.234 Assessment rate.

On and after August 1, 2016, an assessment rate of \$0.035 per 25-pound carton is established for Florida tomatoes.

Dated: March 9, 2017.

**Bruce Summers,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2017–04979 Filed 3–14–17; 8:45 am]

**BILLING CODE 3410–02–P**

#### FEDERAL HOUSING FINANCE AGENCY

##### 12 CFR Part 1202

RIN 2590–AA86

#### Freedom of Information Act Implementation

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing this interim final rule to amend its existing Freedom of Information Act (FOIA) regulation. The amendments incorporate the requirements of the FOIA Improvement Act of 2016 by giving notice of the circumstances under which FHFA may extend the time limit for responding to a FOIA request due to unusual circumstance; notifying a requester of their right to seek dispute resolution services; affording a requester a minimum of 90 days to file an administrative appeal; and clarifying and updating the existing regulation.

**DATES:** The interim final rule is effective on March 15, 2017. FHFA will accept written comments on the interim final rule on or before May 15, 2017. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit your comments on the interim final rule, identified by “RIN 2590–AA86,” by any of the following methods:

- *Agency Web site:* [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the

Federal eRulemaking Portal, please also send it by email to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: “Comments/RIN 2590–AA86.”

- *Hand Delivery/Courier to:* Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA86, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. The package must be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *U.S. Mail Service, United Parcel Service, Federal Express, or other commercial delivery service to:* Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA86, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. Please note that all mail sent to FHFA via the U.S. Mail service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

#### FOR FURTHER INFORMATION CONTACT:

David A. Lee, Chief FOIA Officer, (202) 649–3803, or Stacy J. Easter, FOIA Officer (202) 649–3803, (not toll free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219, or [FOIA@fhfa.gov](mailto:FOIA@fhfa.gov). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Comments

FHFA is amending its FOIA regulation at 12 CFR part 1202 to incorporate changes made to the FOIA, 5 U.S.C. 552, by the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (June 30, 2016) (Act). The primary changes to the FOIA made by the Act include codifying the foreseeable harm standard when making a determination whether to release agency records under Exemption 5; notifying requesters of the availability of dispute resolutions services at various times throughout the FOIA process; providing a minimum of 90 days for requesters to file an administrative appeal; incorporating the new statutory restrictions on charging fees in certain circumstances, and reflecting recent developments in the case law.

FHFA invites comments on all aspects of the interim final rule and will take all relevant comments into consideration before issuing the final regulation. All submissions received must include the agency name or Regulatory Information

Number (RIN) for this rulemaking. All comments received will be posted without change on the FHFA Internet Web site, <http://www.fhfa.gov>, and will include any personal information provided, such as name, address (mailing and email), and telephone numbers. In addition, copies of all comments received will be available for public inspection on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

## II. Effective Date and Request for Comments

FHFA has concluded that good cause exists, under 5 U.S.C. 553(b)(B) and (d)(3), to waive the notice-and-comment and delayed effective date requirements of the Administrative Procedure Act and to proceed with this interim final rule. The amendments to part 1202 primarily address how FHFA will implement the changes made under the Act, make clarifying and general updates to the existing regulation, and add two appendices indicating where to send FOIA requests and appeals to FHFA and FHFA Office of Inspector General, but do not fundamentally alter or change the regulation's nature or scope. Further, in light of the significant need for immediate guidance regarding the changes made under the Act, FHFA has determined that notice-and-comment rulemaking is impracticable and contrary to public policy.

Nevertheless, FHFA is providing the public with a 60-day period following publication of the interim final rule to submit comments. Any comments received will be considered prior to issuing a final regulation.

## III. Background

### A. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4501 *et seq.*) and the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) to establish FHFA as an independent agency of the Federal Government to ensure that the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively, the regulated entities) are capitalized adequately; foster liquid, efficient,

competitive and resilient national housing finance markets; operate in a safe and sound manner; comply with the Safety and Soundness Act and all rules, regulations, guidelines and orders issued under the Safety and Soundness Act, and the regulated entities' respective authorizing statutes; carry out their missions through activities consistent with the aforementioned authorities; and the activities and operations of the regulated entities are consistent with the public interest.

### B. Issuance of FOIA Regulation

In 2011, FHFA issued a final FOIA regulation at 12 CFR part 1202 that provided the procedures and guidelines under which FHFA would implement the FOIA, and added provisions to include its newly created component, the Office of Inspector General (FHFA-OIG). This interim final rule amends the existing FOIA regulation at part 1202 to implement the changes made by the Act, remove individual component procedures from the body of the regulation adding them to the newly created appendices, as well as to make clarifying technical amendments.

## IV. Analysis of Sections Affected by the Act

### Section 1202.2 What do the terms in this regulation mean?

This section is amended to include new and revised terms. It is also amended to conform to recent decisions of the D.C. Circuit Court of Appeals addressing two FOIA Fee categories: "educational institution" and "representative of the news media." See *Cause of Action v. FTC*, 799 F.3d 1108 (D.C. Cir. 2015); and *Sack v. DOD*, 823 F.3d 687 (D.C. Cir. 2016). In *Cause of Action*, 799 F.3d at 1125, the court held that a representative of the news media need not work for an entity that is "organized and operated" to publish or broadcast news. Therefore, the definition of "representative of the news media" is amended to remove the "organized and operated" requirement. The definition of "educational institution" is amended to reflect the holding in *Sack*, 823 F.3d at 688, which held that students who make FOIA requests in furtherance of their coursework or other school-sponsored activities may qualify under this requester category. The amended definition now states that a requester under this category need only to show that the request is made in connection with his or her role at the educational institution.

### Section 1202.3 What information can I obtain through the FOIA?

Paragraph (b) is amended to reflect the changes made to the FOIA by the Act, regarding proactive disclosures of records by making them available for public inspection and copying in FHFA's electronic reading room.

### Section 1202.4 What information is exempt from disclosure?

Paragraph (a) is amended to reflect the changes made to the FOIA by the Act regarding adding the foreseeable harm standard to the statute. This amendment informs the public how FHFA will use the foreseeable harm standard when determining whether or not to disclose requested information.

### Section 1202.5 How do I request information from FHFA under the FOIA?

Paragraph (a) is amended to reflect the addition of two appendices with information on where to file FOIA requests and appeals for each FHFA component (FHFA-Headquarters and FHFA-OIG).

### Section 1202.7 How will FHFA respond to my FOIA request?

Paragraph (b) is amended to include a standard for how FHFA will determine the cut-off date for FOIA searches. Also, as required by the Act, paragraph (g)(2) is amended to make available FHFA's FOIA Public Liaison whenever a request is placed in the complex track. Lastly, paragraph (g)(3) is amended to add an explanation on how, why and when FHFA will aggregate a request.

### Section 1202.9 How do I appeal a response denying my FOIA request?

As required by the Act, paragraph (b) is amended to extend the time to file an administrative appeal to 90 days after an adverse determination. Paragraph (g) is also amended to include a requirement that FHFA notify requesters of the availability of assistance from FHFA's FOIA Public Liaison and the Office of Government Information Services when providing requesters with a response to their requests.

### Section 1202.11 What will it cost to get the records I requested?

Paragraph (c) is amended to update FHFA's fee schedule. Specifically, a detailed formula on how FHFA's fee schedule is calculated has been added. Going forward fees will be based on this formula and will be published and updated, as required, on FHFA's Web site. Also, as required by the Act, paragraph (j), which discusses

restrictions on charging fees when the FOIA's time limits are not met, is amended to reflect changes made by the Act. These changes reflect that agencies may not charge search fees (or duplication fees for representatives of the news media and educational/non-commercial scientific institution requesters) when the agency fails to comply with the FOIA's time limits. The restriction on charging fees is excused and the agency may charge fees as usual when it satisfies one of three exceptions as detailed at 5 U.S.C. 552(a)(4)(A)(vii)(II).

#### *Appendices to Part 1202*

These appendices are new and have been added to describe each FHFA component. Each appendix provides specific information regarding that component to notify the public where to submit a FOIA request for records held or maintained at each component and where to file an appeal.

#### **V. Regulatory Impacts**

##### *Paperwork Reduction Act*

This interim final rule does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). FHFA has considered the impact of this interim final rule under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the internal operations and legal obligations of FHFA.

##### **List of Subjects in 12 CFR Part 1202**

Appeals, Confidential commercial information, Disclosure, Exemptions, Fees, Final action, Freedom of Information Act, Judicial review, Records, Requests.

#### **Authority and Issuance**

Accordingly, for the reasons stated in the Preamble, FHFA is revising part 1202 of Chapter XII of title 12 of the Code of Federal Regulations to read as follows:

#### **PART 1202—FREEDOM OF INFORMATION ACT**

Sec.

- 1202.1 Why did FHFA issue this part?  
 1202.2 What do the terms in this part mean?  
 1202.3 What information can I obtain through the FOIA?  
 1202.4 What information is exempt from disclosure?  
 1202.5 How do I request information from FHFA under the FOIA?  
 1202.6 What if my request does not have all the information FHFA requires?  
 1202.7 How will FHFA respond to my FOIA request?  
 1202.8 If the requested records contain confidential commercial information, what procedures will FHFA follow?  
 1202.9 How do I appeal a response denying my FOIA request?  
 1202.10 Will FHFA expedite my request or appeal?  
 1202.11 What will it cost to get the records I requested?  
 1202.12 Is there anything else I need to know about FOIA procedures?  
 Appendix A to Part 1202—FHFA Headquarters  
 Appendix B to Part 1202—FHFA Office of Inspector General

**Authority:** Pub. L. 110–289, 122 Stat. 2654; 5 U.S.C. 301, 552; 12 U.S.C. 4526; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

##### **§ 1202.1 Why did FHFA issue this part?**

The Federal Housing Finance Agency (FHFA) issued this regulation to comply with the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(a) The Freedom of Information Act (FOIA) (5 U.S.C. 552), is a Federal law that requires the Federal Government to disclose certain Federal Government records to the public.

(b) This part explains the rules that the FHFA will follow when processing and responding to requests for records under the FOIA. It also explains what you must do to request records from FHFA under the FOIA. You should read this part together with the FOIA, which explains in more detail your rights and the records FHFA may release to you.

(c) If you want to request information about yourself that is contained in a system of records maintained by FHFA, you may do so under the Privacy Act of 1974, as amended (5 U.S.C. 552a). This is considered a first-party or Privacy Act request under the Privacy Act, and you must file your request following FHFA's

Privacy Act regulation at part 1204 of this title. If you file a request for information about yourself, FHFA will process your request under both the FOIA and Privacy Act in order to give you the greatest degree of access to any responsive material.

(d) Notwithstanding the FOIA and this part, FHFA may routinely publish or disclose to the public information without following these procedures.

##### **§ 1202.2 What do the terms in this part mean?**

Some of the terms you need to understand while reading this regulation are—

*Aggregating* means combing multiple requests for documents that could reasonably have been the subject of a single request and which occur within a 30-day period, by a single requester or by a group of requesters acting in concert that would otherwise involve unusual circumstances.

*Appeals Officer or FOIA Appeals Officer* means a person designated by FHFA who processes appeals of denied FOIA requests for FHFA records.

*Chief FOIA Officer* means the designated high-level official within FHFA (FHFA–OIG does not have a separate Chief FOIA Officer) who has overall responsibility for the agency's FOIA program and compliance with the FOIA.

*Confidential commercial information* means records provided to the Federal Government by a submitter that contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

*Days*, unless stated as “calendar days,” are working days and do not include Saturdays, Sundays, and Federal holidays. If the last day of any period prescribed herein falls on a Saturday, Sunday, or Federal holiday, the last day of the period will be the next working day that is not a Saturday, Sunday, or Federal holiday.

*Discretionary release* means disclosure of records or information that would otherwise be exempt from disclosure under the FOIA.

*Direct costs* means the expenses, including contract services and retrieving documents from the National Archives and Records Administration, incurred by FHFA, in searching for, reviewing and/or duplicating records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures FHFA actually incurs in reviewing records to respond to the request. Direct costs include the cost of the time of the

employee performing the work, the cost of any computer searches, and the cost of operating duplication equipment. Direct costs do not include overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

*Duplication* means reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

*Employee*, for the purposes of this regulation, means any person holding an appointment to a position of employment with FHFA, or any person who formerly held such an appointment; any conservator appointed by FHFA; or any agent or independent contractor acting on behalf of FHFA, even though the appointment or contract has terminated.

*Fee Waiver* means the waiver or reduction of fees if the requester can demonstrate that certain statutory standards are met.

*FHFA* means each separate component designated by the agency as a primary organizational unit that is responsible for processing FOIA requests, as specified in Appendices A and B to this part. FHFA has two components: Federal Housing Finance Agency Headquarters (FHFA-HQ) and FHFA Office of Inspector General (FHFA-OIG).

*FOIA Officer, FOIA Official and Chief FOIA Officer* are persons designated by FHFA to process and respond to requests for FHFA records under the FOIA.

*FOIA Public Liaison* is a person designated by FHFA who is responsible for assisting requesters with their requests.

*Proactive disclosure* means records that are required by the FOIA to be made publicly available, as well as additional records identified as being of interest to the public that are appropriate for public disclosure, and for posting and indexing such records.

*Readily reproducible* means that the requested record or records exist in electronic format and can be downloaded or transferred intact to a computer disk, tape, or another electronic medium with equipment and software currently in use by FHFA.

*Record* means information or documentary material FHFA maintains in any form or format, including electronic, which FHFA—

(1) Created or received under Federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence

of operations or activities of FHFA, or because of the value of the information it contains; and

(3) Controls at the time it receives a request under the FOIA.

*Regulated entities* means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Home Loan Banks.

*Requester* means any person seeking access to FHFA records under the FOIA. A requester falls into one of three categories for the purpose of determining what fees may be charged. The *three* categories are—

(1) *Commercial*—A request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. A decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information;

(2) *Noncommercial*—Three distinct subcategories—

(i) *Educational institution*—Any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall with this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request would qualify as part of this fee category;

(ii) *Noncommercial scientific institution*—An institution that is not operated on a “commercial” basis, as defined in this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A request in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use; or

(iii) *Representative of the news media*—Any person or entity that publishes or broadcasts news to the public, actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work,

and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public; and

(3) *Other*—All requesters who do not fall within either of the preceding two categories.

*Requester Service Centers* serve as the primary contacts for a requester when the requester has questions, is seeking information about how the FOIA works, or to check the status of their request.

*Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 1202.8(f) of this part.

*Search* means the process of looking for and retrieving records or information responsive to a request, whether manually or by electronic means. Search time includes a page-by-page or line-by-line identification of information within a record and the reasonable efforts expanded to locate and retrieve information from electronic records.

*Submitter* means any person or entity providing confidential information to the Federal Government. The term “submitter” includes, but is not limited to corporations, state governments, and foreign governments.

*Unusual circumstances* means the need to—

(1) Search for and collect records from agencies, offices, facilities, or locations that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records in order to process a single request; or

(3) Consult with another agency or among two or more components of the FHFA that have a substantial interest in the determination of a request.

### § 1202.3 What information can I obtain through the FOIA?

(a) *General*. You may request that FHFA disclose to you its records on a subject of interest to you. The FOIA only requires the disclosure of records. It does not require FHFA to create compilations of information or to

provide narrative responses to questions or queries.

(b) *Proactive disclosure.* FHFA will make available for public inspection and copying in its electronic reading room the following records:

(1) Final opinions or orders made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by FHFA that are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public and are not exempt from disclosure under the FOIA;

(4) Copies of all records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3), that because of the nature of their subject matter, FHFA determines have become or are likely to become the subject of subsequent requests for substantially the same records, or that have been requested 3 or more times; and

(5) A general index of the records referred to in paragraph (b)(4) of this section.

(c) *Reading rooms.* FHFA maintains an electronic reading room. FHFA will ensure that its reading room is reviewed and updated on an ongoing basis. See the Appendices to this part for location and contact information for FHFA–HQ and FHFA–OIG respective reading rooms.

#### § 1202.4 What information is exempt from disclosure?

(a) *General.* Unless the Director of FHFA or his or her designee, or any regulation or statute specifically authorizes disclosure, FHFA will not release records if it reasonably foresees that disclosure would harm an interest protected by one or more of the following—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and in fact is properly classified pursuant to such Executive Order;

(2) Related solely to FHFA's internal personnel rules and practices;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552a), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Contained in inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with FHFA; provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) Contained in personnel, medical or similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution or an entity that is regulated and examined by FHFA that furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Discretion to apply exemptions.* Although records or parts of records may be exempt from disclosure, FHFA may elect under the circumstances of any particular request not to apply an exemption. This election does not generally waive the exemption and it does not have precedential effect. FHFA may still apply an exemption to any other records or portions of records, regardless of when the request is received.

(c) *Redacted portion.* If a requested record contains exempt information and information that can be disclosed and the portions can reasonably be segregated from each other, the disclosable portion of the record will be released to the requester after FHFA deletes the exempt portions. If it is technically feasible, FHFA will indicate the amount of the information deleted at the place in the record where the deletion is made and include a notation identifying the exemption that was applied, unless including that indication would harm an interest protected by an exemption.

(d) *Exempt and redacted material.* FHFA is not required to provide an itemized index correlating each withheld document (or redacted portion) with a specific exemption justification.

(e) *Disclosure to Congress.* This section does not allow FHFA to withhold any information from, or to prohibit the disclosure of any information to, Congress or any Congressional committee or subcommittee.

#### § 1202.5 How do I request information from FHFA under the FOIA?

(a) *Where to send your request.* FHFA has a decentralized system for processing FOIA requests, made up of two components. To make a request for FHFA records, the FOIA request must be in writing. A requester must write directly to the FOIA office of the component that maintains the records being sought. The Appendices to this part contain the respective location and contact information for submitting a FOIA request for each FHFA component.

(b) *Provide your name and address.* Your request must include your full name, your address and, if different, the address at which the component is to notify you about your request, a telephone number at which you can be reached during normal business hours, and an electronic mail address, if any.

(c) *Request is under the FOIA.* Your request must have a statement identifying it as being made under the FOIA.

(d) *Your FOIA status.* Your request should include a statement specifically identifying your status as a “commercial use” requester, an “educational institution” requester, a “non-commercial scientific institution” requester, or a “representative of the news media” for the purposes of the fee provisions of the FOIA.

(e) *Describing the records you request.* You must describe the records that you seek in enough detail to enable FHFA to

search for and locate the records with a reasonable amount of effort. Your request must include as much specific information as possible that you know about each record in your request, such as the date, title, name, author, recipient, subject matter, file designations, or the description of the record.

(f) *How you want the records produced to you.* Your request must state in what form or format you want FHFA to furnish the releasable records, e.g., hardcopy, electronic, etc.

(g) *Agreement to pay fees.* In your FOIA request you must agree to pay all applicable fees charged under § 1202.11 of this part, up to \$100.00, unless you seek a fee waiver. When making a request, you may specify a higher or lower amount you will pay without consultation. Your inability to pay a fee does not justify granting a fee waiver. The fact that FHFA withholds all responsive documents or does not locate any documents responsive to your request, does not mean that you are not responsible for paying applicable fees. Your FOIA request will not be considered received by FHFA until your fee agreement, in writing, is received.

(h) *Valid requests.* FHFA will only process valid requests. A valid request must meet all the requirements of this part.

#### **§ 1202.6 What if my request does not have all the information FHFA requires?**

If FHFA determines that your request does not reasonably describe the records you seek, is overly broad, unduly burdensome to process, cannot yet be processed for reasons related to fees, or lacks required information, you will be informed in writing why your request cannot be processed. You will be given 15 calendar days to modify your request to meet all requirements. This request for additional information tolls the time period for FHFA to respond to your request under § 1202.7 of this part.

(a) If you respond with all the necessary information, FHFA will process this response as a new request and the time period for FHFA to respond to your request will start from the date the additional information is actually received by FHFA.

(b) If you do not respond or provide additional information within the time allowed, or if the additional information you provide is still incomplete or insufficient, FHFA will consider your request withdrawn and will notify you that it will not be processed.

#### **§ 1202.7 How will FHFA respond to my FOIA request?**

(a) *Authority to grant or deny requests.* The FOIA Officer, FOIA Official, and the Chief FOIA Officer are authorized to grant or deny any request for FHFA records.

(b) *Designated standard “cut-off” date for searches.* In determining which records are responsive to a request, FHFA will include only records in its possession as of the date the FOIA request is received.

(c) *Multi-Track request processing.* FHFA uses a multi-track system to process FOIA requests. This means that a FOIA request is processed based on its complexity. When FHFA receives your request, it is assigned to a Standard Track or Complex Track. FHFA will notify you if your request is assigned to the Complex Track as described in paragraph (g) of this section.

(1) *Standard Track.* FHFA assigns FOIA requests that are routine and require little or no search time, review, or analysis to the Standard Track. FHFA responds to these requests in the order in which they are received and normally responds within 20 days after receipt. If FHFA determines while processing your Standard Track request, that it is more appropriately a Complex Track request, it will be reassigned to the Complex Track and you will be notified as described in paragraph (g) of this section.

(2) *Complex Track.* (i) FHFA assigns requests that are non-routine to the Complex Track. Complex Track requests are those to which FHFA determines that the request and/or response may—

- (A) Be voluminous;
- (B) Involve two or more FHFA components or units;
- (C) Require consultation with other agencies or entities;
- (D) Require searches of archived documents;
- (E) Seek confidential commercial information as described in § 1202.8 of this part;
- (F) Require an unusually high level of effort to search for, review and/or duplicate records; or
- (G) Cause undue disruption to the day-to-day activities of FHFA in regulating and supervising the regulated entities or in carrying out its statutory responsibilities.

(ii) FHFA will respond to Complex Track requests as soon as reasonably possible, regardless of the date of receipt.

(d) *Referrals to other agencies.* If you submit a FOIA request that seeks records originating in another Federal Government agency, FHFA will refer your request or a portion of your

request, as applicable, to the other agency for response. FHFA will provide you notice of the referral, what portion of the request was referred, and the name of the other agency and relevant contact information.

(e) *Responses to FOIA requests.* FHFA will respond to your request by granting or denying it in full, or by granting and denying it in part. The response will be in writing. In determining which records are responsive to your request, FHFA will conduct a search for records in its possession as of the date of your request.

(1) *Requests that are granted.* If FHFA grants your request, the response will include the requested records or details about how FHFA will provide them to you and the amount of any fees charged.

(2) *Requests that are denied, or granted and denied in part.* If FHFA denies your request in whole or in part because a requested record does not exist or cannot be located, is not readily reproducible in the form or format you sought, is not subject to the FOIA, or is exempt from disclosure, the written response will include the requested releasable records, if any, the amount of any fees charged, the reasons for denial, and a notice and description of your right to file an administrative appeal under § 1202.9 of this part.

(f) *Format and delivery of disclosed records.* If FHFA grants, in whole or in part, your request for disclosure of records under the FOIA, the records may be made available to you in the form or format you requested, if they are readily reproducible in that form or format. The records will be sent to the address you provided by regular U.S. mail or by electronic mail unless alternate arrangements are made by mutual agreement, such as your agreement to pay express or expedited delivery service fees, or to pick up records at FHFA offices.

(g) *Extensions of time.* (1) In unusual circumstances, FHFA may extend the Standard Track time limit in paragraph (c)(1) of this section for no more than 10 days and notify you of—

- (i) The reason for the extension; and
- (ii) The date on which the determination is expected.

(2) For requests in the Complex Track, FHFA will make available its FOIA Public Liaison or other FOIA contact to assist you in modifying or reformulating your request so that it may be processed on the Standard Track. If the request cannot be modified or reformulated to permit processing on the Standard Track, FHFA will notify you regarding an alternative time period for processing the request.

(3) For the purpose of satisfying unusual circumstances under the FOIA, FHFA may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. FHFA will not aggregate multiple requests that involve unrelated matters.

**§ 1202.8 If the requested records contain confidential commercial information, what procedures will FHFA follow?**

(a) *General.* FHFA will not disclose confidential commercial information in response to your FOIA request except as described in this section.

(b) *Designation of confidential commercial information.* Submitters of commercial information must use good-faith efforts to designate, by appropriate markings or written request, either at the time of submission or at a reasonable time thereafter, those portions of the information they deem to be protected under 5 U.S.C. 552(b)(4) and § 1202.4(a)(4) of this part. Any such designation will expire 10 years after the records are submitted to the Federal Government, unless the submitter requests, and provides reasonable justification for a designation period of longer duration.

(c) *Pre-Disclosure Notification.* Except as provided in paragraph (e) of this section, if your FOIA request encompasses confidential commercial information, FHFA will, prior to disclosure of the information and to the extent permitted by law, provide prompt written notice to a submitter that confidential commercial information was requested when—

(1) The submitter has in good faith designated the information as confidential commercial information protected from disclosure under 5 U.S.C. 552(b)(4) and § 1202.4(a)(4) of this part; or

(2) FHFA has reason to believe that the request seeks confidential commercial information, the disclosure of which may result in substantial competitive harm to the submitter.

(d) *Content of Pre-Disclosure Notification.* When FHFA sends a Pre-Disclosure Notification to a submitter, it will contain—

(1) A description of the confidential commercial information requested or copies of the records or portions thereof containing the confidential business information; and

(2) An opportunity to object to disclosure within 10 days or such other time period that FHFA may allow by providing to FHFA a detailed written

statement demonstrating all reasons the submitter opposes disclosure.

(e) *Exceptions to Pre-Disclosure Notification.* FHFA is not required to send a Pre-Disclosure Notification if—

(1) FHFA determines that information should not be disclosed;

(2) The information has been published lawfully or has been made officially available to the public;

(3) Disclosure of the information is required by law, other than the FOIA;

(4) The information requested is not designated by the submitter as confidential commercial information pursuant to this section; or

(5) The submitter's designation, under paragraph (b) of this section, appears on its face to be frivolous; except that FHFA will provide the submitter with written notice of any final decision to disclose the designated confidential commercial information within a reasonable number of days prior to a specified disclosure date.

(f) *Submitter's objection to disclosure.*

A submitter may object to disclosure within 10 days after the date of the Pre-Disclosure Notification, or such other time period that FHFA may allow, by delivering to FHFA a written statement demonstrating all grounds on which it opposes disclosure, and all reasons supporting its contention that the information should not be disclosed. The submitter's objection must contain a certification by the submitter, or an officer or authorized representative of the submitter, that the grounds and reasons presented are true and correct to the best of the submitter's knowledge. The submitter's objection may itself be subject to disclosure under the FOIA.

(g) *Notice of Intent to disclose information.* FHFA will carefully consider all grounds and reasons provided by a submitter objecting to disclosure. If FHFA decides to disclose the information over the submitter's objection, the submitter will be provided with a written Notice of Intent to disclose at least 10 days before the date of disclosure. The written Notice of Intent will contain—

(1) A statement of the reasons why the information will be disclosed;

(2) A description of the information to be disclosed; and

(3) A specific disclosure date.

(h) *Notice to requester.* FHFA will give a requester whose request encompasses confidential commercial information—

(1) A written notice that the request encompasses confidential commercial information that may be exempt from disclosure under 5 U.S.C. 552(b)(4) and § 1202.4(a)(4) of this part and that the submitter of the information has been

given a Pre-Disclosure Notification with the opportunity to comment on the proposed disclosure of the information; and

(2) A written notice that a Notice of Intent to disclose has been provided to the submitter, and that the submitter has 10 days, or such other time period that FHFA may allow, to respond.

(i) *Notice of FOIA lawsuit.* FHFA will promptly notify the submitter whenever a requester files suit seeking to compel disclosure of the submitter's confidential commercial information. FHFA will promptly notify the requester whenever a submitter files suit seeking to prevent disclosure of information.

**§ 1202.9 How do I appeal a response denying my FOIA request?**

(a) *Right of appeal.* If FHFA denied your request in whole or in part, you may appeal the denial by writing directly to the appropriate FHFA component specified in the Appendices to this part.

(b) *Timing, form, content, and receipt of an appeal.* Your written appeal must be postmarked or submitted within 90 calendar days of the date of the decision by FHFA denying, in whole or in part, your request. Your appeal must include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments you believe support disclosure of the requested record(s). FHFA will not consider an improperly addressed appeal to have been received for the purposes of the 20-day time period of paragraph (d) of this section until it is actually received by the correct FHFA component.

(c) *Extensions of time to appeal.* If you need more time to file your appeal, you may request, in writing, an extension of time of no more than 10 calendar days in which to file your appeal, but only if your request is made within the original 90-calendar day time period for filing the appeal. Granting such an extension is in the sole discretion of the designated component Appeals Officer.

(d) *Final action on appeal.* FHFA's determination on your appeal will be in writing, signed by the designated component Appeals Officer, and sent to you within 20 days after the appeal is received, or by the last day of the last extension under paragraph (e) of this section. The determination of an appeal is the final action of FHFA on a FOIA request. A determination may—

(1) Affirm, in whole or in part, the initial denial of the request and may include a brief statement of the reason



or reasons for the decision, including each FOIA exemption relied upon;

(2) Reverse, in whole or in part, the denial of a request in whole or in part, and require the request to be processed promptly in accordance with the decision; or

(3) Remand a request to FHFA, as appropriate, for re-processing.

(e) *Notice of delayed determinations on appeal.* If FHFA cannot send a final determination on your appeal within the 20-day time limit, the designated component Appeals Officer will continue to process the appeal and upon expiration of the time limit, will inform you of the reason(s) for the delay and the date on which a determination may be expected. In this notice of delay, the appropriate FHFA component Appeals Officer may request that you forebear seeking judicial review until a final determination is made.

(f) *Judicial review.* If the denial of your request for records is upheld in whole or in part, or if a determination on your appeal has not been sent at the end of the 20-day period in paragraph (d) of this section, or the last extension thereof, you may seek judicial review under 5 U.S.C. 552(a)(4). Before seeking review by a court of FHFA's adverse determination, a requester generally must first submit a timely administrative appeal.

(g) *Additional resource.* To aid the requester, the FOIA Public Liaison is available and will assist in the resolution of any disputes. Also, the National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) offers non-compulsory, non-binding mediation services to resolve FOIA disputes. If you need information regarding the OGIS and/or the services it offers, please contact OGIS directly at Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: [ogis@nara.gov](mailto:ogis@nara.gov); phone: (202) 741-5770; toll-free: 1-(877) 684-6448; or facsimile at (202) 741-5769. This information is provided as a public service only. By providing this information, FHFA does not commit to refer disputes to OGIS, or to defer to OGIS' mediation decisions in particular cases.

#### **§ 1202.10 Will FHFA expedite my request or appeal?**

(a) *Request for expedited processing.* You may request, in writing, expedited processing of an initial request or of an appeal. FHFA may grant expedited processing, and give your request or appeal priority if your request for

expedited processing demonstrates a compelling need by establishing one or more of the following—

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if you are a person primarily engaged in disseminating information;

(3) The loss of substantial due process or rights;

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the Federal Government's integrity, affecting public confidence; or

(5) Humanitarian need.

(b) *Certification of compelling need.* Your request for expedited processing must include a statement certifying that the reason(s) you present demonstrate a compelling need are true and correct to the best of your knowledge.

(c) *Determination on request.* FHFA will notify you within 10 days of receipt of your request whether expedited processing has been granted. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision under § 1202.9 of this part will be acted on expeditiously.

#### **§ 1202.11 What will it cost to get the records I requested?**

(a) *Assessment of fees, generally.* FHFA will assess you for fees covering the direct costs of responding to your request and costs for duplicating records, except as otherwise provided in a statute with respect to the determination of fees that may be assessed for disclosure, search time, or review of particular records.

(b) *Assessment of fees, categories of requesters.* The fees that FHFA may assess vary depending on the type of request or the type of requester you are—

(1) *Commercial use.* If you request records for a commercial use, the fees that FHFA may assess are limited to FHFA's operating costs incurred for document search, review, and duplication.

(2) *Educational institution, noncommercial scientific institution, or representative of the news media.* If you are not requesting records for commercial use and you are an educational institution or a noncommercial scientific institution, whose purpose is scholarly or scientific

research, or a representative of the news media, the fees that may be assessed are limited to standard reasonable charges for duplication in excess of 100 pages or an electronic equivalent of 100 pages.

(3) *Other.* If neither paragraph (b)(1) nor paragraph (b)(2) of this section applies, the fees assessed are limited to the costs for document searching in excess of two hours and duplication in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) *Fee schedule.* FHFA will charge fees for processing requests under the FOIA in accordance with the provisions of this section and OMB guidelines (basic pay plus 16 percent). There are three different groups of grades typically involved in processing FOIA requests: Personnel in grades EL-6 to EL-9; personnel in grades EL-10 to EL-13; and personnel EL-14 and above. FHFA's Web site, [www.fhfa.gov](http://www.fhfa.gov), will contain current rates for search and review fees for each group. The rates will be updated as salaries change and will be determined by using the formula in this regulation. The formula is the sum of the mid-point of each grade divided by the number of grades in each category divided by 2088 and then multiplied by 1.16.<sup>1</sup> Fees for searches of computerized records are based on the actual cost to FHFA. For requests that require the retrieval of records stored by FHFA at a Federal records center operated by the National Archives and Records Administration, FHFA will charge additional costs in accordance with the Transaction Billing Rate Schedule established by NARA.

(d) *Notice of anticipated fees in excess of \$100.00.* When FHFA determines or estimates that the fees chargeable to you will exceed \$100.00, you will be notified of the actual or estimated amount of fees you will incur, unless you earlier indicated your willingness to pay fees as high as those anticipated. When you are notified that the actual or estimated fees exceed \$100.00, your request will be tolled until you agree to pay, in writing, the anticipated total fee.

(e) *Advance payment of fees.* FHFA may request that you pay estimated fees or a deposit in advance of responding to your request. If FHFA requests advance payment or a deposit, your request will not be considered received by FHFA until the advance payment or deposit is received. FHFA will request advance payment or a deposit if—

(1) The fees are likely to exceed \$500.00. FHFA will notify you of the

<sup>1</sup> Example of the rate formula is as follows: For 2016, EL-6 to EL-9 is [(\$55,769 + \$63,554 + \$71,816 + \$81,152)/4][1/2088 hours per year][1.16 OMB markup factor] = \$37.82 per hour.

likely cost and obtain from you satisfactory assurance of full payment if you have a history of prompt payment of FOIA fees to FHFA;

(2) You do not have a history of payment, or if the estimate of fees exceeds \$1,000.00, FHFA may require an advance payment of fees in an amount up to the full estimated charge that will be incurred;

(3) You previously failed to pay a fee to FHFA in a timely fashion, *i.e.*, within 30 calendar days of the date of a billing, FHFA may require you to make advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request; or

(4) You have an outstanding balance due from a prior request. FHFA may require you to pay the full amount owed plus any applicable interest, as provided in paragraph (f) of this section, or demonstrate that the fee owed has been paid, as well as payment of the full amount of anticipated fees before processing your request.

(f) *Interest.* FHFA may charge you interest on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent. Once a fee payment has been received by FHFA, even if not processed, FHFA will stay the accrual of interest. Interest charges will be assessed at the rate prescribed by 31 U.S.C. 3717 and will accrue from the date of the billing.

(g) *FHFA assistance to reduce costs.* If FHFA notifies you of estimated fees exceeding \$100.00 or requests advance payment or a deposit, you will have an opportunity to consult with FHFA FOIA staff to modify or reformulate your request to meet your needs at a lower cost.

(h) *Fee waiver requests.* You may request a fee waiver in accordance with the FOIA and this regulation. Requests for a waiver of fees should be made at the time you submit your FOIA request. FHFA may grant your fee waiver request if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester. In submitting a fee waiver request, you must address the following six factors—

(1) Whether the subject of the requested records concerns the operations or activities of the Federal Government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) Whether disclosure of the requested information will contribute to public understanding;

(4) Whether the disclosure is likely to contribute significantly to public understanding of Federal Government operations or activities;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(i) *Fee Waiver determination.* FHFA will notify you within 20 days of receipt of your request whether the fee waiver has been granted. A request for fee waiver that is denied may only be appealed when a final decision has been made on the initial FOIA request.

(j) *Restrictions on charging fees.* If FHFA fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, FHFA may not charge search fees, or in the instance of requests from requesters described in paragraph (b)(2) of this section, may not charge duplication fees. *See* 5 U.S.C. 552(a)(4)(A)(viii).

(k) The FOIA Public Liaison or other FOIA contact is available to assist any requester in modifying or reformulating a request to meet the requester's needs at a lower cost.

#### **§ 1202.12 Is there anything else I need to know about FOIA procedures?**

This FOIA regulation does not and shall not be construed to create any right or to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA. This regulation only provides procedures for requesting records under the FOIA.

#### **Appendix A to Part 1202—FHFA Headquarters**

1. This Appendix applies to the Federal Housing Finance Agency's Headquarters Office.

2. *Reading room.* FHFA Headquarters maintains an electronic reading room. The electronic reading room is located at <http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/Reading-Room.aspx>.

3. *Where to send your request.* You may make a request for FHFA Headquarters records by writing directly to the FOIA Office through electronic mail, U.S. mail, delivery service, or facsimile. The electronic mail address is: [foia@fhfa.gov](mailto:foia@fhfa.gov). For U.S. mail or

delivery service, the mailing address is: FOIA Officer, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. The facsimile number is: (202) 649-1073. When submitting your request, please mark electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with "FOIA Request." FHFA's "Freedom of Information Act Reference Guide," which is available on FHFA's Web site, provides additional information to assist you in making your request, <http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/FOIA-Reference-Guide.aspx>.

4. *Right of appeal.* If FHFA Headquarters denied your request in whole or in part, you may appeal the denial by writing directly to the FOIA Appeals Officer through electronic mail, U.S. mail, delivery service, or facsimile. The electronic mail address is: [foia@fhfa.gov](mailto:foia@fhfa.gov). For U.S. mail or delivery service, the mailing address is: FOIA Appeals Officer, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. The facsimile number is: (202) 649-1073. When submitting your appeal, please mark electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with "FOIA Appeal." FHFA's "Freedom of Information Act Reference Guide," which is available on FHFA's Web site, provides additional information to assist you in making your appeal, <http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/FOIA-Reference-Guide.aspx>.

#### **Appendix B to Part 1202—FHFA Office of Inspector General**

This Appendix applies to the Federal Housing Finance Agency's Office of Inspector General (FHFA-OIG).

1. *Contact information for FOIA Officer.* You may contact the FOIA Officer at (202) 730-0399 or by email at [FOIA@fhfaig.gov](mailto:FOIA@fhfaig.gov). Hearing impaired users may utilize the Federal Relay Service (external link) by dialing 1(800) 877-8339. A Communications Assistant will dial the requested number and relay the conversation between a standard (voice) telephone user and text telephone (TTY).

2. *Information about the FHFA-OIG FOIA process.* You may find information about the FHFA-OIG FOIA process at <https://www.fhfaig.gov/FOIA>.

3. *Reading room.* FHFA-OIG maintains an electronic reading room. The electronic reading room is located at <https://www.fhfaig.gov/FOIA/ReadingRoom>.

4. *Where to send your request.* You may make a request for FHFA-OIG records by writing directly to the FOIA Office through electronic mail, U.S. mail, delivery service, or facsimile. The electronic mail address is: [FOIA@fhfaig.gov](mailto:FOIA@fhfaig.gov). For U.S. mail or delivery service, the mailing address is: Federal Housing Finance Agency Office of Inspector General, 400 Seventh Street SW., Third Floor, Washington, DC 20219, ATTN: Office of Inspector General—FOIA Officer. The facsimile number is: (202) 318-8602. When submitting your request, please mark electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with "FOIA Request."

5. *Right of appeal.* If FHFA–OIG denies your request in whole or in part, you may appeal the denial by writing directly to the FOIA Officer through electronic mail, U.S. mail, delivery service, or facsimile. The electronic mail address is: [FOIA@fhfaig.gov](mailto:FOIA@fhfaig.gov). For U.S. mail or delivery service, the mailing address is: Federal Housing Finance Agency, Office of Inspector General, 400 Seventh Street SW., Third Floor, Washington, DC 20219, ATTN: Office of Inspector General—FOIA Officer. The facsimile number is: (202) 318–8602. When submitting your appeal, please mark electronic mail, letters, or facsimiles and the subject line, envelope, or facsimile cover sheet with “FOIA Appeal.”

Dated: March 7, 2017.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2017–04910 Filed 3–14–17; 8:45 am]

**BILLING CODE 8070–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 21

[Docket No. FAA–2016–9452]

#### Airworthiness Criteria: Glider Design Criteria for Stemme AG Model Stemme S12 Powered Glider

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Airworthiness design criteria.

**SUMMARY:** These airworthiness criteria are issued for the Stemme AG model Stemme S12 powered glider. The Administrator finds the design criteria, which make up the certification basis for the Stemme S12, acceptable.

**DATES:** These airworthiness design criteria are effective April 14, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Rutherford, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106, telephone (816) 329–4165, facsimile (816) 329–4090.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 08, 2016, Stemme AG submitted an application for type validation of the Stemme S12 in accordance with the Technical Implementation Procedures for Airworthiness and Environmental Certification Between the FAA and the European Aviation Safety Agency (EASA), Revision 5, dated September 15, 2015. The Stemme S12 is a two-seat, self-launching, powered glider with a liquid cooled, turbocharged engine mounted in the center fuselage, an

indirect drive shaft, and a fully-foldable, variable-pitch composite propeller in the nose. It is constructed from glass and carbon fiber reinforced composites, features a conventional T-type tailplane, and has a retractable main landing gear. The glider has a maximum weight of 1,984 pounds (900 kilograms) and may be equipped with an optional dual-axis autopilot system. EASA type certificated the Stemme S12 under Type Certificate Number (No.) EASA.A.054 on March 11, 2016. The associated EASA Type Certificate Data Sheet (TCDS) No. EASA.A.054 defined the certification basis Stemme AG submitted to the FAA for review and acceptance.

The applicable requirements for glider certification in the United States can be found in FAA Advisory Circular (AC) 21.17–2A, “Type Certification—Fixed-Wing Gliders (Sailplanes), Including Powered Gliders,” dated February 10, 1993. AC 21.17–2A has been the basis for certification of gliders and powered gliders in the United States for many years. AC 21.17–2A states that applicants may utilize the Joint Aviation Requirements (JAR)–22, “Sailplanes and Powered Sailplanes”, or another accepted airworthiness criteria, or a combination of both, as the accepted means for showing compliance for glider type certification.

##### Type Certification Basis

The applicant Certification Basis is based on EASA Certification Specification (CS)–22, “Sailplanes and Powered Sailplanes”, initial issue, dated November 14, 2003. In addition to CS–22 requirements, the applicant will comply with other requirements from the certification basis referenced in EASA TCDS No. EASA.A.054, including special conditions and equivalent safety findings.

##### Discussion of Comments

Notice of proposed airworthiness design criteria for the Stemme AG Stemme S12 powered glider was published in the **Federal Register** on November 30, 2016 (81 FR 86296). No comments were received, therefore these airworthiness design criteria are adopted as proposed.

##### The Airworthiness Design Criteria

Accordingly, pursuant to the authority delegated to me by the Administrator, the following airworthiness design criteria under the special class provision of 14 CFR 21.17(b) as part of the type certification basis for the Stemme AG Stemme S12 power glider:

1. 14 CFR part 21, effective February 1, 1965, including amendments 21–1 through 21–93 as applicable.
2. EASA CS–22, initial issue, dated November 14, 2003.
3. EASA Special Condition No. SC–A.22.1.01, “Increase in maximum mass for sailplanes and powered sailplanes.”
4. “Preliminary Standard for the Substantiation of Indirect Drive Shafts in Power Plants of Powered Sailplanes Certified to JAR–22” (with a modification for the Stemme AG model Stemme S 10), Luftfahrt-Bundesamt (LBA) document number (no.) I231–87, issued August 05, 1988.
5. Installation of a Dual-Axis Autopilot System, including—
  - EASA CS–VLA (Very Light Aeroplanes) 1309, “Equipment, systems, and installations”; initial issue, dated November 14, 2003; and
  - EASA CS–23.1329, “Automatic pilot system”, amendment 3, dated July 20, 2012.
6. Drop Testing for Retractable Landing Gear (EASA equivalent safety findings) to include CS–VLA 725, “Limit drop tests”; CS–VLA 726, “Ground load dynamic tests”; and CS–VLA 727, “Reserve energy absorption”; initial issue dated November 14, 2003.

7. “Standards for Structural Substantiation of Sailplane and Powered Sailplane Parts Consisting of Glass or Carbon Fiber Reinforced Plastics”, LBA document no. I4–FVK/91, issued July 1991.

8. “Guideline for the analysis of the electrical system for powered sailplanes”, LBA document no. I334–MS 92, issued September 15, 1992.

9. The following kinds of operation are allowed: VFR-Day.

10. Date of application for FAA Type Certificate: January 08, 2016.

Issued in Kansas City, Missouri on January 23, 2017.

**Mel Johnson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2017–05000 Filed 3–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2017-0115; Directorate Identifier 2017-NE-04-AD; Amendment 39-18824; AD 2017-04-51]

RIN 2120-AA64

**Airworthiness Directives; Safran Helicopter Engines, S.A., Turboshaft Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A., Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. Emergency AD 2017-04-51 was sent previously to all known U.S. owners and operators of these engines. This AD requires inspecting, wrapping, and replacing the affected drain valve assembly (DV) installed on these Arriel 1 engines. This AD was prompted by reports of fuel leaks originating from the DV on certain Arriel engines. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective March 30, 2017 to all persons except those persons to whom it was made immediately effective by Emergency AD 2017-04-51, issued on February 8, 2017, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of a certain publication identified in this AD as of March 30, 2017.

We must receive comments on this AD by May 1, 2017.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

- *Fax:* 202-493-2251.

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

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0115; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7754; fax: 781-238-7199; email: [robert.green@faa.gov](mailto:robert.green@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On February 8, 2017, we issued Emergency AD 2017-04-51, which requires inspecting, wrapping, and replacing the DV. This emergency AD was sent previously to all known U.S. owners and operators of these Safran Helicopter Engines, S.A., Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. This action was prompted by reports of fuel leaks originating from the DV on certain Arriel engines. This condition, if not corrected, could result in engine compartment fire, in-flight shutdown, and damage to the helicopter.

**Relevant Service Information Under 14 CFR Part 51**

We reviewed Safran Helicopter Engines Alert Mandatory Service Bulletin A292 73 0851, Version A, dated January 31, 2017. The MSB describes procedures for inspecting, wrapping, and replacing the DV. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**AD Requirements**

This AD requires inspecting, wrapping, and replacing the DV.

**FAA's Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance requirements are within 10 flight hours or 7 days. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA-2017-0115 and Directorate Identifier 2017-NE-04-AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

**Costs of Compliance**

We estimate that this AD affects 70 engines installed on helicopters of U.S. registry.

We estimate the following costs to comply with this AD:

## ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting, wrapping, and replacing the DV ...	4.5 work-hours × \$85 per hour = \$382.50 .....	\$7,805	\$8,187.50	\$573,125

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2017-04-51 Safran Helicopter Engines, S.A.:** Amendment 39-18824; Docket No. FAA-2017-0115; Directorate Identifier 2017-NE-04-AD.

**(a) Effective Date**

This AD is effective March 30, 2017 to all persons except those persons to whom it was made immediately effective by Emergency AD 2017-04-51, issued on February 8, 2017, which contained the requirements of this amendment.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Safran Helicopter Engines, S.A., Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines equipped with a drain valve assembly (DV) with a part number and a serial number listed in Appendix 5.1 in Safran Helicopter Engines Alert Mandatory Service Bulletin (MSB) A292 73 0851, Version A, dated January 31, 2017.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7321, Fuel Control/Turbine Engines.

**(e) Unsafe Condition**

This AD was prompted by reports of fuel leaks originating from the DV on certain Arriel engines. We are issuing this AD to prevent an engine compartment fire, in-flight shutdown, and damage to the helicopter.

**(f) Compliance**

- (1) Comply with this AD within the compliance times specified, unless already done.
- (2) Within 10 flight hours or 7 days, whichever occurs first, after the effective date of this AD:
  - (i) Replace the affected DV with a DV eligible for installation. Use the Accomplishment Instructions, Paragraph 2, of Safran Helicopter Engines Alert MSB A292 73 0851, Version A, dated January 31, 2017, to do the replacement; or
  - (ii) Visually inspect the affected DV for fuel leakage.
- (A) If a fuel leak is detected, replace the affected DV with a DV eligible for installation, before the next flight.

(B) If no fuel leak is detected, before next flight, wrap the affected DV with a self-amalgamate tape using the Accomplishment Instructions, paragraph 2, of Safran Helicopter Engines Alert MSB A292 73 0851, Version A, dated January 31, 2017.

(C) After wrapping an affected DV, as specified in paragraph (f)(2)(ii)(B) of this AD, inspect the DV for fuel leakage before each first flight of the day. If a fuel leak is detected, replace the affected DV with a DV eligible for installation, before the next flight.

(D) After wrapping an affected DV, as specified in paragraph (f)(2)(ii)(B) of this AD, inspect the DV wrapping before each first flight of the day. If the wrapping is found defective (loose, missing, or damaged), before the next flight, remove the wrap and re-wrap the affected DV using the Accomplishment Instructions, paragraph 2, of Safran Helicopter Engines Alert MSB A292 73 0851, Version A, dated January 31, 2017.

(E) For an engine on which the affected DV was wrapped, within 180 days after the first wrapping of the affected DV as specified in paragraph (f)(2)(ii)(B) of this AD, replace the affected DV with a DV eligible for installation.

**(g) Definitions**

For the purpose of this AD, a DV eligible for installation is:

- (1) a DV that is not affected by this AD; or
- (2) a DV in which the diaphragm has been replaced in accordance with the instructions in paragraph 4 of Safran Helicopter Engines Alert MSB A292 73 0851, Version A, dated January 31, 2017.

**(h) Terminating Action**

Replacement of an affected DV installed on an engine, with a DV eligible for installation constitutes terminating action for the repetitive inspections required by paragraph (f)(2)(ii) of this AD.

**(i) Alternative Methods of Compliance (AMOCs)**

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: [ANE-AD-AMOC@faa.gov](mailto:ANE-AD-AMOC@faa.gov).

**(j) Related Information**

(1) For further information about this AD, contact: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7754; fax: 781-238-7199; email: [robert.green@faa.gov](mailto:robert.green@faa.gov).

(2) Refer to MCAI European Aviation Safety Agency Emergency AD No. 2017-0019-E, dated February 3, 2017, for more information.

**(k) Material Incorporated by Reference**

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

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

(i) Safran Helicopter Engines Alert Mandatory Service Bulletin A292 73 0851, Version A, dated January 31, 2017.

(ii) Reserved.

(3) For Safran Helicopter Engines service information identified in this AD, contact Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

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

Issued in Burlington, Massachusetts, on March 8, 2017.

**Carlos A. Pestana,**

*Acting Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2017-05236 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-13-P**

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**PENSION BENEFIT GUARANTY CORPORATION**
**29 CFR Parts 4022 and 4044**
**Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in April 2017 and interest assumptions under the asset allocation regulation for valuation dates in the second quarter of 2017. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

**DATES:** Effective April 1, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Deborah C. Murphy ([Murphy.Deborah@PBGC.gov](mailto:Murphy.Deborah@PBGC.gov)), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202-326-4400 ext. 3451. (TTY/TDD users may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 202-326-4400 ext. 3451.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC's Web site (<http://www.pbgc.gov>).

The interest assumptions in Appendix B to part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in Appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for April 2017 and updates the asset allocation interest assumptions for the second quarter (April through June) of 2017.

The second quarter 2017 interest assumptions under the allocation regulation will be 2.15 percent for the first 20 years following the valuation date and 2.60 percent thereafter. In comparison with the interest assumptions in effect for the first quarter of 2017, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.28 percent in the select rate, and an increase of 0.23 percent in the ultimate rate (the final rate).

The April 2017 interest assumptions under the benefit payments regulation

will be 1.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for March 2017, these interest assumptions represent a decrease of 0.25 percent in the immediate rate and no changes in i1, i2, or i3.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during April 2017, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**
**29 CFR Part 4022**

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

**29 CFR Part 4044**

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 282, as set forth below, is added to the table.

**Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
* 282	* 4-1-17	* 5-1-17	* 1.00	* 4.00	* 4.00	* 4.00	* 7	* 8

■ 3. In appendix C to part 4022, Rate Set 282, as set forth below, is added to the table.

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
* 282	* 4-1-17	* 5-1-17	* 1.00	* 4.00	* 4.00	* 4.00	* 7	* 8

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for April–June 2017, as set forth below, is added to the table.

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

\* \* \* \* \*

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
* April–June 2017 .....	* 0.0215	* 1–20	* 0.0260	* >20	* N/A	* N/A

**Deborah Chase Murphy,**  
Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.  
[FR Doc. 2017-04945 Filed 3-14-17; 8:45 am]  
BILLING CODE 7709-02-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2017-0085]

**Drawbridge Operation Regulation; Mianus River, Greenwich, CT**

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Metro-North Bridge across the Mianus River, mile 1.0 at Greenwich, Connecticut. This deviation is necessary in order to

complete required maintenance including installation of new timber ties, miter rails, and steel repairs.

DATES: This deviation is effective from 12:01 a.m. on March 27, 2017 through 12:01 a.m. on May 9, 2017.

ADDRESSES: The docket for this deviation, USCG-2017-0085 is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email James Moore, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 212-514-4334, email [james.m.moore2@uscg.mil](mailto:james.m.moore2@uscg.mil).

SUPPLEMENTARY INFORMATION: The owner of the bridge, the Connecticut Department of Transportation, requested a temporary deviation in order to facilitate maintenance of the bridge including installation of timber ties, miter rail replacement, and steel repairs.

The Metro-North Bridge across the Mianus River, mile 1.0 at Greenwich, Connecticut is a single-leaf bascule railroad bridge offering mariners a vertical clearance of 20 feet at mean high water and 27 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.209.

The temporary deviation will allow the owner of the Metro-North Bridge to close the span for openings each week beginning 8 a.m. Monday through 4 p.m. Friday from March 27, 2017 to May 8, 2017. The span will open on signal from 4 p.m. Friday through 8 a.m. Monday, provided 24 hours advance notice is given. The regular operating schedule for the span will be restored April 8, 2017 through April 11, 2017 in order to accommodate a previously scheduled boating event.

Vessels able to pass through the bridge in the closed position may do at anytime. The bridge will be able to open for emergencies. There is no alternate route for vessels to pass.

The Coast Guard will also inform the users of the waterways through our

Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 7, 2017.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist,  
First Coast Guard District.*

[FR Doc. 2017-05069 Filed 3-14-17; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2017-0112]

#### Drawbridge Operation Regulation; Elizabeth River, Norfolk, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Berkley (U.S. 460/S.R. 337) Bridge across the Elizabeth River, mile 0.4, at Norfolk, VA. This deviation is necessary to facilitate testing of the emergency drive motors. This deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** The deviation is effective from 2 a.m. to 9 a.m. on April 9, 2017.

**ADDRESSES:** The docket for this deviation, [USCG-2017-0112] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Martin Bridges, Bridge Administration Branch Fifth District, Coast Guard, telephone 757-398-6422, email [Martin.A.Bridges@uscg.mil](mailto:Martin.A.Bridges@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Virginia Department of Transportation, who owns and operates the Berkley (U.S. 460/S.R. 337) Bridge across the Elizabeth River, mile 0.4, at Norfolk, VA, has requested a temporary

deviation from the current operating regulation set out in 33 CFR 117.1007(b), to facilitate testing of the emergency drive motor on both spans of the bridge.

Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 2 a.m. to 9 a.m. on April 9, 2017. The drawbridge has two spans, each with double-leaf bascule draws, and both spans have a vertical clearance in the closed-to-navigation position of 48 feet above mean high water.

The Berkley Bridge is used by recreational vessels, tug and barge traffic, fishing vessels, and small commercial vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridges in the closed position may do so at anytime. The bridge spans will not be able to open in case of an emergency and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 8, 2017.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2017-04970 Filed 3-14-17; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2017-0164]

#### Drawbridge Operation Regulation; Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Broadway Bridge across the Willamette River, mile

11.7, at Portland, OR. The deviation is necessary to accommodate maintenance and equipment upgrades. This deviation allows the bridge to operate the double bascule span one side at a time, single leaf, to install and test new equipment.

**DATES:** This deviation is effective from 7 p.m. on May 26, 2017 to 6 a.m. on September 20, 2017.

**ADDRESSES:** The docket for this deviation, USCG-2017-0164, is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206-220-7282, email [Steven.M.Fischer@uscg.mil](mailto:Steven.M.Fischer@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

Multnomah County requested the Broadway Bridge be authorized to open half the span in single leaf mode. The Broadway Bridge crosses the Willamette River at mile 11.7, and provides 90 feet of vertical clearance above Columbia River Datum 0.0 while in the closed-to-navigation position, and provides 125 feet of horizontal clearance with half the span open. This bridge operates in accordance with 33 CFR 117.897. This deviation allows the double bascule span of the Broadway Bridge across the Willamette River, mile 11.7, to operate the bridge in single leaf mode to marine traffic. This deviation allows the bridge to operate the double bascule span one side at a time, single leaf, to install and test new equipment. The deviation period to open the east span only will cover the following dates: From 7 p.m. on May 26, 2017 to 7 a.m. on May 27, 2017; from 7 p.m. on May 27, 2017 to 7 a.m. on May 28, 2017; from 7 p.m. on June 2, 2017 to 7 a.m. on June 3, 2017; from 7 p.m. on June 3, 2017 to 7 a.m. on June 4, 2017; from 6 a.m. on June 15, 2017 to 6 a.m. on July 20, 2017. The deviation period to open the west span only will cover the following dates: From 7 p.m. on July 28, 2017 to 7 a.m. on July 29, 2017; from 7 p.m. on July 29, 2017 to 7 a.m. on July 30, 2017; from 7 p.m. on August 4, 2017 to 7 a.m. on August 5, 2017; from 7 p.m. on August 5, 2017 to 7 a.m. on August 6, 2017; from 6 a.m. on August 16, 2017 to 6 a.m. on September 20, 2017. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. We have coordinated



with the majority of known waterway users and there were no objections to this schedule.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 9, 2017.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2017-05075 Filed 3-14-17; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2017-0156]

#### Drawbridge Operation Regulation; Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Broadway Bridge across the Willamette River, mile 11.7, at Portland, OR. The deviation is necessary to accommodate the Portland Race for the Roses event. This deviation allows the bridge to remain in the closed-to-navigation position to facilitate the safe movement of event participants across the bridge.

**DATES:** This deviation is effective from 7 a.m. to 12 noon on April 2, 2017.

**ADDRESSES:** The docket for this deviation, USCG-2017-0156, is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven

Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206-220-7282, email [Steven.M.Fischer@uscg.mil](mailto:Steven.M.Fischer@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

Multnomah County requested for the Broadway Bridge to remain closed to vessel traffic to facilitate the safe, uninterrupted roadway passage of participants in the Portland Race for the Roses event. The Broadway Bridge crosses the Willamette River at mile 11.7, and provides 90 feet of vertical clearance above Columbia River Datum 0.0 while in the closed-to-navigation position. This bridge operates in accordance with 33 CFR 117.897. This deviation allows the bascule span of the Broadway Bridge across the Willamette River, mile 11.7, to remain in the closed-to-navigation position, and need not open for maritime traffic from 7 a.m. to 12 noon, on April 2, 2017. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. We have coordinated with the majority of known waterway users and there were no objections to this schedule.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 9, 2017.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2017-05076 Filed 3-14-17; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2017-0148]

#### Drawbridge Operation Regulation; Narrow Bay, Smith Point County Park, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Smith Point Bridge across Narrow Bay, mile 6.1, at Smith Point Park, New York. This deviation is necessary in order to facilitate the Smith Point Triathlon Road Race and allows the bridge to remain in the closed position for two hours.

**DATES:** This deviation is effective from 7 a.m. through 9 a.m. on August 13, 2017.

**ADDRESSES:** The docket for this deviation, USCG-2017-0148 is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email James M. Moore, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 212-514-4334, email [james.m.moore2@uscg.mil](mailto:james.m.moore2@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Smith Point Bridge, mile 6.1, across Narrow Bay, has a vertical clearance of 18 feet at mean high water and 19 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.799(d).

The temporary deviation will allow the Smith Point Bridge to remain closed from 7 a.m. through 9 a.m. on August 13, 2017. The waterway is used primarily by seasonal recreational vessels and occasional tug/barge traffic. Coordination with waterway users has indicated no objections to the proposed short-term closure of the draw.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will be able to open for emergencies. There is no alternate route for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners

of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 7, 2017.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist,  
First Coast Guard District.*

[FR Doc. 2017-05068 Filed 3-14-17; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2016-0540; FRL-9957-65]

#### Streptomycin; Pesticide Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of streptomycin in or on fruit, citrus, group 10-10, for both fresh fruit and dried pulp. This action is in response to EPA's granting of an emergency exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide in citrus production. This regulation establishes maximum permissible levels for residues of streptomycin in or on these commodities. The time-limited tolerances expire on December 31, 2019.

**DATES:** This regulation is effective March 15, 2017. Objections and requests for hearings must be received on or before May 15, 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-2016-0540, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael L. 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](mailto: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. 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-id.x?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-id.x?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

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

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2016-0540 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 May 15, 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-2016-0540, 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 and Statutory Findings**

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6), of 21 U.S.C. 346a(e) and 346a(l)(6), is establishing time-limited tolerances for residues of streptomycin, expressed as only streptomycin ((4S,4aR,5S,5aR,6S,12aS)-4-(dimethylamino)-1,4,4a,5,5a,6,11,12a-octahydro-3,5,6,10,12,12a-hexahydroxy-6-methyl-1,11-dioxo-2-naphthacene-carboxamide), in or on fruit, citrus, group 10-10 at 2 parts per million (ppm), and the dried pulp of these commodities at 6 ppm. These time-limited tolerances expire on December 31, 2019.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA

section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.*, without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance 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 . . .”

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that “emergency conditions exist which require such exemption.” EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

### III. Emergency Exemption for Streptomycin on Citrus and FFDCA Tolerances

The Florida Department of Agriculture and Consumer Services (FDACS) asserted that an emergency situation exists in accordance with the criteria for approval of an emergency exemption, and requested the use of streptomycin (and oxytetracycline, addressed in a separate document) in citrus to suppress the *Candidatus Liberibacter asiaticus* (CLas) bacterium that causes Huanglongbing (HLB) also known as citrus greening. HLB is a newly-introduced disease, vectored by the invasive insect, the Asian citrus psyllid, and is the most serious disease of citrus worldwide. This disease has rapidly spread throughout Florida’s citrus production area, causing severe losses with an overall decrease in production of more than 60% primarily due to HLB. Significant losses have occurred, many producers have gone out of business, and FDACS asserts that the long-term economic viability of the

citrus industry in Florida is threatened by this disease. Currently there is no cure. The bacteria reside in the phloem (the circulatory system of the tree), disrupting circulation of water and nutrients, which ultimately leads to death of the tree. FDACS states that use of streptomycin, along with other management measures, may suppress HLB symptoms, and prolong the productive life of infected trees, allowing citrus producers to remain in business while researchers continue to explore and evaluate new treatments for the disease.

After having reviewed the submission, EPA determined that an emergency condition exists for this State, and that the criteria for approval of an emergency exemption are met. EPA has authorized a specific exemption under FIFRA section 18 for the use of streptomycin on citrus to suppress the CLas bacterium that causes HLB disease in Florida.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of streptomycin in or on citrus fruit commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). Although these time-limited tolerances expire on December 31, 2019, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on citrus fruit commodities after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether streptomycin meets FIFRA’s registration requirements for use on citrus fruit or whether permanent tolerances for this use would

be appropriate. Under these circumstances, EPA does not believe that these time-limited tolerance decisions serve as bases for registrations of streptomycin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances by themselves serve as the authority for persons in any State other than Florida to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for streptomycin, contact the Agency’s Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

### IV. Aggregate Risk Assessment and Determination of Safety

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption use and the time-limited tolerances for residues of streptomycin on fruit, citrus, group 10–10 at 2 ppm, and the dried pulp of these commodities at 6 ppm. EPA’s assessment of exposures and risks associated with establishing the time-limited tolerances follows.

#### A. Toxicological Points of Departure/Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risks to humans from exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, EPA assumes that any amount of exposure will lead to some degree of risk. Thus, the EPA estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the

general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <https://www.epa.gov/>

*pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for streptomycin used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR STREPTOMYCIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/ scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Any population) Chronic dietary (All populations)	NA ..... NOAEL= 5 mg/kg/day UF <sub>A</sub> = 10 UF <sub>H</sub> = 10 FQPA SF = 1X	NA ..... Chronic RfD = 0.05 mg/kg/day cPAD = 0.05 mg/kg/day	Toxicity from single dose was not identified. Two-year feeding study in rats. LOAEL = 10 mg/kg/day based on reduced body weight in males.
Inhalation (All durations) .....	NOAEL = 5 mg/kg/day. FQPA SF = 1X	LOC ≤ MOE of 100	Two-year feeding study in rats. LOAEL = 10 mg/kg/day based on reduced body weight in males.
Cancer .....	Classification—There is not enough information in line with EPA’s guidelines for toxicological studies of pesticides to classify carcinogenic potential. The toxicological data requirements have been waived due to the extensive human database from streptomycin drug use. A 2-year rat carcinogenicity study, used by FDA and the World Health Organization to set tolerances for animal drug residues, is available and did not demonstrate evidence of carcinogenicity. Also, a literature search for streptomycin toxicity in animals and humans did not result in any data indicating evidence of carcinogenicity.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF<sub>A</sub> = extrapolation from animal to human (interspecies). UF<sub>H</sub> = potential variation in sensitivity among the human population (intraspecies).

The complete human risk assessment for this action can be found at <http://www.regulations.gov> in the document “Streptomycin. Section 18 Emergency Exemption for Citrus Grown in Florida” in the docket for ID number EPA–HQ–OPP–2016–0450.

*B. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to streptomycin, EPA considered exposure under the time-limited tolerances established by this action as well as all existing streptomycin tolerances in 40 CFR 180.245. EPA assessed dietary exposures from streptomycin in food as follows:

- i. *Acute exposure.* No acute effects were identified in the toxicological studies for streptomycin; therefore, a quantitative acute dietary exposure assessment is unnecessary.
- ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the 2003–2008 US Department of Agriculture (USDA) National Health and Nutrition Examination Survey (NHANES). For residue levels in food, EPA assumed tolerance level residues for all registered uses plus the new tolerances of 2 ppm in citrus fruit and 6 ppm in the dried pulp of these commodities. In addition, default

processing factors were used for all processed commodities, except citrus juice, oil, and tomato puree since concentration was not observed in these commodities. One hundred percent crop treated (PCT) was assumed for all commodities. EPA’s exposure assessment included tolerance level residues in livestock commodities owing to use of streptomycin as an animal drug as well. No anticipated residue or PCT refinements were used.

iii. *Cancer.* Based on the data summarized in Unit IV.A., EPA has concluded that streptomycin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for streptomycin. Tolerance level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for streptomycin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of streptomycin. Further information regarding EPA drinking water models

used in pesticide exposure assessment can be found at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide>.

Potential residues resulting in surface water and groundwater were modeled based upon registered and new uses. The estimated drinking water concentrations (EDWCs) for ground water were higher than for surface water, and thus were used for estimating exposure from drinking water consumption, as the most conservative (worst case) estimate. Based on the Pesticide Root Zone Model, Ground Water, the EDWC in groundwater (the highest modeled value) for streptomycin for acute exposures is estimated to be 932 parts per billion (ppb), and for chronic exposures (non-cancer) is estimated at 760 ppb. No acute assessment was required as discussed earlier in this document. The modeled estimate of drinking water concentration for chronic exposure was directly entered into the dietary exposure model used to estimate chronic risks presented by potential residues in food and drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control,

indoor pest control, termiticides, and flea and tick control on pets).

Streptomycin is currently registered for uses on residential gardens and trees which could result in residential exposures. EPA considered residential exposures from these uses and determined the following: Since there is no dermal hazard identified for streptomycin, residential dermal exposures were not assessed. Non-dietary incidental ingestion and inhalation from post-application residential exposures are assumed to be negligible, based upon the use scenarios and chemical properties of streptomycin. However, residential handler inhalation exposures may occur based on the use sites, equipment, and in particular, the lack of personal protective equipment (PPE) requirements on certain product labels for residential uses. Risk was therefore evaluated from short- and intermediate-term inhalation exposures for residential (non-professional) handlers/applicators. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide>.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found streptomycin to share a common mechanism of toxicity with any other substances, and streptomycin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that streptomycin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at <http://www.epa.gov/pesticides/cumulative>.

#### C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the

completeness of the database on toxicity and exposure unless EPA determines, based on reliable data, that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data are available to EPA which support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There were no teratogenic effects noted in a rabbit developmental study at the high dose of 10 mg/kg/day. Although children born to mothers treated with streptomycin injections have sometimes had hearing loss, no teratogenic effects have been attributed to streptomycin treatment. The injected dose at which these effects occurred in humans is equivalent to approximately 150 times higher than the NOAEL from the rabbit study and approximately 30,000 times higher than the dose that produced the reduced body weight endpoint used in establishing the chronic RfD. Additionally, none of the available toxicity data for streptomycin indicate any pre- or post-natal susceptibility. Therefore there are no residual concerns, EPA is confident that the chronic RfD is sufficiently protective for teratogenic effects, and the Food Quality Protection Act (FQPA) safety factor was reduced to 1X.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for streptomycin is complete. An extensive database exists from drug use of streptomycin in humans and animals and all guideline toxicity data requirements for streptomycin have been waived. The toxicity of streptomycin was assessed using toxicity reviews provided by the FDA and from the published literature on drug use. Because the dose selected for risk assessment from agricultural use is based upon a toxicity endpoint (decreased body weight in test animals) that occurs at a much lower oral dose than the injected dose at which prenatal hearing effects occurred in humans, there are no residual concerns and the FQPA safety factor is reduced to 1X.

ii. The extensive database in animals and humans does not demonstrate any potential for streptomycin to cause either peripheral or central nervous system toxicity and there is no need for a developmental neurotoxicity study or

additional UFs to account for neurotoxicity.

iii. There is no direct evidence of sensitivity/susceptibility in the developing or young animal. No teratogenic effects were observed in the rabbit. As noted previously, children born to mothers treated with streptomycin injections have sometimes had hearing loss but no teratogenic effects have been attributed to direct streptomycin treatment. Chosen points of departure are expected to be protective of any possible hearing loss effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed assuming 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to streptomycin in drinking water. EPA used similarly conservative assumptions to consider potential for post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by streptomycin.

#### D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, streptomycin is not expected to pose an acute risk.

2. *Chronic risk.* Based on the explanation in the unit regarding residential use patterns, chronic residential exposures to residues of streptomycin are not expected.

Therefore chronic aggregate risk was assessed considering only dietary exposures from potential residues in food and drinking water. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to streptomycin from potential residues in food and drinking water will not result in risks of concern (*i.e.*, are <100% of the cPAD) for all population groups

considered. The population group with the greatest dietary exposure is Infants  $\leq 1$  year old, with 90% of the cPAD occupied by chronic dietary exposure. Estimates for chronic dietary exposure contributed by residues in food occupy  $\leq 32\%$  of the cPAD for all population subgroups, indicating that the main contribution to dietary exposure is from potential residues in drinking water. The most conservative assumptions were made in the drinking water analysis, which likely resulted in overestimated exposures. Refinements could be made which would likely decrease the EDWCs, thereby further reducing the estimates of exposure and risk from potential residues in drinking water. However, assessment using these unrefined worst-case exposure scenarios provided chronic exposure estimates which would not result in risks of concern (*i.e.*, were  $<100\%$  of the cPAD).

**3. Short- and intermediate-term risk.** Short- and intermediate-term aggregate exposures take into account short and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The dermal route of exposure was not assessed because no dermal hazard exists for streptomycin. Non-dietary incidental ingestion and inhalation from post-application residential exposures are assumed to be negligible, based upon the chemical properties and the use scenarios for streptomycin. Intermediate-term residential exposure is not expected from the residential use patterns registered for streptomycin, and therefore was not assessed. However, short-term inhalation exposures may occur for residential handlers applying streptomycin, and therefore this route of exposure was assessed. For all residential handler scenarios considered, the estimated inhalation exposures did not present risks of concern (*i.e.*,  $MOEs \geq EPA's LOC$  of 100). The lowest calculated MOE was 86,000 from the highest exposure scenario of the handler using hand wand/backpack and no PPE. The adult population group with the highest dietary exposure was adults 20 to 49 years old, with 38% of the cPAD occupied. Therefore, aggregate short- and intermediate-term exposure included dietary (food and water) and inhalation routes from residential handler exposure. Using these two highest-exposure scenarios, the short-term exposure estimate resulted in an MOE of 270, which does not present a risk of concern ( $MOE \geq LOC$  of 100). Although residential exposures to children may occur through incidental

oral and inhalation routes during residential application and post-application activities, they are assumed to be negligible and thus were not quantitatively assessed. Therefore, the child aggregate assessment included only contributions from chronic exposure to food and drinking water, which was previously presented in this document, and did not result in risks of concern.

**4. Aggregate cancer risk for U.S. population.** Based on the lack of evidence of carcinogenicity in the streptomycin database, no cancer risk is expected from streptomycin and a cancer risk assessment was not needed.

**5. Determination of safety.** Based on these risk assessments, EPA concludes that there is reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to streptomycin residues.

**6. Pharmaceutical aggregate risk.** Section 408 of the FFDCFA requires EPA to consider potential sources of exposure to a pesticide and related substances in addition to the dietary sources expected to result from a pesticide use subject to the tolerance. In order to determine whether to maintain a pesticide tolerance, EPA must "determine that there is a reasonable certainty of no harm." Under FFDCFA section 505, the Food and Drug Administration reviews human drugs for safety and effectiveness and may approve a drug notwithstanding the possibility that some users may experience adverse side effects. EPA does not believe that, for purposes of the section 408 dietary risk assessment, it is compelled to assume that combined exposures to pesticide and pharmaceutical residues that lead to a physiological effect in the user constitutes "harm" under the meaning of section 408 of the FFDCFA.

Rather, EPA believes the appropriate way to consider the pharmaceutical use of streptomycin in its risk assessment is to examine the impact that the additional nonoccupational pesticide exposures would have to a pharmaceutical user exposed to a related (or, in some cases, the same) compound. Where the additional pesticide exposure has no more than a minimal impact on the pharmaceutical user, EPA could make a reasonable certainty of no harm finding for the pesticide tolerances of that compound under section 408 of the FFDCFA. If the potential impact on the pharmaceutical user as a result of co-exposure from pesticide use is more than minimal, then EPA would not be able to conclude that dietary residues were safe, and

would need to discuss with FDA appropriate measures to reduce exposure from one or both sources.

Injected drug doses of streptomycin are approximately 15 mg/kg/day. Because the oral absorption of streptomycin is  $<1\%$ , this corresponds to an oral equivalent dose of 1,500 mg/kg/day. This oral equivalent dose is over 30,000 times the highest dietary exposure estimate of 0.045 mg/kg/day, the food and water exposure estimate for the highest-exposed population (infants  $<1$  year old). Therefore, dietary exposure from pesticide uses of streptomycin is negligible compared to drug exposure and would not contribute to drug toxicity, so there are no concerns for risks from dietary exposure contribution of streptomycin from pesticide use, in patients receiving streptomycin drug injections. Because the pesticide exposure has no more than a minimal impact on the total dose to a pharmaceutical user, EPA believes that there is a reasonable certainty that the potential dietary pesticide exposure will result in no harm to a user being treated therapeutically with streptomycin.

## V. Other Considerations

**A. Analytical Enforcement Methodology.** An adequate enforcement methodology is available to enforce the tolerance expression. The method uses high performance liquid chromatography with tandem mass spectrometry for detection (HPLC-MS/MS). The method is detailed in "Confirmation of Aminoglycosides by HPLC/MS/MS; United States Department of Agriculture, Food Safety and Inspection Service, Office of Public Health Science SOP No: CLG-AMG1.02," which may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

**B. International Residue Limits.** In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCFA section 408(b)(4). The Codex is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States

is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established any MRLs for streptomycin in/on citrus fruit commodities.

**VI. Conclusion**

Therefore, time-limited tolerances are established for residues of streptomycin in or on fruit, citrus, group 10–10, at 2 ppm, and the dried pulp of these commodities at 6 ppm. These tolerances expire on December 31, 2019.

**VII. Statutory and Executive Order Reviews**

This action establishes tolerances under FFDCA sections 408(e) and 408(l)(6). 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 in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

**VIII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA submitted 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: February 9, 2017.

**Michael L. Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. In § 180.245, add alphabetically the entries “Fruit, citrus, Group 10–10” and “Fruit, citrus, Group 10–10, dried pulp” to the table in paragraph (b) to read as follows:

**§ 180.245 Streptomycin; tolerances for residues.**

*	*	*	*	*
(b) * * *				

Commodity	Parts per million	Expiration date
Fruit, citrus, Group 10–10 .....	2.0	December 31, 2019.
Fruit, citrus, Group 10–10, dried pulp .....	6.0	December 31, 2019.
* * * * *	*	*

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 217**

[Docket No. 160929897–7222–02]

RIN 0648–BG37

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Russian River Estuary Management Activities**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon request from the Sonoma County Water Agency (SCWA), issues these regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the incidental taking of marine mammals incidental to Russian River estuary management activities in Sonoma County, California, over the course of five years (2017–2022). These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and establish requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective from April 21, 2017, through April 20, 2022.

**ADDRESSES:** A copy of SCWA's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm). In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:****Purpose and Need for Regulatory Action**

These regulations, issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), establish a framework for authorizing the take of marine mammals incidental to SCWA's estuary management activities at the mouth of the Russian River in Sonoma County,

CA. SCWA plans to manage the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Breaching of the naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment and increased human presence, and monitoring in the estuary requires the use of small boats.

We received an application from SCWA requesting five-year regulations and authorization to take multiple species of marine mammals. Take is anticipated to occur by Level B harassment incidental to estuary management activities due to disturbance of hauled pinnipeds. The regulations are valid from 2017 to 2022. Please see "Background" below for definitions of harassment.

*Legal Authority for the Action*

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this final rule containing five-year regulations, and for any subsequent Letters of Authorization. As directed by this legal authority, this final rule contains mitigation, monitoring, and reporting requirements.

*Summary of Major Provisions Within the Final Rule*

The following provides a summary of some of the major provisions within the final rulemaking for SCWA estuary management activities. We have determined that SCWA's adherence to the planned mitigation, monitoring, and reporting measures listed below will achieve the least practicable adverse impact on the affected marine mammals. They include:

- Measures to minimize the number and intensity of incidental takes during sensitive times of year and to minimize the duration of disturbances.

- Measures designed to eliminate startling reactions.

- Eliminating or altering management activities on the beach when pups are present, and setting limits on the frequency and duration of events during pupping season.

**Background**

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1371 (a)(5)(A) and (D)) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant); and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**Summary of Request**

On September 2, 2016, we received an adequate and complete request from SCWA for authorization to take marine mammals incidental to estuary management activities. On September 20, 2016 (81 FR 64440), we published a notice of receipt of SCWA's application



in the **Federal Register**, requesting comments and information related to the request for 30 days. We did not receive any comments. SCWA provided a revised draft incorporating minor revisions on November 1, 2016.

SCWA plans to manage the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Flood control-related breaching of the barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only from May 15 through October 15 (hereafter, the “lagoon management period”). Artificial breaching and monitoring activities may occur at any time during the period of validity of the regulations, which are valid for 5 years, from April 21, 2017, through April 20, 2022.

Breaching of the naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (e.g., bulldozer, excavator) and increased human presence, and monitoring in the estuary requires the use of small boats. As a result, pinnipeds hauled out on the beach or at peripheral haul-outs in the estuary may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Species known from the haul-out at the mouth of the Russian River or from peripheral haul-outs, and therefore anticipated to be taken incidental to the specified activity, include the harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*).

Prior to this request for incidental take regulations and a subsequent LOA, we issued seven consecutive incidental harassment authorizations (IHAs) to SCWA for incidental take associated with the same ongoing activities. SCWA was first issued an IHA, valid for a period of one year, effective on April 1, 2010 (75 FR 17382; April 6, 2010), and was subsequently issued one-year IHAs for incidental take associated with the same activities, effective on April 21, 2011 (76 FR 23306; April 26, 2011), April 21, 2012 (77 FR 24471; April 24, 2012), April 21, 2013 (78 FR 23746; April 22, 2013), April 21, 2014 (79 FR 20180; April 11, 2014), April 21, 2015

(80 FR 24237; April 30, 2015), and April 21, 2016 (81 FR 22050; April 14, 2016).

### Description of the Specified Activity

Additional detail regarding the specified activity was provided in our **Federal Register** notice of proposed rulemaking (81 FR 96415; December 30, 2016) and in past notices cited herein; please see those documents or SCWA’s application for more information.

#### Overview

The specified activity involves management of the estuary to prevent flooding while preventing adverse modification to critical habitat for ESA-listed salmonids. Requirements related to the ESA are described in further detail below. During the lagoon management period, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon. A perched lagoon, which is an estuary closed to tidal influence in which water surface elevation is above mean high tide, would reduce flooding while maintaining beneficial conditions for juvenile salmonids. Additional breaches of the barrier beach may be conducted for the sole purpose of reducing flood risk. SCWA’s activity was described in detail in our notice of proposed authorization prior to the 2011 IHA (76 FR 14924; March 18, 2011); please see that document for a detailed description of SCWA’s estuary management activities. Aside from minor additions to SCWA’s biological and physical estuary monitoring measures, the specified activity remains the same as that described in the 2011 document.

#### Dates and Duration

The specified activity may occur at any time during the five-year period of validity for these regulations (April 21, 2017 through April 20, 2022), although construction and maintenance of a lagoon outlet channel would occur only during the lagoon management period. In addition, there are certain restrictions placed on SCWA during the harbor seal pupping season. These, as well as periodicity and frequency of the specified activities, are described in further detail below.

#### Specified Geographical Region

The estuary is located about 97 kilometers (km) (60 miles (mi)) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA’s application). The Russian River watershed encompasses 3,847 km<sup>2</sup> (1,485 mi<sup>2</sup>) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at

Goat Rock State Beach (see Figure 2 of SCWA’s application); the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel and McIver, 1994).

#### Detailed Description of Activities

Within the Russian River watershed, the U.S. Army Corps of Engineers (Corps), SCWA, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District (District) operate and maintain Federal facilities and conduct activities in addition to the estuary management, including flood control, water diversion and storage, instream flow releases, hydroelectric power generation, channel maintenance, and fish hatchery production. As described in the notice of proposed rulemaking, NMFS issued a 2008 Biological Opinion (BiOp) for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the Corps, SCWA, and the District in the Russian River watershed (NMFS, 2008). This BiOp found that the activities—including SCWA’s estuary management activities—authorized by the Corps and undertaken by SCWA and the District, if continued in a manner similar to recent historic practices, were likely to jeopardize the continued existence of ESA-listed salmonids and were likely to adversely modify critical habitat. In part, therefore, the BiOp requires SCWA to collaborate with NMFS and modify their estuary water level management in order to reduce marine influence (i.e., high salinity and tidal inflow) and promote a higher water surface elevation in the estuary in order to enhance the quality of rearing habitat for juvenile salmonids. SCWA is also required to monitor the response of water quality, invertebrate production, and salmonids in and near the estuary to water surface elevation management in the estuary-lagoon system.

There are three components to SCWA’s ongoing estuary management activities: (1) Lagoon outlet channel management, during the lagoon management period only, required to accomplish the dual purposes of flood risk abatement and maintenance of juvenile salmonid habitat; (2) traditional artificial breaching, with the sole objective of flood risk abatement; and (3) physical and biological monitoring in and near the estuary, required under the terms of the BiOp, to understand response to water surface elevation management in the estuary-lagoon system. The latter category (physical and biological monitoring) includes all ancillary beach and/or estuary

monitoring activities and will remain the same as in past years and as described in our 2015 notice of proposed authorization (80 FR 14073; March 18, 2015). Please see the previously referenced **Federal Register** notice (76 FR 14924; March 18, 2011) for detailed discussion of lagoon outlet channel management, artificial breaching, and other monitoring activities.

### Comments and Responses

We published a notice of proposed rulemaking in the **Federal Register** on December 30, 2016 (81 FR 96415). During the 30-day comment period, we received a letter from the Marine Mammal Commission (Commission) and comments from two private citizens. The Commission recommends that we issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures as described in our notice of proposed rulemaking and the application. All measures proposed in the initial **Federal Register** notice are included within the final rule. The comments from the two private citizens are described below.

*Comment 1:* If a project is found to jeopardize a species or adversely modify its critical habitat, NMFS must cease activity until a non-jeopardizing Reasonable and Prudent Alternative (RPA) to the proposed project is in place, in coordination with the Federal action agency and any applicant.

*Response:* Although this is a general comment not specifically relevant to the proposed rulemaking that was the subject of the public comment period, the commenter's statement is correct. We refer readers to NMFS's 2008 BiOp for details of the relevant ESA section 7 consultation described previously in this document.

*Comment 2:* It is important to leave our environment and the Russian River estuary as pristine as possible for future generations. Please keep takes allowed from this region to a minimum.

*Response:* As required by the MMPA, NMFS has prescribed mitigation sufficient to satisfy the MMPA's least practicable adverse impact standard and has determined that the level of incidental taking proposed for authorization meets the MMPA's negligible impact standard.

### Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species that may be harassed incidental to estuary management activities are the harbor seal, California sea lion, and the northern elephant seal. We presented a

detailed discussion of the status of these stocks and their occurrence in the action area in the notice of the proposed rulemaking (81 FR 96415; December 30, 2016).

Ongoing monthly harbor seal counts at the Jenner haul-out were begun by J. Mortenson in January 1987, with additional nearby haul-outs added to the counts thereafter. In addition, local resident E. Twohy began daily observations of seals and people at the Jenner haul-out in November 1989. These datasets note whether the mouth at the Jenner haul-out was opened or closed at each observation, as well as various other daily and annual patterns of haul-out usage (Mortenson and Twohy, 1994). Recently, SCWA began regular baseline monitoring of the haul-out as a component of its estuary management activity. In the notice of proposed rulemaking, we presented average daily numbers of seals observed at the mouth of the Russian River from 1993–2005 and from 2009–2015 (see Table 1; 81 FR 96415; December 30, 2016).

### Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

We provided a detailed discussion of the potential effects of the specified activity on marine mammals in the notice of the proposed rulemaking (81 FR 96415; December 30, 2016). A summary of anticipated effects is provided below.

A significant body of monitoring data exists for pinnipeds at the mouth of the Russian River. In addition, pinnipeds have co-existed with regular estuary management activity for decades, as well as with regular human use activity at the beach, and are likely habituated to human presence and activity. Nevertheless, SCWA's estuary management activities have the potential to disturb pinnipeds present on the beach or at peripheral haul-outs in the estuary. During breaching operations, past monitoring has revealed that some or all of the seals present typically move or flush from the beach in response to the presence of crew and equipment, although some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—has been documented since SCWA developed protocols to prevent such events in 1999. While it is likely impossible to conduct required estuary management activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this

document, ensure that animals are gradually apprised of human approach. Under these conditions, seals typically exhibit a continuum of responses, beginning with alert movements (e.g., raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus. In addition, eight other haul-outs exist nearby that may accommodate flushed seals. In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through stampeding or abandonment of pups.

California sea lions and northern elephant seals, which have been noted only infrequently in the action area, have been observed as being less sensitive to stimulus than harbor seals during monitoring at numerous other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that, while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals was 0.1 percent (VanBlaricom, 2010). In the event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities—less than that expected of harbor seals.

Although the Jenner haul-out is not known as a primary pupping beach, pups have been observed during the pupping season; therefore, we have evaluated the potential for injury, serious injury, or mortality to pups. There is a lack of published data regarding pupping at the mouth of the Russian River, but SCWA monitors have observed pups on the beach. No births were observed during recent monitoring, but may be inferred based on signs indicating pupping (e.g., blood spots on the sand, birds consuming possible placental remains). Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a mass movement. As discussed previously, no such movements have been recorded since development of appropriate protocols in 1999. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species.

Similarly, the period of mother-pup bonding, critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by

estuary management activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.*, 2002; Burns *et al.*, 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. Although pupping season is defined as March 15–June 30, the peak of pupping season is typically concluded by mid-May, when the lagoon management period begins. As such, it is expected that most mother-pup bonding would likely be concluded as well. The number of management events during the months of March and April has been relatively low in the past, and the breaching activities occur in a single day over several hours. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding.

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.*, less than one day) and limited intensity (*i.e.*, temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor has it been documented—in the years since appropriate protocols were established (see “Mitigation” for more details). Further, the continued, and increasingly heavy (see SCWA’s monitoring reports), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

*Anticipated Effects on Marine Mammal Habitat*

We provided a detailed discussion of the potential effects of this action on

marine mammal habitat in the notice of the proposed IHA (81 FR 96415; December 30, 2016). SCWA’s estuary management activities will result in temporary physical alteration of the Jenner haul-out. With barrier beach closure, seal usage of the beach haul-out declines, and the three nearby river haul-outs may not be available for usage due to rising water surface elevations. Breaching of the barrier beach, subsequent to the temporary habitat disturbance, will likely increase suitability and availability of habitat for pinnipeds. Biological and water quality monitoring will not physically alter pinniped habitat.

In summary, there will be temporary physical alteration of the beach. However, natural opening and closure of the beach results in the same impacts to habitat. Therefore, seals are likely adapted to this cycle. In addition, the increase in rearing habitat quality has the goal of increasing salmonid abundance, ultimately providing more food for seals present within the action area. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

**Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as: “. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).”

In accordance with the regulations implemented by this final rule, we plan to issue an LOA to SCWA to take harbor seals, California sea lions, and northern elephant seals, by Level B harassment

only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through disturbance. In addition, monitoring activities prescribed in the BiOp may harass additional animals at the Jenner haul-out and at the three haul-outs located in the estuary (Penny Logs, Patty’s Rock, and Chalanchawi). Estimates of the number of harbor seals, California sea lions, and northern elephant seals that may be harassed by the planned activities is based upon the number of potential events associated with Russian River estuary management activities and the average number of individuals of each species that are present during conditions appropriate to the activity. Monitoring effort at the mouth of the Russian River has shown that the number of seals utilizing the haul-out declines during bar-closed conditions. Methodology of take estimation was discussed in detail in our notice of proposed rulemaking (81 FR 96415; December 30, 2016). Table 1 details the total number of estimated takes for harbor seals.

California sea lions and northern elephant seals are occasional visitors to the estuary. Based on limited information regarding occurrence of these species at the mouth of the Russian River estuary, we assume there is the potential to encounter one animal of each species per month throughout the year. Lagoon outlet channel activities could potentially occur over six months of the year, artificial breaching activities over eight months, topographic surveys year-round, and biological and physical monitoring in the estuary over eight months. Therefore, we assume that up to 34 incidents of take could occur per year for both the California sea lion and northern elephant seal. Based on past occurrence records, the take authorization for these two species is likely a precautionary overestimate.

TABLE 1—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Number of animals expected to occur <sup>a</sup>	Number of events <sup>b,c</sup>	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)		
Implementation: 117 <sup>d</sup> ..... Maintenance and Monitoring: ..... May: 80 ..... June: 98 ..... July: 117 .....	Implementation: 3 ..... Maintenance: ..... May: 1 ..... June-Sept: 4/month ..... Oct: 1 .....	Implementation: 702. Maintenance: 1,156.

TABLE 1—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES—Continued

Number of animals expected to occur <sup>a</sup>	Number of events <sup>b,c</sup>	Potential total number of individual animals that may be taken
Aug: 17 ..... Sept: 30 ..... Oct: 28 .....	Monitoring: ..... June–Sept: 2/month Oct: 1	Monitoring: 552.  Total: 2,410.
<b>Artificial Breaching</b>		
Oct: 28 ..... Nov: 32 ..... Dec: 59 ..... Jan: 49 ..... Feb: 75 ..... Mar: 133 ..... Apr: 99 ..... May: 80 .....	Oct: 2 ..... Nov: 2 ..... Dec: 2 ..... Jan: 1 ..... Feb: 1 ..... Mar: 1 ..... Apr: 1 ..... May: 2 .....  12 events maximum .....	Oct: 56. Nov: 64. Dec: 118. Jan: 49. Feb: 75. Mar: 133. Apr: 99. May: 160.  Total: 754.
<b>Topographic and Geophysical Beach Surveys</b>		
Jan: 99 ..... Feb: 131 ..... Mar: 165 ..... Apr: 141 ..... May: 151 ..... Jun: 164 ..... Jul: 282 ..... Aug: 133 ..... Sep: 62 ..... Oct: 48 ..... Nov: 68 ..... Dec: 98 .....	1 topographic survey/month; 100 percent of animals present Jun–Feb; 10 percent of animals present Mar–May.	Jan: 99. Feb: 131. Mar: 165. Apr: 14. May: 151. Jun: 164. Jul: 282. Aug: 133. Sep: 62. Oct: 48. Nov: 68. Dec: 98.  Total: 1,415.
<b>Biological and Physical Habitat Monitoring in the Estuary</b>		
1 <sup>e</sup> ..... Total .....	113 ..... N/A .....	113. 4,692.

<sup>a</sup> For Lagoon Outlet Channel Management and Artificial Breaching, average daily number of animals corresponds with data from Table 2 in our notice of proposed rulemaking. For Topographic and Geophysical Beach Surveys, average daily number of animals corresponds with 2011–15 data from Table 1 in our notice of proposed rulemaking.

<sup>b</sup> For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities.

<sup>c</sup> Number of events for artificial breaching derived from historical data. The average number of events for each month was rounded up to the nearest whole number; estimated number of events for December was increased from one to two because multiple closures resulting from storm events have occurred in recent years during that month. The total numbers (12) likely represent an overestimate, as the average annual number of events is five.

<sup>d</sup> Although implementation could occur at any time during the lagoon management period, the highest daily average per month from the lagoon management period was used.

<sup>e</sup> Based on past experience, SCWA expects that no more than one seal may be present, and thus would have the potential to be disturbed, in total at the three river haul-outs.

The take numbers described in the preceding text are annual estimates. Therefore, over the course of the 5-year period of validity of the regulations, we will authorize a total of 23,460 incidents of take for harbor seals and 170 such incidents each for the California sea lion and northern elephant seal.

**Analyses and Determinations**

*Negligible Impact Analysis*

NMFS has defined “negligible impact” in 50 CFR 216.103 as “. . . an

impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to

considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any such responses (*e.g.*, critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes (if any), and effects on habitat. We also assess the number, intensity, and context of estimated takes by evaluating this

information relative to population status.

Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, sources of human-caused mortality).

Although SCWA's estuary management activities may disturb pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. While these impacts can occur year-round, they occur sporadically and for limited duration (*e.g.*, a maximum of two consecutive days for water level management events). Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. While disturbance may occur during a sensitive time (during the March 15–June 30 pupping season), mitigation measures have been specifically designed to further minimize harm during this period and eliminate the possibility of pup injury or mother-pup separation.

No injury, serious injury, or mortality is anticipated, nor is the planned action likely to result in long-term impacts such as permanent abandonment of the haul-out. Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a mass movement, or from extended mother-pup separation as a result of such movement. Long-term impacts to pinniped usage of the haul-out could result from significantly increased presence of humans and equipment on the beach. To avoid these possibilities, we have worked with SCWA to develop the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present, and by setting limits on the frequency and duration of events during pupping season. During the past 15 years of flood control management, implementation of similar mitigation measures has resulted in no known mass movement or stampede

events and no known injury, serious injury, or mortality. Over the course of that time, management events have generally been infrequent and of limited duration.

No pinniped stocks for which incidental take will be authorized are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.*, less than one day) and limited intensity (*i.e.*, temporary flushing at most). Stampinged, and therefore injury or mortality, is not expected—nor has it been documented—in the years since appropriate protocols were established (see “Mitigation” for more details). Further, the continued, and increasingly heavy use of the haul-out (see figures in SCWA documents) despite decades of breaching events indicates that abandonment of the haul-out is unlikely. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, we find that the total marine mammal take from SCWA's estuary management activities will have a negligible impact on the affected marine mammal species or stocks.

#### *Small Numbers Analysis*

The number of animals expected to be taken for each species of pinniped can be considered small relative to the population size. There are an estimated 30,968 harbor seals in the California stock, 296,750 California sea lions, and 179,000 northern elephant seals in the California breeding population. Based on extensive monitoring effort specific to the affected haul-out and historical data on the frequency of the specified activity, we plan to authorize annual levels of take, by Level B harassment only, of 4,692 incidents of harassment for harbor seals, 34 incidents of harassment for California sea lions, and 34 incidents of harassment for northern elephant seals, representing 15.2, 0.01, and 0.02 percent of the populations, respectively. However, this represents an overestimate of the number of individuals harassed annually over the duration of the regulations, because

these totals represent much smaller numbers of individuals that may be harassed multiple times. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

#### **Mitigation**

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, “and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.” NMFS's implementing regulations require applicants for ITAs to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

SCWA will continue the following mitigation measures, as implemented during the previous ITAs, which are designed to minimize impact to affected species and stocks:

- SCWA crews will cautiously approach (*e.g.*, walking slowly with limited arm movement and minimal sound) the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a mass movement—a particular concern during pupping season.
- SCWA staff will avoid walking or driving equipment through the seal haul-out.
- Crews on foot will make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly, in order to prevent sudden flushes.
- During breaching events, all monitoring will be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out in order to minimize potential for harassment.
- A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

In addition, SCWA will continue the following mitigation measures specific

to pupping season (March 15–June 30), as implemented in the previous ITAs:

- SCWA will maintain a one-week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.

- If a pup less than one week old is on the beach where heavy machinery would be used or is on the path used to access the work location, the management action will be delayed until the pup has left the site or until the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA will consult with NMFS to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than one week old are on the beach prior to a breaching event.

- Physical and biological monitoring will not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

Equipment will be driven slowly on the beach and care will be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach. All work will be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring will be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

We have carefully evaluated SCWA's planned mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current

science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to goal 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at a biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to goal 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to goal 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of SCWA's planned measures and on SCWA's record of management at the mouth of the Russian River including information from monitoring of SCWA's implementation of the mitigation measures as prescribed under the previous ITAs, we have determined that the planned mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of

accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (e.g., presence, abundance, distribution, density).

- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving, or feeding areas).

- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) population, species, or stock.

- Effects on marine mammal habitat and resultant impacts to marine mammals.

- Mitigation and monitoring effectiveness.

SCWA submitted a marine mammal monitoring plan as part of the ITA application. It can be found online at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm). The plan has been successfully implemented by SCWA under previous ITAs. The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA has designed the plan both to satisfy the requirements of the ITA, and to address the following questions of interest:

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?

2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?

3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer (May 15 to October 15) lagoon in the Russian River estuary?

4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

*Monitoring Measures*

*Baseline Monitoring*—Seals at the Jenner haul-out will be counted for four hours every week, with no more than four baseline surveys each month. Two monitoring events each month will occur in the morning, and two will occur in the afternoon, with an effort to schedule a morning survey at low and high tide each month and an afternoon survey at low and high tide each month. This baseline information will provide SCWA with details that may help to plan estuary management activities in the future to minimize pinniped interaction. Survey protocols are as follows: All seals hauled out on the beach are counted every 30 minutes from the overlook on the bluff along

Highway 1 adjacent to the haul-out using spotting scopes. Monitoring may conclude for the day if weather conditions affect visibility (e.g., heavy fog in the afternoon). Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each 30-minute count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. If possible, adults and pups are counted separately.

This primary haul-out is where the majority of seals are found and where pupping occurs, and SCWA’s planned monitoring will allow continued development in understanding the physical and biological factors that influence seal abundance and behavior at the site. In particular, SCWA notes that the planned frequency of surveys will allow them to be able to observe the influence of physical changes that do not persist for more than ten days, like

brief periods of barrier beach closures or other environmental changes, and will allow for assessment of how seals respond to barrier beach closures as well as accurate estimation of the number of harbor seal pups born at Jenner each year.

In addition to the census data, disturbances of the haul-out are recorded. The method for recording disturbances follows those in Mortenson (1996). Disturbances will be recorded on a three-point scale that represents an increasing seal response to the disturbance (Table 2). The time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out, are recorded. It should be noted that only responses falling into Mortenson’s Levels 2 and 3 will be considered as harassment under the MMPA, under the terms of these final regulations.

TABLE 2—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal’s body length.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal’s body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flight	All retreats (flushes) to the water.

Weather conditions are recorded at the beginning of each census. These include temperature, Beaufort sea state, precipitation/visibility, and wind speed. Tide levels and estuary water surface elevations are correlated to the monitoring start and end times.

In an effort towards understanding possible relationships between use of the Jenner haul-out and nearby coastal and river haul-outs, several other haul-outs on the coast and in the Russian River estuary are monitored as well (see Figure 1 of SCWA’s application). Peripheral site monitoring would occur only in the event of an extended period of lagoon conditions (i.e., barrier beach closed with perched outlet channel for three weeks or more). Abundance at these sites has been observed to be generally very low regardless of river mouth condition. These sites are generally very small physically, and are composed of small rocks or outcrops or logs in the river, and therefore could not accommodate significant displacement from the main beach haul-out. Monitoring of peripheral sites under extended lagoon conditions will allow

for possible detection of any changed use patterns.

*Estuary Management Event Monitoring, Lagoon Outlet Channel*—Should the mouth of the river close during the lagoon management period, SCWA would construct a lagoon outlet channel as required by the BiOp. Activities associated with the initial construction of the outlet channel, as well as the maintenance of the channel that may be required, would be monitored for disturbances to the seals at the Jenner haul-out.

A one-day pre-event channel survey will be made within one to three days prior to constructing the outlet channel. The haul-out will be monitored on the day the outlet channel is constructed and daily for up to the maximum two days allowed for channel excavation activities. Monitoring will also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period. Monitoring of outlet channel construction and maintenance will correspond with that described above in the “Baseline Monitoring” section, with the exception that management activity

monitoring duration will be defined by event duration. On the day of the management event, pinniped monitoring will begin at least one hour prior to the crew and equipment accessing the beach work area, and will continue through the duration of the event, until at least one hour after the crew and equipment leave the beach.

In an attempt to understand whether seals from the Jenner haul-out are displaced to coastal and river haul-outs nearby when management events occur, other nearby haul-outs are monitored concurrently with monitoring of outlet channel construction and maintenance activities. This provides an opportunity to qualitatively assess whether these haul-outs are being used by seals displaced from the Jenner haul-out during lagoon outlet channel excavation and maintenance. This monitoring will not provide definitive results regarding displacement to nearby coastal and river haul-outs, as individual seals are not marked or photo-identified, but is useful in tracking general trends in haul-out use during lagoon outlet channel excavation and maintenance. As volunteers are required to monitor these

peripheral haul-outs, haul-out locations may need to be prioritized if there are not enough volunteers available. In that case, priority would be assigned to the nearest haul-outs (North Jenner and Odin Cove), followed by the Russian River estuary haul-outs, and finally the more distant coastal haul-outs.

**Estuary Management Event Monitoring, Artificial Breaching Events**—In accordance with the Russian River BiOp, SCWA may artificially breach the barrier beach outside of the summer lagoon management period, and may conduct a maximum of two such breaching during the lagoon management period, when estuary water surface elevations rise above seven feet. In that case, NMFS may be consulted regarding potential scheduling of an artificial breaching event to open the barrier beach and reduce flooding risk.

Pinniped response to artificial breaching will be monitored at each such event during the period of validity of these regulations. Monitoring methods will follow the census and disturbance monitoring protocols described in the “Baseline Monitoring” section, which were also used for the 1996 to 2000 monitoring events (MSC, 1997, 1998, 1999, 2000; SCWA and MSC, 2001). The exception, as for lagoon management events, is that the duration of monitoring is dependent upon the duration of the event. On the day of the management event, pinniped monitoring begins at least one hour before the crew and equipment accesses the beach work area, and monitoring continues through the duration of the event, until at least one hour after the crew and equipment leave the beach.

For all counts, the following information will be recorded in thirty-minute intervals: (1) Pinniped counts by species; (2) behavior; (3) time, source and duration of any disturbance; (4) estimated distances between source of disturbance and pinnipeds; (5) weather conditions (*e.g.*, temperature, wind); and (5) tide levels and estuary water surface elevation.

**Monitoring During Pupping Season**—The pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than one week old) observations. Characteristics of a neonate pup include: Body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Stewards’ Seal Watch monitoring program (Stewards) to determine if pups less than one week old are on the beach

prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA will contact the NMFS stranding response network immediately, and also will report the incident to NMFS’s West Coast Regional Office and Office of Protected Resources within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are: (1) No observed contact with adult seals, (2) no movement of the pup, and (3) the pup’s attempts to nurse are rebuffed.

**Staffing**—Monitoring is conducted by qualified individuals, which may include professional biologists employed by NMFS or SCWA or volunteers trained by the Stewards. All volunteer monitors are required to attend classroom-style training and field site visits to the haul-outs. Training covers the MMPA and conditions of the ITA, SCWA’s pinniped monitoring protocols, pinniped species identification, age class identification (including a specific discussion regarding neonates), recording of count and disturbance observations (including completion of datasheets), and use of equipment. Pinniped identification includes the harbor seal, California sea lion, and northern elephant seal, as well as other pinniped species with potential to occur in the area. Generally, SCWA staff and volunteers collect baseline data on Jenner haul-out use during the twice-monthly monitoring events. A schedule for this monitoring will be established with Stewards once volunteers are available for the monitoring effort. SCWA staff monitors lagoon outlet channel excavation and maintenance activities and artificial breaching events at the Jenner haul-out, with assistance from available Stewards volunteers. Stewards volunteers monitor the coastal and river haul-out locations during lagoon outlet channel excavation and maintenance activities.

Training on the MMPA, pinniped identification, and the conditions of the ITA is held for staff and contractors assigned to estuary management activities. The training includes equipment operators, safety crew members, and surveyors. In addition, prior to beginning each water surface elevation management event, the biologist monitoring the event participates in the onsite safety meeting to discuss the location(s) of pinnipeds at the Jenner haul-out that day and methods of avoiding and minimizing disturbances to the haul-out as outlined in the ITA.

### Reporting

SCWA is required to submit an annual report on all activities and marine mammal monitoring results to NMFS within ninety days following the end of the monitoring period. These reports must contain the following information:

- The number of pinnipeds taken, by species and age class (if possible);
- Behavior prior to and during water level management events;
- Start and end time of activity;
- Estimated distances between source and pinnipeds when disturbance occurs;
- Weather conditions (*e.g.*, temperature, wind, etc.);
- Haul-out reoccupation time of any pinnipeds based on post-activity monitoring;
- Tide levels and estuary water surface elevation; and
- Pinniped census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

SCWA must also submit a comprehensive summary report that includes any future application for renewed regulations and Letters of Authorization.

### Summary of Previous Monitoring

SCWA complied with the mitigation and monitoring required under previous authorizations. Prior **Federal Register** notices of proposed yearly authorizations have provided summaries of the monitoring results from 2009–2015; please see those documents for more information. Previous monitoring reports are available online at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm). We also provided a detailed description of previous monitoring results in the proposed rule for this action (81 FR 96415; December 30, 2016).

### Adaptive Management

The regulations governing the take of marine mammals incidental to SCWA estuary management activities contain an adaptive management component.

The reporting requirements associated with this final rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources



to determine (with input from SCWA regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

SCWA's monitoring program (see "Monitoring and Reporting") will be managed adaptively. Changes to the monitoring program may be adopted if they are reasonably likely to better accomplish the MMPA monitoring goals described previously or may better answer the specific questions associated with SCWA's monitoring plan.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

#### **Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by the specified activity. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

#### **Endangered Species Act (ESA)**

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that section 7 consultation under the ESA is not required.

#### **National Environmental Policy Act**

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, we prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of the original IHA to SCWA for the specified activities and found that it would not result in any significant impacts to the human environment. We

signed a Finding of No Significant Impact (FONSI) on March 30, 2010. We have reviewed SWCA's application for incidental take regulations and an associated LOA for ongoing estuary management activities and the 2016 monitoring report. Based on that review, we have determined that the action follows closely the ITAs issued and implemented in 2010–2016, and does not present any substantial changes, or significant new circumstances or information relevant to environmental concerns which would require a supplement to the 2010 EA or preparation of a new NEPA document. Therefore, we have determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and we rely on the existing EA and FONSI for this action. The 2010 EA and FONSI for this action are available for review at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm).

#### **Classification**

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information (COI) subject to the requirements of the Paperwork Reduction Act (PRA) unless that COI displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

#### **List of Subjects in 50 CFR Part 217**

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 8, 2017.

**Alan D. Risenhoover,**

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

For reasons set forth in the preamble, NMFS amends 50 CFR part 217 as follows:

### **PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

■ 1. The authority citation for part 217 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart A to part 217 to read as follows:

#### **Subpart A—Taking Marine Mammals Incidental to Russian River Estuary Management Activities**

Sec.

217.1 Specified activity and specified geographical region.

217.2 Effective dates.

217.3 Permissible methods of taking.

217.4 Prohibitions.

217.5 Mitigation requirements.

217.6 Requirements for monitoring and reporting.

217.7 Letters of Authorization.

217.8 Renewals and modifications of Letters of Authorization.

217.9–217.10 [Reserved]

#### **Subpart A—Taking Marine Mammals Incidental to Russian River Estuary Management Activities**

##### **§ 217.1 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to the Sonoma County Water Agency (SCWA) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to estuary management activities.

(b) The taking of marine mammals by SCWA may be authorized in a Letter of Authorization (LOA) only if it occurs at Goat Rock State Beach or in the Russian River estuary in California.

##### **§ 217.2 Effective dates.**

Regulations in this subpart are effective from April 21, 2017, through April 20, 2022.

##### **§ 217.3 Permissible methods of taking.**

Under LOAs issued pursuant to §§ 216.106 and 217.7 of this chapter, the Holder of the LOA (hereinafter "SCWA") may incidentally, but not intentionally, take marine mammals within the area described in § 217.1(b) by Level B harassment associated with

estuary management activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

#### § 217.4 Prohibitions.

Notwithstanding takings contemplated in § 217.1 and authorized by an LOA issued under §§ 216.106 and 217.7 of this chapter, no person in connection with the activities described in § 217.1 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 and 217.7 of this chapter;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

#### § 217.5 Mitigation requirements.

When conducting the activities identified in § 217.1(a) of this chapter, the mitigation measures contained in any LOA issued under §§ 216.106 and 217.7 of this chapter must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of SCWA, its designees, and work crew personnel operating under the authority of the issued LOA; and

(2) If SCWA observes a pup that may be abandoned, it shall contact the National Marine Fisheries Service (NMFS) West Coast Regional Stranding Coordinator immediately and also report the incident to NMFS Office of Protected Resources within 48 hours. Observers shall not approach or move the pup.

(b) SCWA crews shall cautiously approach the haul-out ahead of heavy equipment.

(c) SCWA staff shall avoid walking or driving equipment through the seal haul-out.

(d) Crews on foot shall make an effort to be seen by seals from a distance.

(e) During breaching events, all monitoring shall be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out.

(f) A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

(g) All work shall be completed as efficiently as possible and with the smallest amount of heavy equipment possible.

(h) Boats operating near river haul-outs during monitoring shall be kept within posted speed limits and driven as far from the haul-outs as safely possible.

(i) SCWA shall implement the following mitigation measures during pupping season (March 15–June 30):

(1) SCWA shall maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.

(2) If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action shall be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA shall consult with NMFS and the California Department of Fish and Wildlife to determine the appropriate course of action. SCWA shall coordinate with the locally established seal monitoring program (Stewards of the Coast and Redwoods) to determine if pups less than one week old are on the beach prior to a breaching event.

(3) Physical and biological monitoring shall not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

#### § 217.6 Requirements for monitoring and reporting.

(a) Monitoring and reporting shall be conducted in accordance with the approved Pinniped Monitoring Plan.

(b) Baseline monitoring shall be conducted each week, with two events per month occurring in the morning and two per month in the afternoon. These censuses shall continue for four hours, weather permitting; the census days shall be chosen to ensure that monitoring encompasses a low and high tide each in the morning and afternoon. All seals hauled out on the beach shall be counted every 30 minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using high-powered spotting scopes. Observers shall indicate where groups of seals are hauled out on the sandbar and provide

a total count for each group. If possible, adults and pups shall be counted separately.

(c) Peripheral coastal haul-outs shall be visited concurrently with baseline monitoring in the event that a lagoon outlet channel is implemented and maintained for a prolonged period of over 21 days.

(d) During estuary management events, monitoring shall occur on all days that activity is occurring using the same protocols as described for baseline monitoring, with the difference that monitoring shall begin at least one hour prior to the crew and equipment accessing the beach work area and continue through the duration of the event, until at least one hour after the crew and equipment leave the beach. In addition, a one-day pre-event survey of the area shall be made within one to three days of the event and a one-day post-event survey shall be made after the event, weather permitting.

(e) For all monitoring, the following information shall be recorded in 30-minute intervals:

(1) Pinniped counts by species;

(2) Behavior;

(3) Time, source and duration of any disturbance, with takes incidental to SCWA actions recorded only for responses involving movement away from the disturbance or responses of greater intensity (*e.g.*, not for alerts);

(4) Estimated distances between source of disturbance and pinnipeds;

(5) Weather conditions (*e.g.*, temperature, percent cloud cover, and wind speed); and

(6) Tide levels and estuary water surface elevation.

(f) *Reporting*—(1) *Annual reporting.*

(i) SCWA shall submit an annual summary report to NMFS not later than ninety days following the end of the reporting period established in any LOA issued under § 217.7. SCWA shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) The number of seals taken, by species and age class (if possible);

(B) Behavior prior to and during water level management events;

(C) Start and end time of activity;

(D) Estimated distances between source and seals when disturbance occurs;

(E) Weather conditions (*e.g.*, temperature, wind, etc.);

(F) Haul-out reoccupation time of any seals based on post-activity monitoring;

(G) Tide levels and estuary water surface elevation;

(H) Seal census from bi-monthly and nearby haul-out monitoring; and

(I) Specific conclusions that may be drawn from the data in relation to the four questions of interest in SCWA's Pinniped Monitoring Plan, if possible.

(2) SCWA shall submit a comprehensive summary report to NMFS in conjunction with any future submitted request for incidental take authorization.

(g) *Reporting of injured or dead marine mammals.* (1) In the unanticipated event that the activity defined in § 217.1(a) clearly causes the take of a marine mammal in a prohibited manner, SCWA shall immediately cease such activity and report the incident to the Office of Protected Resources (OPR), NMFS and the West Coast Regional Stranding Coordinator, NMFS. Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with SCWA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SCWA may not resume their activities until notified by NMFS. The report must include the following information:

- (i) Time and date of the incident;
- (ii) Description of the incident;
- (iii) Environmental conditions;
- (iv) Description of all marine mammal observations in the 24 hours preceding the incident;
- (v) Species identification or description of the animal(s) involved;
- (vi) Fate of the animal(s); and
- (vii) Photographs or video footage of the animal(s).

(2) In the event that SCWA discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), SCWA shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (g)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SCWA to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that SCWA discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 217.1(a) (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), SCWA shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of

the discovery. SCWA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) Pursuant to paragraphs (g)(2) and (3) of this section, SCWA may use discretion in determining what injuries (*i.e.*, nature and severity) are appropriate for reporting. At minimum, SCWA must report those injuries considered to be serious (*i.e.*, will likely result in death) or that are likely caused by human interaction (*e.g.*, entanglement, gunshot). Also pursuant to sections paragraphs (g)(2) and (3) of this section, SCWA may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

#### § 217.7 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, SCWA must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of the regulations in this subpart.

(c) If an LOA expires prior to the expiration date of the regulations in this subpart, SCWA may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SCWA must apply for and obtain a modification of the LOA as described in § 217.8.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

#### § 217.8 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 and 217.7 of this chapter for the activity identified in § 217.1(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and

reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under the regulations in this subpart were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 217.7 of this chapter for the activity identified in § 217.1(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SCWA regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA are:

(A) Results from SCWA's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 and 217.7 of this chapter, an LOA may be modified without prior

notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

**§§ 217.9–217.10 [Reserved]**

[FR Doc. 2017–04944 Filed 3–14–17; 8:45 am]

**BILLING CODE 3510–22–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 160920866–7167–02]

**RIN 0648–XF287**

**Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2017 total allowable catch of pollock for Statistical Area 610 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2017, through 1200 hrs, A.l.t., May 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2017 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 2,232 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish in the GOA (82 FR 12032, February 27, 2017). In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2017 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,132 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 9, 2017.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 10, 2017.

**Karen H. Abrams,**  
*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–05180 Filed 3–10–17; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register

Vol. 82, No. 49

Wednesday, March 15, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 26, 50, 52, 73, and 140

[NRC–2015–0070]

RIN 3150–AJ59

### Regulatory Improvements for Power Reactors Transitioning to Decommissioning

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory basis; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is requesting comments on a draft regulatory basis to support a rulemaking that would amend NRC's regulations for the decommissioning of nuclear power reactors. The NRC's goals in amending these regulations would be to provide for an efficient decommissioning process; reduce the need for exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC staff; and support the principles of good regulation, including openness, clarity, and reliability. The NRC plans to hold a public meeting to discuss the draft regulatory basis and facilitate public comment.

**DATES:** Submit comments by June 13, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before this date.

**ADDRESSES:** You may submit comments by the following method:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0070. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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

**FOR FURTHER INFORMATION CONTACT:**

Alysia G. Bone, telephone: 301–415–1034, email: [Alysia.Bone@nrc.gov](mailto:Alysia.Bone@nrc.gov); or Jennifer C. Tobin, telephone: 301–415–2328, email: [Jennifer.Tobin@nrc.gov](mailto:Jennifer.Tobin@nrc.gov). Both are staff of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

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- III. Specific Requests for Comments
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**I. Obtaining Information and Submitting Comments**

*A. Obtaining Information*

Please refer to Docket ID NRC–2015–0070 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0070.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The draft regulatory basis document is available in ADAMS under Accession No. ML17047A413.

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

*B. Submitting Comments*

Please include Docket ID NRC–2015–0070 in your comment submission. If you cannot submit your comments on the Federal rulemaking Web site, [www.regulations.gov](http://www.regulations.gov), then contact one of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons to not include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS. Please note that the NRC will not provide formal written responses to each of the comments received on the draft regulatory basis. However, the NRC staff will consider all comments received in the development of the final regulatory basis.

**II. Discussion**

On December 30, 2014, in the staff requirements memorandum (SRM) for SECY–14–0118, “Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements” (ADAMS Accession No. ML14364A111), the Commission directed the NRC staff to proceed with a rulemaking on power reactor decommissioning. The Commission also stated that the rulemaking should address: Issues discussed in SECY–00–0145, “Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning” (ADAMS Accession No. ML003721626), such as the graded approach to emergency preparedness (EP); lessons learned from the plants that have already (or are currently) going through the decommissioning process; the

advisability of requiring a licensee's Post-Shutdown Decommissioning Activities Report (PSDAR) to be approved by the NRC; the appropriateness of maintaining the three existing options for decommissioning and the timeframes associated with those options; the appropriate role of state and local governments and non-governmental stakeholders in the decommissioning process; and any other issues deemed relevant by the NRC.

The NRC issued an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (80 FR 72358; November 19, 2015) to obtain stakeholder feedback on the regulatory issues included in the SRM for SECY-14-0118. The NRC received public comments related to each of the regulatory issues outlined in the ANPR. Most public feedback pertained to the level of public involvement in the decommissioning process, the 60-year limit for power reactor decommissioning, whether the NRC should approve the PSDAR, EP considerations, and the use of the decommissioning trust funds (DTFs). The NRC reviewed the comments and used input received from the comments to develop the options presented in the draft regulatory basis.

In the draft regulatory basis, the NRC staff concludes that it has sufficient justification to proceed with rulemaking in the areas of EP, physical security, DTFs, offsite and onsite financial protection requirements and indemnity agreements, and application of the backfit rule. As stated previously, the NRC staff included all of these areas in the ANPR and received stakeholder feedback. Further, the NRC staff is recommending rulemaking to: (1) Require that the PSDAR contain a description of how the spent fuel stored under a general independent spent fuel storage installation license will be removed from the reactor site in accordance with the regulatory requirements in § 50.82 of title 10 of the *Code of Federal Regulations* (10 CFR), "Termination of License," 10 CFR 50.54(bb), "Conditions of Licenses," 10 CFR 52.110, "Termination of License," and/or 10 CFR 72.218, "Termination of Licenses;" and (2) amend 10 CFR 51.53, "Postconstruction Environmental Reports," and 10 CFR 51.95, "Postconstruction Environmental Impact Statements," to clarify that the requirements for a license amendment before decommissioning activities may commence applies only to non-power reactors, as specified in 10 CFR 50.82(b), "Termination of License," in accordance with the 1996 final rule that

amended the NRC's decommissioning regulations (61 FR 39278).

At this time, the NRC staff has determined that additional stakeholder input is needed prior to finalizing recommendations related to cyber security, drug and alcohol testing, certified fuel handler training and minimum staffing, aging management, and fatigue management. The NRC received comments in these areas from the ANPR and intends to seek specific public input on these topics as part of the public comment request on the entire draft regulatory basis.

In the draft regulatory basis, the NRC staff concludes that regulatory activities other than rulemaking—such as guidance development—should be used to address concerns expressed in comments received on the ANPR regarding the appropriate role of State and local governments in the decommissioning process, the level of NRC review and approval of the PSDAR, and the 60 year limit for power reactor decommissioning. The NRC is requesting public comment on the draft regulatory basis and its associated appendices. To supplement the draft regulatory basis, the NRC is preparing a preliminary draft regulatory analysis, which will be made available for public comment in the near future.

### III. Request for Comment

The NRC is requesting comment on the draft regulatory basis, "Regulatory Improvements for Reactors Transitioning to Decommissioning." As you prepare your comments, consider the following general questions:

1. Is the NRC considering appropriate options for each regulatory area described in the draft regulatory basis?
2. Are there additional factors that the NRC should consider in each regulatory area? What are these factors?
3. Are there any additional options that the NRC should consider during development of the proposed rule?
4. Is there additional information concerning regulatory impacts that NRC should include in its regulatory basis for this rulemaking?

#### *Specific Regulatory Issues*

In addition to these general questions, the NRC has identified additional areas of consideration that either could be included in the scope of the power reactor decommissioning rulemaking or addressed through other actions. The NRC may include additional discussion of these issues in the final regulatory basis, and if included, will use any public comments received regarding these issues to inform the development of the final regulatory basis. The NRC

requests that members of the public answer the following specific questions regarding these additional regulatory issues.

#### *Foreign Ownership, Control, or Domination (FOCD) Exemptions for Facilities in Decommissioning*

A licensee in decommissioning may desire to transfer their license under 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," to another entity to perform the decommissioning activities described in the licensee's PSDAR. However, pursuant to § 50.38, "Ineligibility of Certain Applicants," the receiving entity is ineligible to obtain the license if it is a citizen, national, or agent of a foreign country or if it is any corporation or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. The NRC has granted exemptions from this requirement for facilities that have been dismantled and removed, such that only independent spent fuel storage installations remained onsite (78 FR 58571; September 24, 2013).

5. Should the NRC address the exemption to § 50.38 for licensees of facilities in decommissioning on a generic basis as a part of this rulemaking? If so, why, and how should the NRC address this issue?

#### *Potential Changes to 10 CFR Part 37*

Both operating and decommissioning power reactor licensees are subject to the physical protection programs contained in § 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," of 10 CFR part 73, "Physical Protection of Plants and Materials;" appendix B, "General Criteria for Security Personnel," to 10 CFR part 73; and appendix C, "Licensee Safeguards Contingency Plans," to 10 CFR part 73. These licensees are also subject to 10 CFR part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," if they possess category 1 and category 2 quantities of radioactive material. Therefore, these licensees are potentially subject to both 10 CFR part 73 and 10 CFR part 37 security regulations.

The NRC issued the regulations in 10 CFR part 37 to establish security requirements for the use and transport of risk significant quantities of category 1 and category 2 radioactive material. Category 1 and category 2 thresholds of radioactive materials in 10 CFR part 37 are consistent with similar categories of

radioactive materials established by the International Atomic Energy Agency in its Code of Conduct on the Safety and Security of Radioactive Sources (available at <http://www-ns.iaea.org/tech-areas/radiation-safety/code-of-conduct.asp> (last visited on February 10, 2017)).

The objective of 10 CFR part 37 is to provide reasonable assurance that licensees can prevent the theft or diversion of category 1 and category 2 quantities of radioactive material. The current 10 CFR part 37 regulation is applicable to any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material, any licensee that transports these materials using ground transportation, and any licensee that transports small quantities of irradiated reactor fuel.

To address the potential impact of redundant security regulations during decommissioning, the NRC is considering revising security regulations, including addressing the physical security requirements for category 1 and category 2 materials at facilities undergoing decommissioning.

6. Are the physical security protection programs in 10 CFR part 37 an area of regulation that the NRC should address in this rulemaking? If so, why, and how should the NRC address this issue?

7. Should 10 CFR part 50 licensees transitioning from an operating status to decommissioning status be provided specific physical security requirements in 10 CFR part 37 for category 1 and category 2 materials, based on their decommissioning status (*i.e.*, in DECON, SAFSTOR, and ENTOMB)?

8. Should the NRC establish specific security requirements for the storage of category 1 and category 2 materials contained in large components, robust structures, and in other equipment that are not likely to be subject to theft and diversion due to their inherent self-protecting features (*i.e.*, large physical size and weight)?

9. Is a clarification of the exemption in § 37.11(b) needed with respect to facilities with 10 CFR part 73 security plans that are undergoing decommissioning?

#### *Specific Questions Regarding Appendix F, "Decommissioning Trust Funds," of the Draft Regulatory Basis*

In addition to the options proposed in Appendix F of the draft regulatory basis, the NRC is considering an option to amend the regulations in § 50.75, "Reporting and Recordkeeping for Decommissioning Planning," to require each power reactor licensee to provide and assure to a site-specific cost estimate that is reviewed by the NRC at

initial licensing, throughout operations, and while in decommissioning. A future licensee would provide at licensing site-specific decommissioning plans, including an initial site-specific cost estimate that captures the major assumptions, major decommissioning activities, references, and any other bases used to develop this estimate. Each plan would address how the cost estimate will be adjusted for future cost escalation, the mechanism to be established for funding, and a schedule for periodic contributions and assumptions about future decommissioning trust fund growth (*e.g.*, 2 percent real-rate of return). During operations, each licensee would update the initial site-specific cost estimate periodically to account for cost escalation and any changes in assumptions that may result in increased decommissioning costs (*i.e.*, years 1–35 at 5 year intervals; annually thereafter). Should this option be considered, the NRC would recommend the following:

a. The Table of Minimum Amounts in § 50.75(b) would continue to require certification of a site-specific decommissioning cost estimate that meets, or exceeds, the NRC minimum formula amount.

b. *Implementation Period:* The NRC would recommend that current licensees be provided the biennial (2 year) status report period with an additional year to provide and assure to the site-specific decommissioning plan referenced herein.

10. Should this area of the regulations be addressed in this rulemaking? If so, why, and how should the NRC address this issue?

#### *Onsite and Offsite Liability Insurance During Decommissioning*

The NRC staff is considering a proposal to adjust the amounts of primary liability insurance that power reactor licensees in decommissioning must maintain. The current practice is to exempt these licensees from the § 140.11 requirements (for offsite insurance) and § 50.54(w) (for onsite insurance) so that the amount of offsite and onsite insurance corresponds to the risks of a decommissioning plant. The NRC staff would use this rulemaking to establish regulations for licensees in decommissioning to preclude the need for these licensees to request exemptions. The NRC staff is considering using the amounts approved in several previous exemption actions and adjusting those amounts for inflation.

11. If the NRC takes this approach, should the NRC apply this requirement

to licensees who already have exemptions from insurance requirements and whose levels of insurance have not been adjusted for inflation?

#### *Specific Question Regarding Security Plan Changes During Decommissioning*

Operating reactor licensees that are decommissioning may use the § 50.54(p)(2) process to implement changes to their site security plans (*e.g.*, removal of barriers, reduction of vital areas and armed response team members) that do not decrease the safeguards effectiveness of their plans. After the licensee has implemented the changes to their security plans and submitted the required report of the changes, the NRC staff practice is to review these reports to ensure that the licensee has properly adhered to the requirements of § 50.54(p)(2) and not implemented a change that decreases the safeguards effectiveness of its security plans. Although not specifically required by regulation, licensees have typically included in their submitted reports information demonstrating that these changes do not constitute a decrease in safeguards effectiveness. However, submission of this additional information currently is not a regulatory requirement.

The NRC staff further notes that the change process in § 50.54(p)(2) is complicated for both licensees and the NRC staff by the fact that the term "decrease in safeguards effectiveness" is not defined in our regulations. Accordingly, the NRC is considering adding the following definition to § 50.2, "Definitions," or to § 50.54(p)(2): *A decrease in the safeguards effectiveness* of a security plan is a change or series of changes to the security plan that reduces or eliminates the licensee's ability to perform or maintain the security function that was previously performed or provided by the changed element or component without compensating changes to other security plan elements or components.

12. The NRC staff requests public comments on the following options.

Option 1, no change. Decommissioning licensees continue to implement security plan changes that do not decrease safeguards effectiveness using the provisions of § 50.54(p)(2), reporting changes to the NRC within 2 months. If the NRC staff is unable to verify the licensee's safeguards effectiveness determination through a review of the submitted report, the NRC staff would continue to follow up on the changes through the inspection process.

Option 2, develop regulatory guidance associated with decommissioning

reactor security plan changes to provide licensees guidance for making security plan changes that do and do not decrease the safeguards effectiveness of the plan.

Option 3, revise the requirements in § 50.54(p) to include the aforementioned definition of safeguards effectiveness and revise the specific requirements in § 50.54(p)(2) to more closely reflect the wording found in § 50.54(q), “Emergency Plans,” specifically within paragraphs 50.54(q)(3) and (5).

13. Which option should the NRC pursue to address this issue?

*Specific Question Regarding the Community Advisory Board (CAB)*

Although not a regulatory requirement, to date all decommissioning licensees have created some form of a community advisory board, with membership and activity levels commensurate with the overall level of public interest in the decommissioning activities at the facility. Currently, the staff doesn’t have a compelling safety basis to recommend an option for rulemaking regarding the licensee’s establishment of a community advisory board.

14. The staff is seeking public comment on how such a requirement might constitute a cost-justified, substantial increase in protection of the public health and safety or the common defense and security.

**IV. Cumulative Effects of Regulation**

The cumulative effects of regulation (CER) describe the challenges that licensees or other impacted entities

(such as State agency partners) may face while implementing new regulatory positions, programs, and requirements (e.g., rules, generic letters, backfits, inspections). The CER is an organizational effectiveness challenge that results from a licensee or impacted entity implementing a number of complex positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). The NRC has implemented CER enhancements to the rulemaking process to facilitate public involvement throughout the rulemaking process. Therefore, the NRC is specifically requesting comment on the cumulative effects that may result from this proposed rulemaking. In developing comments on the draft regulatory basis, consider the following questions:

(1) In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed requirements, including changes to programs, procedures, or the facility?

(2) If current or projected CER challenges exist, what should be done to address this situation (e.g., if more time is required to implement the new requirements, what period of time would be sufficient, and why such a time frame is necessary)?

(3) Do other regulatory actions (e.g., orders, generic communications, license amendment requests, and inspection findings of a generic nature) by the NRC

or other agencies influence the implementation of the potential proposed requirements?

(4) Are there unintended consequences? Does the potential proposed action create conditions that would be contrary to the potential proposed action’s purpose and objectives? If so, what are the consequences and how should they be addressed?

(5) Please provide information on the costs and benefits of the potential proposed action. This information will be used to support additional regulatory analysis by the NRC.

**V. Availability of Documents**

The NRC may post additional materials related to this rulemaking activity to the Federal rulemaking Web site at [www.regulations.gov](http://www.regulations.gov) under Docket ID NRC–2015–0070. These documents will inform the public of the current status of this activity and/or provide additional material for use at future public meetings.

The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2015–0070); (2) click the “Sign up for Email Alerts” link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

The documents identified in the following table are available to interested persons through one or more of the methods listed in the **ADDRESSES** section of this document.

Document	ADAMS Accession No./web link/ <b>Federal Register</b> citation
SECY–14–0118, “Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements,” December 30, 2014.	ML14364A111.
SECY–00–0145—“Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning,” June 28, 2000. .... <b>Federal Register</b> notice, “Advance Notice of Proposed Rulemaking: Regulatory Improvements for Decommissioning Power Reactors,” November 19, 2015.	ML003721626. 80 FR 72358.
<b>Federal Register</b> notice, “Maine Yankee Atomic Power Company, Connecticut Yankee Atomic Power Company, and The Yankee Atomic Electric Company,” September 24, 2013.	78 FR 58571.
Code of Conduct on the Safety and Security of Radioactive Sources, September 8, 2003 .....	<a href="http://www-ns.iaea.org/tech-areas/radiation-safety/code-of-conduct.asp">http://www-ns.iaea.org/tech-areas/radiation-safety/code-of-conduct.asp</a> .

**VI. Plain Writing**

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

**Register** on June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

Dated at Rockville, Maryland, this 10th day of March 2017.

For the Nuclear Regulatory Commission.

**Louise Lund**,  
*Director, Division of Policy and Rulemaking,  
Office of Nuclear Reactor Regulation.*

[FR Doc. 2017–05141 Filed 3–14–17; 8:45 am]

**BILLING CODE 7590–01–P**



**BUREAU OF CONSUMER FINANCIAL PROTECTION****12 CFR Parts 1005 and 1026**

[Docket No. CFPB–2017–0008]

RIN 3170–AA69

**Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date****AGENCY:** Bureau of Consumer Financial Protection.**ACTION:** Proposed rule with request for public comment.**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau or CFPB) is proposing to delay the October 1, 2017 effective date of the rule governing Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) by six months, to April 1, 2018.**DATES:** Comments must be received on or before April 5, 2017.**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2017–0008 or RIN 3170–AA69, by any of the following methods:

- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB–2017–0008 or RIN 3170–AA69 in the subject line of the email.

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

**Instructions:** All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will

become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Devlin or Yaritza Velez, Counsels, or Kristine M. Andreassen, Senior Counsel, Office of Regulations, at (202) 435–7700.

**SUPPLEMENTARY INFORMATION:****I. Summary of the Proposed Rule**

On October 5, 2016, the Bureau released a final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and Regulation Z, which implements the Truth in Lending Act (TILA) (Prepaid Accounts Final Rule).<sup>1</sup> The Prepaid Accounts Final Rule has an effective date of October 1, 2017. Through its efforts to support industry implementation of the Prepaid Accounts Final Rule, the Bureau has learned that some industry participants believe they will have difficulty complying with certain provisions of the Prepaid Accounts Final Rule that go into effect October 1, 2017. In order to facilitate compliance with the Prepaid Accounts Final Rule, and to allow an opportunity for the Bureau to assess whether any additional adjustments to the Rule are appropriate, the Bureau is proposing to extend the effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018. The Bureau believes that such an extension would, among other things, help industry participants address certain packaging-related logistical issues for prepaid accounts that are sold at retail locations.

This proposed rule seeks comment on whether the Bureau should extend the effective date of the Prepaid Accounts Final Rule, and if so, whether six months is an appropriate length of time for such an extension. The Bureau is also proposing to make conforming amendments to certain regulatory text and commentary adopted in the Prepaid Accounts Final Rule to reflect the proposed effective date delay.

**II. Background****A. The Prepaid Accounts Rulemaking**

In the Prepaid Accounts Final Rule, the Bureau extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts, and generally expanded

Regulation Z's coverage to overdraft credit features that may be offered in conjunction with prepaid accounts.<sup>2</sup> The Bureau released a proposal regarding prepaid accounts under Regulations E and Z, including model and sample disclosure forms, for public comment on November 13, 2014,<sup>3</sup> and released the Prepaid Accounts Final Rule on October 5, 2016.

Upon issuing the Prepaid Accounts Final Rule, the Bureau initiated robust efforts to support industry implementation.<sup>4</sup> Information regarding the Bureau's Prepaid Accounts Final Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation Web site at <https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>.

**B. Proposed Effective Date**

As published, the Prepaid Accounts Final Rule has a general effective date of October 1, 2017. As part of its efforts to support industry implementation, the Bureau has discussed implementation efforts with a number of industry participants. As a result of those discussions, the Bureau has learned that some industry participants are concerned that they will have difficulty in complying with the Prepaid Accounts Final Rule while also ensuring continued availability of their prepaid products and with minimal disruption to consumers by October 1, 2017 for a variety of reasons. For example, the Bureau put in place an exception in Regulation E § 1005.18(h)(2) pursuant to which financial institutions are not

<sup>2</sup> 81 FR 83934 (Nov. 22, 2016).

<sup>3</sup> 79 FR 77102 (Dec. 23, 2014) (Prepaid Accounts NPRM). See also Press Release, CFPB, *CFPB Proposes Strong Federal Protections for Prepaid Products* (Nov. 13, 2014), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-strong-federal-protections-for-prepaid-products/>. The Bureau had previously issued an advance notice of proposed rulemaking that posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable cards and other prepaid products. 77 FR 30923 (May 24, 2012).

<sup>4</sup> These on-going efforts include: (1) The publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Final Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Final Rule, including an executive summary of the rule, summaries of key changes for payroll card accounts and government benefit accounts, a prepaid account coverage chart, and a summary of the rule's effective date provisions; (3) the release of native design files for print and source code for web-based disclosures for all of the model and sample disclosure forms included in the Prepaid Accounts Final Rule; (4) meetings with industry, including trade associations and individual industry participants, to discuss and support their implementation efforts; and (5) participation in conferences and forums.

<sup>1</sup> 81 FR 83934 (Nov. 22, 2016).

required to pull and replace prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. Nonetheless, the Bureau understands that because of concerns about legal and regulatory exposure at both the Federal and State level due to potential product changes, and in particular due to developments following release of the Prepaid Accounts Final Rule, some industry participants believe that they should in fact pull and replace non-compliant packaging. Industry has also raised related concerns regarding the production capacity of packaging manufacturers and other supply chain limitations leading up to the October 1, 2017 effective date due to increased demand by industry on a limited number of manufacturers.

In addition, in the course of working to implement the Prepaid Accounts Final Rule, some industry participants have raised concerns about what they describe as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices (including recent changes thereto) that they did not fully address in their comment letters on the Prepaid Accounts NPRM, which may lead to additional complexities for implementation and negative implications for consumers.

The Bureau continues to believe that the Prepaid Accounts Final Rule will provide significant benefits to consumers and that, therefore, expeditious implementation remains essential to provide comprehensive consumer protections to users of prepaid accounts. The Bureau also appreciates the concerns raised by some industry participants that they may have difficulty in complying with the rule by October 1, 2017. Accordingly, for the reasons stated herein, the Bureau is proposing to delay the effective date of the Prepaid Accounts Final Rule for a period of six months, to April 1, 2018. In order to effect this change, the Bureau is also proposing to amend Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary, to reflect the delayed effective date.

Furthermore, delaying the effective date will allow the Bureau to more closely evaluate concerns raised by industry participants regarding certain substantive aspects of the Prepaid Accounts Final Rule that they assert are posing particular complexities for implementation or may have negative consequences for consumers that were not anticipated or fully explained by commenters in response to the Prepaid

Accounts NPRM, and to propose revisions to those provisions of the Prepaid Accounts Final Rule if it determines that amendments are necessary and appropriate.

The Bureau believes that, based on its initial outreach to industry, a six-month delay would be sufficient for industry participants to ensure that they can comply with the Prepaid Accounts Final Rule with minimal disruption to consumers. In particular, a six-month extension would both allow more time for package printing and allow pull-and-replace processes at retail locations to occur after the winter holiday season, which is a particularly busy time for retailers. Indeed, the Bureau understands that industry often effectuates pull-and-replace processes in the spring for precisely this reason. The Bureau also believes that a six-month delay will allow the Bureau adequate opportunity to consider possible additional amendments to the Prepaid Accounts Final Rule, and for industry to implement any such changes, without unnecessary disruption to consumers' access to, and use of, prepaid accounts.

The Bureau solicits comment on whether it should delay the effective date for the Prepaid Accounts Final Rule, and if so, whether six months is an appropriate length of time. The Bureau also solicits comment on the potential consequences of not extending the effective date. In particular, the Bureau asks commenters to provide specific detail and any available data regarding current and planned practices, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts of this proposal on industry, consumers, and other stakeholders. Finally, the Bureau solicits comment about the impact of the proposed delay on consumers who use prepaid accounts.

The Bureau is not proposing to delay the effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2), which is October 1, 2018. The Bureau expects to have its agreement submission process in place by October 1, 2018, and the Bureau's outreach has not indicated that industry participants are concerned that they will not be able to meet the agreement submission effective date. The Bureau nonetheless solicits comment on whether it should delay the effective date of the agreement submission requirement, and if so, for what length of time.

The Bureau is not proposing to amend any substantive requirements of the Prepaid Accounts Final Rule at this time. The purpose of this notice is not

to seek comment generally on policy decisions made in the Prepaid Accounts Final Rule that industry or other stakeholders might wish the Bureau to reconsider. The Bureau will continue its outreach to industry and other stakeholders to understand their experiences in implementing the Prepaid Accounts Final Rule. If the Bureau determines that amendments to the substantive provisions of the Prepaid Accounts Final Rule are warranted, it will do so through a separate rulemaking.

### III. Legal Authority

The Bureau is proposing to exercise its rulemaking authority pursuant to EFTA section 904(a) and (c), Dodd-Frank Act sections 1022(b)(1) and 1032(a), and TILA section 105(a) to delay the effective date of the Prepaid Accounts Final Rule.

The legal authority for the Prepaid Accounts Final Rule is described in detail in the Prepaid Accounts Final Rule's **SUPPLEMENTARY INFORMATION**.<sup>5</sup> As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)<sup>6</sup> authorizes the Bureau to prescribe regulations to carry out the purposes of EFTA and provides that such regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions, for any class of electronic fund transfers or remittance transfers as in the judgment of the Bureau are necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. As amended by the Dodd-Frank Act, TILA section 105(a)<sup>7</sup> directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.<sup>8</sup> Section 1032(a)

<sup>5</sup> See, e.g., 81 FR 83934, 83958–60 (Nov. 22, 2016).

<sup>6</sup> 15 U.S.C. 1593b(a).

<sup>7</sup> 15 U.S.C. 1604(a).

<sup>8</sup> TILA section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required by parts A, D, or E of TILA shall have an effective date "of that October 1 which follows by at least six months the date of promulgation." Section 105(d) further provides that the Bureau "may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time

of the Dodd-Frank Act<sup>9</sup> provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Additionally, under Dodd-Frank Act section 1022(b)(1),<sup>10</sup> the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. EFTA, TILA, and Title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)<sup>11</sup> to prescribe rules under EFTA, TILA, and Title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act<sup>12</sup> prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

#### IV. Provisions Affected by the Proposal

##### 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

##### 18(b) Pre-Acquisition Disclosure Requirements

##### 18(b)(2) Short Form Disclosure Content

##### 18(b)(2)(ix) Disclosure of Additional Fee Types

Regulation E § 1005.18(b)(2) describes the short form disclosure requirements for prepaid accounts. Section 1005.18(b)(2)(ix) contains requirements specifically regarding additional fee types. Section 1005.18(b)(2)(ix)(D) describes the timing requirements for the initial assessment of an additional fee types disclosure, and § 1005.18(b)(2)(ix)(E) describes the timing for the periodic reassessment and

permitted for creditors or lessors to adjust their forms to accommodate new requirements.” Although the Bureau desires to have the rule take effect as soon as feasible given its value for consumers, the Bureau is proposing to use its discretion under TILA section 105(d) to lengthen the period in this instance. The Bureau believes the changes the Prepaid Accounts Final Rule will require to disclosures pursuant to Regulation Z warrant a delayed effective date that conforms to the rest of the rule.

<sup>9</sup> 12 U.S.C. 5532(a).

<sup>10</sup> 12 U.S.C. 5512(b)(1).

<sup>11</sup> 12 U.S.C. 5512(b).

<sup>12</sup> 12 U.S.C. 5512(b)(2).

update of additional fee types disclosures. The Bureau is proposing to revise the dates in the regulatory text and headings in § 1005.18(b)(2)(ix)(D)(1) through (3) and in comments 18(b)(2)(ix)(D)(1)–1, 18(b)(2)(ix)(D)(2)–1, 18(b)(2)(ix)(E)(2)–1.i through iii, and 18(b)(2)(ix)(E)(3)–1 to reflect the proposed revised effective date of April 1, 2018. The Bureau is not, however, proposing to change the October 1, 2014 date in § 1005.18(b)(2)(ix)(D)(1) and related commentary, which is the beginning of the time frame for which financial institutions may calculate additional fee types to disclose, so as not to inconvenience financial institutions who have already prepared their additional fee types calculations in reliance on that date.

##### 18(h) Effective Date and Special Transition Rules for Disclosure Provisions

Regulation E § 1005.18(h) sets forth several provisions to make clearer the Prepaid Accounts Final Rule’s general October 1, 2017 effective date. The Bureau is proposing to revise the dates in the regulatory text and headings throughout § 1005.18(h) and in comments 18(h)–1, 2, 6.i and 6.ii to reflect the proposed revised effective date of April 1, 2018.

##### 1005.19 Internet Posting of Prepaid Account Agreements

##### 19(f) Effective Date

##### 19(f)(1) Effective Date

Regulation E § 1005.19(f)(1) sets forth the general effective date for the prepaid account agreement posting requirements in § 1005.19, other than the delayed requirement to submit prepaid account agreements to the Bureau pursuant to § 1005.19(b), as addressed in § 1005.19(f)(2). The Bureau is proposing to revise the date in the regulatory text of § 1005.19(f)(1) to reflect the proposed revised effective date of April 1, 2018. As discussed above, the Bureau is not proposing to delay the October 1, 2018 date for submission of agreements to the Bureau.

#### V. Effective Date

The Bureau is proposing to delay the effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018. Additionally, the Bureau is proposing to make conforming amendments to Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary. After considering comments received on the proposal, the Bureau will publish a final rule with respect to the effective date of the Prepaid Accounts Final Rule.

The Bureau proposes that the final rule with respect to the effective date of the Prepaid Accounts Final Rule will become effective 30 days after publication in the **Federal Register**, as required under section 553(d) of the Administrative Procedure Act.<sup>13</sup>

#### VI. Section 1022(b) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has considered the potential benefits, costs and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. The Bureau consulted, or offered to consult with, the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

The Bureau previously considered the costs, benefits, and impacts of the Prepaid Accounts Final Rule’s major provisions.<sup>14</sup> Compared to the baseline established by the Prepaid Accounts Final Rule,<sup>15</sup> the proposed delay of the effective date of the Prepaid Accounts Final Rule would generally benefit covered persons by facilitating initial compliance with the Prepaid Accounts Final Rule’s requirements and delaying the start of ongoing compliance costs. Because covered persons retain the option of complying with the Prepaid Accounts Final Rule’s effective date, any delay in the effective date will not increase costs to providers because they retain the option of complying with the original effective date. If a delay in the effective date would help to preserve consumer access to covered products by minimizing industry disruption, both

<sup>13</sup> 5 U.S.C. 553(d).

<sup>14</sup> 81 FR 83934, 84269 (Nov. 22, 2016).

<sup>15</sup> The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

consumers and covered persons would benefit. The Bureau believes that delaying the effective date may also delay consumers' realization of benefits arising from the protections provided by the Prepaid Accounts Final Rule. In addition, the Bureau does not expect the proposed rule to have a differential impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act or on consumers in rural areas. The Bureau does not believe that the proposed delay in the effective date would reduce consumer access to consumer financial products and services, and it may increase consumer access by decreasing the possibility of industry disruption arising from the Prepaid Accounts Final Rule's implementation.

The Bureau requests comment on this discussion as well as submission of additional information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposed rule.

## VII. Regulatory Flexibility Act

The Regulatory Flexibility Act<sup>16</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996<sup>17</sup> (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.<sup>18</sup> The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.<sup>19</sup>

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on

a substantial number of small entities.<sup>20</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.<sup>21</sup>

In the Prepaid Accounts NPRM, the Bureau concluded that the rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required.<sup>22</sup> That conclusion remained unchanged for the Prepaid Accounts Final Rule.<sup>23</sup> The Bureau concludes that an IRFA is not required for this proposed rule because the proposed rule, which would delay the effective date of a rule that will not have a significant economic impact on a substantial number of small entities, would not have a significant economic impact on a substantial number of small entities if adopted.

As discussed above, the proposal would delay the effective date of the Prepaid Accounts Final Rule to April 1, 2018. The proposed six-month delay in the effective date would benefit small entities by providing additional flexibility with respect to the timing of the Prepaid Accounts Final Rule's implementation. In addition to generally providing increased flexibility, the delay in the effective date would permit small entities to delay the commencement of any ongoing costs that result from complying with the Prepaid Accounts Final Rule. Because small entities retain the option of complying with the Prepaid Accounts Final Rule's original effective date, the proposed rule's delay of the effective date will not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Final Rule. Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

## VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995<sup>24</sup> (PRA), Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to the Prepaid Accounts Final Rule have been previously reviewed and approved by OMB in accordance with the PRA

and assigned OMB Control Number 3170-0014 (Regulation E) and 3170-0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule would not have any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

Dated: March 8, 2017.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2017-05060 Filed 3-14-17; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket Number USCG-2016-0723]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, St. Augustine, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is seeking comments and information concerning a proposal to change the operating schedule for the Bridge of Lions across the Atlantic Intracoastal Waterway, St. Augustine, Florida. The City of St. Augustine is concerned that vehicle traffic is becoming exponentially worse with each passing season and that on-demand bridge openings are contributing to vehicle traffic backups. The proposed modification would extend the twice an hour draw opening period from 7 a.m. to 9 p.m. daily, and preclude the bridge draw from opening at 3:30 p.m. on weekends and Federal holidays.

<sup>16</sup> Public Law 96-354, 94 Stat. 1164 (1980).

<sup>17</sup> Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996).

<sup>18</sup> 5 U.S.C. 601 through 612. The term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment]." 5 U.S.C. 601(4). The term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment]." 5 U.S.C. 601(5).

<sup>19</sup> 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

<sup>20</sup> 5 U.S.C. 601 through 612.

<sup>21</sup> 5 U.S.C. 609.

<sup>22</sup> 79 FR 77102, 77283 (Dec. 23, 2014).

<sup>23</sup> 81 FR 83934, 84308 (Nov. 22, 2016).

<sup>24</sup> 44 U.S.C. 3501 *et seq.*

**DATES:** Comments and related material must reach the Coast Guard on or before May 15, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0723 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, call or email MST1 Timothy Fosdick, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904–714–7623, email [Timothy.P.Fosdick@uscg.mil](mailto:Timothy.P.Fosdick@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 NPRM Notice of Proposed Rulemaking  
 ANPRM Advance Notice of Proposed Rulemaking  
 § Section Symbol  
 U.S.C. United States Code

**A. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this ANPRM as being available in the docket, and all public comments, will be in our online

docket at <http://www.regulations.gov> and can be viewed by following that Web site’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**B. Regulatory History and Information**

In 2015, the City of St. Augustine approached the Coast Guard with a recommendation to amend the Bridge of Lions operating schedule. Shortly thereafter, a meeting was held with the City of St. Augustine, the Florida Department of Transportation (FDOT), bridge owner, and the U.S. Coast Guard to seek improvements to reduce the vehicle traffic backups at the intersection of A1A, the Bridge of Lions, and Avenida Menendez. During the meeting, FDOT agreed to work with the City traffic engineers to develop better traffic signaling techniques to reduce the vehicle traffic backups. In May 2016, the City of St. Augustine proposed an amendment to the bridge operating schedule to reduce vehicle traffic backups in the affected area. The City would like to extend the 7 a.m. to 6 p.m. twice an hour opening schedule to 9 p.m., daily and preclude the bridge draw from opening at 3:30 p.m. on weekends and Federal holidays.

The current operating schedule, as published in 33 CFR 117.261(d), reads as follows: Bridge of Lions (SR A1A) bridge, mile 777.9 at St. Augustine. The draw shall open on signal; except that, from 7 a.m. to 6 p.m. the draw need open only on the hour and half-hour; however, the draw need not open at 8 a.m., 12 noon, and 5 p.m. Monday through Friday except Federal holidays. From 7 a.m. to 6 p.m. on Saturdays, Sundays and Federal holidays the draw need only open on the hour and half-hour.

In accordance with Nautical Chart 11485, 37th Ed., Nov. 2014, the Bridge of Lions has a vertical clearance of 18 feet in the closed (down) position at mean high water and a horizontal clearance of 79 feet. Additionally, there is a note on the chart stating “Strong tidal currents run perpendicular to the Bridge of Lions opening. Vessels engaged in towing and pushing operations are advised to transit the bridge opening during slack tide and, if necessary, breakdown the tow in small units or use adequate tugs.” In regards to the Bridge of Lions, the U.S. Coast Pilot 4, Chapter 12, Edition 47, 2015 also states “Caution is advised because the tidal currents, particularly ebb, run at right angles to the bridge. It is advisable to drift large tows through this opening at slack water. Normal flood

currents of 1 knot and ebb currents of 1.5 knots may be expected. Several mishaps involving the bridge being hit by vessels, which have lost maneuvering control during periods of ebb currents, have occurred. Caution is advised when transiting the area.”

The original Bridge of Lions was built in 1927 and replaced in 2010. The new bridge was completed with no modifications to the vertical or horizontal clearances; therefore, there was no impact to the number of bridge openings due to vessel traffic.

**C. Basis and Purpose**

The legal basis and authorities for this ANPRM are found in 33 U.S.C. 499, 33 CFR 1.05–1, and Department of Homeland Security Delegation No. 0170.1. The Coast Guard is considering a change to the operating schedule for the Bridge of Lions across the Atlantic Intracoastal Waterway, St. Augustine, Florida. The Coast Guard received a request from the City of St. Augustine to modify the operating schedule for the Bridge of Lions in an effort to decrease vehicle traffic backups caused by the significant increase in vehicle traffic combined with the on-demand bridge openings. The purpose of this ANPRM is to solicit comments on a potential proposed rulemaking concerning a request to change the operating schedule for the Bridge of Lions.

**D. Discussion of Proposed Rule**

Amending the twice an hour opening schedule to a 7 a.m. to 9 p.m. period should not have an unreasonable impact on navigation. However, amending the bridge operating schedule to exclude a 3:30 p.m. opening on weekends and Federal holidays may have a negative impact to the public, as there are many tourists in vehicles and vessels in St. Augustine during these periods. Additional input will be required from the City of St. Augustine to understand why this particular time was selected. It will also be essential to determine whether any commercial vessel operators would be directly impacted by amending the bridge operating schedule.

**E. Information Requested**

To aid the Coast Guard in developing a proposed rule, we seek any comments, whether positive or negative, including but not limited to: The impact on vessel traffic and/or marine businesses in the area when extending the twice an hour opening; any potential negative impact to vessel traffic or marine businesses of not opening the bridge between 3 p.m. and 4 p.m.; whether the extension to 9 p.m. of the Bridge of Lions twice an

hour opening schedule would reduce traffic congestion and; if traffic congestion would be reduced if the bridge did not open between 3 p.m. and

4 p.m. on weekends and Federal holidays.

Dated: March 9, 2017.

**S.A. Buschman,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.*

[FR Doc. 2017-05071 Filed 3-14-17; 8:45 am]

**BILLING CODE 9110-04-P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): 2017/2018 Income Eligibility Guidelines

**AGENCY:** Food and Nutrition Service (FNS), Department of Agriculture (USDA).

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (“Department”) announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

**DATES:** Effective date July 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Kurtria Watson, Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 605-4387.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

#### Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

#### Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

#### Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29100, June 24, 1983, and 49 FR 22675, May 31, 1984).

#### Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(d)(2)(A)), requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person’s eligibility for participation in the WIC Program. The law provides that persons will be income-eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted. Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2017 was published by the Department of Health and Human Services (HHS) at 82 FR 8831, January 31, 2017. The guidelines published by

HHS are referred to as the “poverty guidelines.”

Section 246.7(d)(1) of the WIC regulations (Title 7, Code of Federal Regulations) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the Richard B. Russell National School Lunch Act for reduced-price school meals, or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time, the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period of July 1, 2017 through June 30, 2018. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, *i.e.*, earlier in the year, but in no case may implementation take place later than July 1, 2017. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on or before July 1, 2017.

**INCOME ELIGIBILITY GUIDELINES**  
 (Effective from July 1, 2017 to June 30, 2018)

Household Size	Federal Poverty Guidelines- 100%					Reduced Price Meals - 185%				
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly
<b>48 Contiguous States, D.C., Guam and Territories</b>										
1.....	\$12,060	\$1,005	\$503	\$464	\$232	\$22,311	\$1,860	\$930	\$859	\$430
2.....	16,240	1,354	677	625	313	30,044	2,504	1,252	1,156	578
3.....	20,420	1,702	851	786	393	37,777	3,149	1,575	1,453	727
4.....	24,600	2,050	1,025	947	474	45,510	3,793	1,897	1,751	876
5.....	28,780	2,399	1,200	1,107	554	53,243	4,437	2,219	2,048	1,024
6.....	32,960	2,747	1,374	1,268	634	60,976	5,082	2,541	2,346	1,173
7.....	37,140	3,095	1,548	1,429	715	68,709	5,726	2,863	2,643	1,322
8.....	41,320	3,444	1,722	1,590	795	76,442	6,371	3,186	2,941	1,471
Each add'l family member add	+	+	+	+	+	+	+	+	+	+
	\$4,180	\$349	\$175	\$161	\$81	\$7,733	\$645	\$323	\$298	\$149
<b>Alaska</b>										
1.....	\$15,060	\$1,255	\$628	\$580	\$290	\$27,861	\$2,322	\$1,161	\$1,072	\$536
2.....	20,290	1,691	846	781	391	37,537	3,129	1,565	1,444	722
3.....	25,520	2,127	1,064	982	491	47,212	3,935	1,968	1,816	908
4.....	30,750	2,563	1,282	1,183	592	56,888	4,741	2,371	2,188	1,094
5.....	35,980	2,999	1,500	1,384	692	66,563	5,547	2,774	2,561	1,281
6.....	41,210	3,435	1,718	1,585	793	76,239	6,354	3,177	2,933	1,467
7.....	46,440	3,870	1,935	1,787	894	85,914	7,160	3,580	3,305	1,653
8.....	51,670	4,306	2,153	1,988	994	95,590	7,966	3,983	3,677	1,839
Each add'l family member add	+	+	+	+	+	+	+	+	+	+
	\$5,230	\$436	\$218	\$202	\$101	\$9,676	\$807	\$404	\$373	\$187
<b>Hawaii</b>										
1.....	\$13,860	\$1,155	\$578	\$534	\$267	\$25,641	\$2,137	\$1,069	\$987	\$494
2.....	18,670	1,556	778	719	360	34,540	2,879	1,440	1,329	665
3.....	23,480	1,957	979	904	452	43,438	3,620	1,810	1,671	836
4.....	28,290	2,358	1,179	1,089	545	52,337	4,362	2,181	2,013	1,007
5.....	33,100	2,759	1,380	1,274	637	61,235	5,103	2,552	2,356	1,178
6.....	37,910	3,160	1,580	1,459	730	70,134	5,845	2,923	2,698	1,349
7.....	42,720	3,560	1,780	1,644	822	79,032	6,586	3,293	3,040	1,520
8.....	47,530	3,961	1,981	1,829	915	87,931	7,328	3,664	3,382	1,691
Each add'l family member add	+	+	+	+	+	+	+	+	+	+
	\$4,810	\$401	\$201	\$185	\$93	\$8,899	\$742	\$371	\$343	\$172



**INCOME ELIGIBILITY GUIDELINES**  
**Supplemental Chart for Family Sizes Greater Than Eight**  
**(Effective from July 1, 2017 to June 30, 2018)**

Household Size	Federal Poverty Guidelines- 100%					Reduced Price Meals - 185%				
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly
<b>48 Contiguous States, D.C., Guam and Territories</b>										
9.....	\$45,500	\$3,792	\$1,896	\$1,750	\$875	\$84,175	\$7,015	\$3,508	\$3,238	\$1,619
10.....	49,680	4,140	2,070	1,911	956	91,908	7,659	3,830	3,535	1,768
11.....	53,860	4,489	2,245	2,072	1,036	99,641	8,304	4,152	3,833	1,917
12.....	58,040	4,837	2,419	2,233	1,117	107,374	8,948	4,474	4,130	2,065
13.....	62,220	5,185	2,593	2,394	1,197	115,107	9,593	4,797	4,428	2,214
14.....	66,400	5,534	2,767	2,554	1,277	122,840	10,237	5,119	4,725	2,363
15.....	70,580	5,882	2,941	2,715	1,358	130,573	10,882	5,441	5,023	2,512
16.....	74,760	6,230	3,115	2,876	1,438	138,306	11,526	5,763	5,320	2,660
Each add'l family member add	+ \$4,180	+ \$349	+ \$175	+ \$161	+ \$81	+ \$7,733	+ \$645	+ \$323	+ \$298	+ \$149
<b>Alaska</b>										
9.....	\$56,900	\$4,742	\$2,371	\$2,189	\$1,095	\$105,265	\$8,773	\$4,387	\$4,049	\$2,025
10.....	62,130	5,178	2,589	2,390	1,195	114,941	9,579	4,790	4,421	2,211
11.....	67,360	5,614	2,807	2,591	1,296	124,616	10,385	5,193	4,793	2,397
12.....	72,590	6,050	3,025	2,792	1,396	134,292	11,191	5,596	5,166	2,583
13.....	77,820	6,485	3,243	2,994	1,497	143,967	11,998	5,999	5,538	2,769
14.....	83,050	6,921	3,461	3,195	1,598	153,643	12,804	6,402	5,910	2,955
15.....	88,280	7,357	3,679	3,396	1,698	163,318	13,610	6,805	6,282	3,141
16.....	93,510	7,793	3,897	3,597	1,799	172,994	14,417	7,209	6,654	3,327
Each add'l family member add	+ \$5,230	+ \$436	+ \$218	+ \$202	+ \$101	+ \$9,676	+ \$807	+ \$404	+ \$373	+ \$187
<b>Hawaii</b>										
9.....	\$52,340	\$4,362	\$2,181	\$2,014	\$1,007	\$96,829	\$8,070	\$4,035	\$3,725	\$1,863
10.....	57,150	4,763	2,382	2,199	1,100	105,728	8,811	4,406	4,067	2,034
11.....	61,960	5,164	2,582	2,384	1,192	114,626	9,553	4,777	4,409	2,205
12.....	66,770	5,565	2,783	2,569	1,285	123,525	10,294	5,147	4,751	2,376
13.....	71,580	5,965	2,983	2,754	1,377	132,423	11,036	5,518	5,094	2,547
14.....	76,390	6,366	3,183	2,939	1,470	141,322	11,777	5,889	5,436	2,718
15.....	81,200	6,767	3,384	3,124	1,562	150,220	12,519	6,260	5,778	2,889
16.....	86,010	7,168	3,584	3,309	1,655	159,119	13,260	6,630	6,120	3,060
Each add'l family member add	+ \$4,810	+ \$401	+ \$201	+ \$185	+ \$93	+ \$8,899	+ \$742	+ \$371	+ \$343	+ \$172

The table of this Notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all United States Territories, including Guam. Separate tables for Alaska and Hawaii have been

included for the convenience of the State agencies because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States.

**Authority:** 42 U.S.C. 1786.

Dated: February 27, 2017.

**Jessica Shahin,**

*Acting Administrator, Food and Nutrition Service, USDA.*

[FR Doc. 2017-05119 Filed 3-14-17; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### Request for Information: Supplemental Nutrition Assistance Program (SNAP) Income Conversion Factors for Anticipated Income

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

**ACTION:** Notice.

**SUMMARY:** The Food and Nutrition Service (FNS) seeks input on the use of the current Supplemental Nutrition Assistance Program (SNAP) income conversion factors used to anticipate a household's income for the purposes of SNAP eligibility when a household's income is received on a weekly or biweekly basis. FNS hopes to obtain perspective from State agencies and other stakeholders as it considers how to best balance the flexibilities States are granted in calculating anticipated monthly income under current SNAP regulations, while adhering to the legislative intent of reducing administrative burden on State agencies and removing barriers to eligibility for needy households.

**DATES:** Written comments must be received on or before May 15, 2017.

**ADDRESSES:** Comments may be sent to Sasha Gersten-Paal, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 812, Alexandria, VA 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically. All written comments will be open for public inspection at the FNS office located at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 812, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday). All responses to this notice will be summarized and included in the request for Office of Management and Budget

(OMB) approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this request for information should be directed to Sasha Gersten-Paal via email to [Sasha.Gersten-Paal@fns.usda.gov](mailto:Sasha.Gersten-Paal@fns.usda.gov).

**SUPPLEMENTARY INFORMATION:** SNAP regulations at 7 CFR 273.10(c)(2)(i) provide State agencies with three options when converting weekly and biweekly income into anticipated monthly income: Multiplying by 4.3 for weekly income or by 2.15 for biweekly income; using the State agency's public assistance (PA) conversion standard; or, using a household's exact amount, if it can be anticipated. These options have been available to State agencies since the enactment of the Food Stamp Act of 1977, and the majority of States opt to use the first set of conversion factors.

Generally, when calculating a SNAP recipient's benefit amount, the lower the recipient's income, the greater their SNAP benefit will be. Some stakeholders contend that using the first set of conversion factors (4.3 for weekly income or 2.15 for biweekly income) underestimates a recipient's actual monthly income, which in turn raises the amount of the recipient's SNAP benefit. These stakeholders maintain that not only does this result in an overpayment to the recipient, it also creates inequity between SNAP recipients paid on a monthly basis and those paid on a weekly or biweekly basis. These stakeholders recommend that FNS increase income conversion accuracy by amending current SNAP regulations to carry the current factors out by two decimal places, specifically, to 4.33 for weekly income, and 2.17 for biweekly income.

In 1971, Congress amended the Food Stamp Act of 1964 and directed FNS to establish standards of eligibility for the Food Stamp Program. In implementing the amendment, FNS began adjusting a household's monthly income to include income anticipated to be received during the certification period. For income received less frequently than a monthly basis, the factors used to average income were 4.3 for weekly income, and 2.15 for biweekly income.

In the Food Stamp Act of 1977, Congress expanded the definition of anticipated income in Section 5(f) to include "income reasonably anticipated to be received" during the certification period, and again provided FNS the authority to establish standards for calculating anticipated income. The House Committee of Agriculture's Report on the Food Stamp Act of 1977

states that the purpose in adopting this standard was ". . . to smooth the way for participation by the needy, not to place obstacles in their path by making them out to be less needy than they in fact are."

FNS codified these conversion factors through rulemaking, including a Notice of Proposed Rulemaking published on May 2, 1978, and a Final Rule published on October 17, 1978. Between the Proposed Rulemaking and the Final Rule, FNS received nearly 500 comments regarding the sections on determining anticipated income. In the preamble to the Final Rule, FNS stated that "State and local agencies were frequently concerned with the use of the proposed multipliers for converting income received on a weekly (4.3) or biweekly (2.15) basis. Some recommended using 4.333 and 2.167 to conform to the [Aid to Families with Dependent Children (AFDC)] factors for weekly and biweekly income conversions." To address this concern, in addition to using the established factors of 4.3 and 2.15, the Final Rule permitted State agencies to align their conversion factors with other public assistance programs, or to use the exact monthly figure if it could be obtained for the entire certification period.

In 1981, Congress added Section 5(f)(4) to the Act and directed FNS to ensure, "to the extent feasible," that the income of households receiving both Food Stamp benefits and benefits from AFDC, the predecessor to Temporary Assistance for Needy Families, were "calculated on a comparable basis under the two Acts."

With this history in mind, FNS is seeking information from State agency partners and stakeholders on the following particular questions:

1. Of the three income conversion options provided by 7 CFR 273.10(c)(2)(i), which option does your State agency use?
  - a. Why does your State agency use this particular option?
  - b. What are the perceived strengths, if any, of this option?
  - c. What are the perceived weaknesses, if any, of this option?
2. What, if any, administrative challenges would your State agency face in adopting a different income conversion option?
3. What, if any, technological challenges would your State agency face in adopting a different income conversion option?
4. Is there another methodology in converting weekly and biweekly income that FNS should consider?

a. Why should this methodology be used in place of the current options outlined in 7 CFR 273.10(c)(2)(i)?

b. Does this methodology support the legislative intent of Congress in removing barriers to access to households in need of nutritional assistance?

c. Does this methodology support the legislative intent of Congress to grant States more flexibility?

Dated: March 6, 2017.

**Jessica Shahin,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2017-05133 Filed 3-14-17; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Humboldt (NV) Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Humboldt (NV) Resource Advisory Committee (RAC) will meet in Winnemucca, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act.

**DATES:** The meeting will be held on March 29, 2017, at 9:00 a.m., Pacific Standard Time (PST). All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held at the USDA Service Center, 3275 Fountain Way, Winnemucca, Nevada 89445. The meeting can also be attended by teleconference. For anyone who would like to attend by teleconference, please visit <http://fs.usda.gov/goto/htnf/rac> or contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the USDA Service Center. Please call ahead to facilitate entry into the building.

#### **FOR FURTHER INFORMATION CONTACT:**

Joseph Garrotto, Designated Federal Officer, by phone at (775) 352-1215 or via email at [jgarrotto@fs.fed.us](mailto:jgarrotto@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

#### **SUPPLEMENTARY INFORMATION:**

The purpose of the meeting is to:

1. Elect Chair/Vice Chairperson, and
2. Review and recommend project proposals for Title II funds.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 15, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Wendy Markham, RAC Coordinator; by email to [wmarkham@fs.fed.us](mailto:wmarkham@fs.fed.us), or via facsimile to 775-623-9134.

**Meeting Accommodations:** If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 24, 2017.

**Glenn Casamassa,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017-05101 Filed 3-14-17; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF COMMERCE

### Census Bureau

#### **Notice of Correction to Federal Register Notice for 2018 End-to-End Census Test- Post-Enumeration Survey Independent Listing Operation**

**AGENCY:** U.S Census Bureau, Commerce.

**ACTION:** Notice of correction.

**SUMMARY:** On December 28, 2016, **Federal Register** Document 2016-31410 was published, which provided the Census Bureau's plans for the 2018 End-to-End Census Test- Post-Enumeration

Survey Independent Listing Operation. This collection was subsequently cancelled. This Correction Notice serves as notification of the cancellation of this collection after the **Federal Register** Notice was published for public comment.

**Sheleen Dumas,**

*PRA Departmental Lead, Office of the Chief Information Officer.*

[FR Doc. 2017-05142 Filed 3-14-17; 8:45 am]

**BILLING CODE 3510-07-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-837]

#### **Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Preliminary Intent To Rescind in Part: Calendar Year 2015**

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain cut-to-length carbon-quality steel plate from the Republic of Korea (Korea) for the period January 1, 2015, through December 31, 2015. This review covers multiple exporters/producers; two of which are being individually examined as mandatory respondents. The Department preliminary determines that Hyundai Steel Co. (Hyundai Steel) received countervailable subsidies that are above *de minimis* and that Dongkuk Steel Mill Co., Ltd. (DSM) received countervailable subsidies that are *de minimis*. Therefore, we are applying to the five firms not selected for individual examination in the administrative review the above *de minimis* net subsidy rate calculated for Hyundai Steel. See the "Preliminary Results of Review" section below.

**DATES:** Effective March 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** John Conniff (for Hyundai Steel) or Jolanta Lawska (for DSM), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-1009 and (202) 482-8362, respectively.

**SUPPLEMENTARY INFORMATION:**

**Intent to Partially Rescind the Administrative Review**

The Department initiated a review of 15 companies in this segment of the proceeding.<sup>1</sup> Between April 15 and May 9, 2016, we received timely filed no shipment certifications from GS Global Corp. (GS Global), Hyundai Glovis, Hyundai Mipo Dockyard Co., Ltd (Hyundai Mipo), Hyuosung Corporation (Hyuosung), Posco Daewoo Corporation (formerly known as Daewoo International Corp.)<sup>2</sup> (Posco Daewoo Corp.), Samsung C&T Corporation (Samsung C&T Corp.), SK Networks Co., Ltd. (SK Networks), and Samsung Heavy Industries. Because there is no evidence on the record to indicate that these companies had sales of subject merchandise during the period of review (POR), pursuant to 19 CFR 351.213(d)(3), the Department intends to rescind the review with respect to GS Global, Hyundai Glovis, Hyundai Mipo, Hyuosung, Posco Daewoo Corp., Samsung C&T Corp., SK Networks, and Samsung Heavy Industries. A final decision regarding whether to rescind on these companies will be made in the final results of this review.

**Scope of the Order**

The merchandise covered by the order is certain cut-to-length plate from Korea. For a complete description of the scope of this administrative review, see the Preliminary Decision Memorandum.<sup>3</sup>

**Methodology**

The Department is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.*, a financial contribution by an “authority” that confers a benefit to the recipient, and that the subsidy is specific.<sup>4</sup> For a full description of the methodology

<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324 (April 7, 2016).

<sup>2</sup> On May 5, 2016 the Department received a “Notice of No Sales” letter from Posco Daewoo Corporation, which was formerly known as “Daewoo International Corp.”

<sup>3</sup> See “Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, and the Preliminary Intent to Rescind in Part: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea,” from James Maeder, Senior Director, Office I, Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated concurrently with this notice (Preliminary Decision Memorandum).

<sup>4</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

underlying our conclusions, see the accompanying Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

**Rate for Non-Selected Companies Under Review**

There are five companies for which a review was requested and not preliminarily rescinded, but were not selected as mandatory respondents. We are applying to the non-selected companies the rate preliminarily calculated for Hyundai Steel, which is above *de minimis*.

**Preliminary Results of the Review**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for DSM and Hyundai Steel. For the period January 1, 2015, through December 31, 2015, we preliminarily determine that the following net subsidy rates for the producers/exporters under review to be as follows:

Company	2015 Ad valorem rate (percent)
Dongkuk Steel Mill Co., Ltd .....	0.13 ( <i>de minimis</i> )
Hyundai Steel Co., Ltd .....	0.54
Bookuk Steel .....	0.54
BDP International .....	0.54
Samsung C&T Engineering and Construction Group.	0.54
Sung Jin Steel Co., Ltd .....	0.54
Samsung C&T Trading and Investment Group.	0.54

**Disclosure and Public Comment**

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.<sup>5</sup> Interested parties may submit written arguments (case briefs) within 30 days of publication of

the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing the case briefs.<sup>6</sup> Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) Statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.<sup>7</sup> Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.<sup>8</sup> Parties should confirm by telephone the date, time, and location of the hearing.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after issuance of these preliminary results.

**Assessment Rates and Cash Deposit Requirements**

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after publication of the final results of this review.

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above for each company listed on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final

<sup>6</sup> See 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

<sup>7</sup> See 19 CFR 351.310(c).

<sup>8</sup> See 19 CFR 351.310.

<sup>5</sup> See 19 CFR 351.224(b).

results of this administrative review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: February 28, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

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

- I. Summary
- II. Background
- III. Intent To Rescind the 2015 Administrative Review, in Part
- IV. Non-Selected Rate
- V. Scope of the Order
- VI. Subsidies Valuation Information
  - A. Allocation Period
  - B. Attribution of Subsidies
  - C. Benchmarks for Long-Term Loans and Discount Rates
  - D. Denominators
- VII. Analysis of Programs
  - A. Programs Preliminarily Determined To Be Countervailable
  - B. Programs Preliminarily Determined Not To Confer a Measurable Benefit
  - C. Programs Preliminarily Determined To Not Be Countervailable
  - D. Other Programs
  - E. Additional Programs Preliminarily Determined To Be Not Used During the POR
- VIII. Recommendation

[FR Doc. 2017-05132 Filed 3-14-17; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Notice of Scope Rulings

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

**DATES:** *Effective Date:* March 15, 2017.

**SUMMARY:** The Department of Commerce (“Department”) hereby publishes a list of scope rulings and anticircumvention determinations made between January 1, 2016, and March 31, 2016, inclusive. We intend to publish future lists after the close of the next calendar quarter.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Waters, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW., Washington, DC 20230; telephone: 202-482-4735.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department’s regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis.<sup>1</sup> Our most recent notification of scope rulings was published on October 7, 2016.<sup>2</sup> This current notice covers all scope rulings and anticircumvention determinations made by Enforcement and Compliance between January 1, 2016, and March 31, 2016, inclusive. Subsequent lists will follow after the close of each calendar quarter.

##### *Scope Rulings Made Between January 1, 2016 and March 31, 2016*

##### Mexico

###### *A-201-805: Certain Circular Welded Non-Alloy Steel Pipe From Mexico*

*Requestor:* Regiomontana de Perfiles y Tubos S.A. de C.V.; certain black, circular tubing produced to ASTM A-513 specifications meet the exclusion criteria for mechanical tubing and are, therefore, not included within the scope of the order; March 31, 2016.

##### People’s Republic of China

###### *A-570-967 and C-570-968: Aluminum Extrusions From the People’s Republic of China*

*Requestor:* Plexus Corporation; Silver Spring Network Enclosure (SSN Enclosures) and Silver Spring Network Enclosure Kits (SSNE Kits); The SSN Enclosure are imported separately or grouped with spare parts, and because they are composed of only aluminum extrusions, under the finished merchandise provision, they are included within the scope of the orders. However, when the SSN Enclosures are imported with both aluminum and non-extruded aluminum components to fully fabricate into a product that would serve as a subassembly ready for use in conjunction with a downstream product upon installation, these SSNE Kits meet the finished goods kit criteria and are excluded from the scope of the orders; January 5, 2016.

###### *A-570-967 and C-570-968: Aluminum Extrusions From the People’s Republic of China*

*Requestor:* Ventana Design-Build Systems, Inc.; Ventana Window Walls are customized window-wall structures that at the time of importation contain all of the parts necessary to assemble into a finished window wall, which meet the criteria of finished goods kits, and are thus, excluded from the scope of the orders; January 19, 2016.

<sup>1</sup> See 19 CFR 351.225(o).

<sup>2</sup> See *Notice of Scope Rulings*, 81 FR 69784 (October 7, 2016).

###### *A-570-967 and C-570-968: Aluminum Extrusions From the People’s Republic of China*

*Requestor:* Homecrest Outdoor Living, LLC; Homecrest Woven Polypropylene Seats are woven seats that incorporate extruded aluminum frames with wicker material formed of polypropylene rope, which meet the finished merchandise criteria, and thus are excluded from the scope of the orders; January 27, 2016.

###### *A-570-967 and C-570-968: Aluminum Extrusions From the People’s Republic of China*

*Requestor:* Pentair Water Pool and Spa, Inc. (“Pentair”); Pentair’s telescopic aluminum pool poles and detachable skimmers and rakes are fully and permanently assembled and completed at the time of entry and contain non-extruded aluminum components beyond mere fasteners, and, thus, are excluded from the scope of the orders as finished merchandise; March 11, 2016.

###### *A-570-967 and C-570-968: Aluminum Extrusions From the People’s Republic of China*

*Requestor:* Trending Imports LLC (“Trending”); Trending’s aluminum extrusions made from 5050 grade aluminum alloy material were preliminary found to be outside of the scope of the orders on aluminum extrusions from the PRC because the 5050 alloy products meet the explicit exclusion in the scope of “aluminum alloy{s} with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight.”; March 11, 2016.

###### *A-570-967 and C-570-968: Aluminum Extrusions From the People’s Republic of China*

*Requestor:* Kota International, LTD (“Kota”); Kota’s ACS-50 series aluminum extrusions made from 5xxx series grade aluminum alloy material were preliminary found to be outside of the scope of the orders on aluminum extrusions from the PRC because the 5xxx series alloy products meet the explicit exclusion in the scope of “aluminum alloy{s} with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight.”; March 11, 2016.

###### *A-570-901: Certain Lined Paper Products From the People’s Republic of China*

*Requestor:* Nelson Torres Advertising (“NTA”); NTA’s funeral album product is within the scope of the order on certain lined paper products from the PRC because the product does not meet any of the specific exclusion criteria for products intended for specific record keeping uses, such as “desk and wall calendars and organizers,” “telephone logs,” or “address books; January 12, 2016.

###### *A-570-943 and C-570-944: Certain Oil Country Tubular Goods From the People’s Republic of China*

*Requestor:* DynaEnergetics U.S. Inc.; certain tubing for perforating gun carriers

which is a tubular steel product used in the drilling of an oil well is within the scope of the antidumping and countervailing duty orders; February 12, 2016.

*A-570-970 and C-570-971: Multilayered Wood Flooring From the People's Republic of China*

*Requestor:* Old Master Products, Inc. ("Old Master"); Old Master's two-layer wood flooring products are not within the scope of the *Orders* on multilayered wood flooring from the PRC because they lack the expressed requirement of two or more layers or plies of wood veneer in combination with a core; February 4, 2016.

*A-570-970 and C-570-971: Multilayered Wood Flooring From the People's Republic of China*

*Requestor:* Jiashan Huijiale Decoration Material Co., Ltd. ("Jiashan Huijiale"); Jiashan Huijiale's two-layer engineered wood flooring panel with bottom-surface inlays is not within the scope of the *Orders* on multilayered wood flooring from the PRC, because it lacks the requisite two or more layers or plies of wood veneer in combination with a core; February 29, 2016.

*A-570-875: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China*

*Requestor:* SIGMA Corporation ("SIGMA"); SIGMA's list of 94 ductile iron pipe fittings are covered by the scope of the non-malleable pipe fittings order because they meet all of the ASME and UL specifications characterizing it as subject merchandise; January 13, 2016.

*A-570-956 and C570-957: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China*

Commercial Honing LLC dba Commercial Fluid Power ("Commercial Honing"); Commercial Honing's 12 sizes of mechanical tubing are outside the scope of the *Orders* on seamless carbon and alloy steel standard, line, and pressure pipe from the PRC because they meet the exclusion language of the scope. However, one size of Commercial Honing's mechanical tubing falls within the scope of the *Orders* because it does not meet the requirements set forth in the exclusion language; February 25, 2016.

Interested parties are invited to comment on the completeness of this list of completed scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, 1401 Constitution Avenue NW., APO/Dockets Unit, Room 18022, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: March 9, 2017.

**Gary Taverman,**

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

[FR Doc. 2017-05167 Filed 3-14-17; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

**SUMMARY:** The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

**DATES:** Effective March 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482-4735.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

##### Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review ("POR"), it must notify the Department within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at <http://access.trade.gov> in accordance with 19 CFR 351.303.<sup>1</sup> Such submissions are subject to

<sup>1</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ("the Act"). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

##### Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, except for the administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC"), the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments five days after the deadline for the initial comments.

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

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

for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (“Q&V”) Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

#### **Respondent Selection—Wooden Bedroom Furniture From the PRC**

In the event that the Department limits the number of respondents for individual examination in the antidumping duty administrative review of wooden bedroom furniture from the PRC, for the purposes of this segment of the proceeding, *i.e.*, the 2016 review period, the Department intends to select respondents based on volume data contained in responses to a Q&V questionnaire. All parties are hereby notified that they must timely respond to the Q&V questionnaire. The Department’s Q&V questionnaire along with certain additional questions will be available in a document package on the Department’s Web site at <http://enforcement.trade.gov/download/prc-wbf/index.html> on the date this notice is published. The responses to the Q&V questionnaire should be filed with the respondents’ Separate Rate Application or Separate Rate Certification (see the “Separate Rates” section below) and their response to the additional questions and must be received by the Department by no later than 30 days after publication of this notice. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department does not intend to grant any extensions for the submission of responses to the Q&V questionnaire.

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

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department

may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

#### **Separate Rates**

In proceedings involving non-market economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. In addition, all firms that wish to qualify for separate-rate status in the antidumping duty administrative review of wooden bedroom furniture from the PRC must complete, as appropriate, either a separate-rate certification or application, as described below, and respond to the additional questions and the Q&V questionnaire on the Department’s Web site at <http://enforcement.trade.gov/download/prc-wbf/index.html>. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that

they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department’s Web site at <http://enforcement.trade.gov/nme/nme-sep-rate.html> on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the “Instructions for Filing the Certification” in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States. For the antidumping duty administrative review of wooden bedroom furniture from the PRC, Separate Rate Certifications, as well as a response to the Q&V questionnaire and the additional questions in the document package, are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice.

Entities that currently do not have a separate rate from a completed segment of the proceeding<sup>2</sup> should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,<sup>3</sup> should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department’s Web site at <http://enforcement.trade.gov/nme/nme-sep-rate.html> on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status

<sup>2</sup> Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

<sup>3</sup> Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

Applications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. For the antidumping duty administrative review of wooden bedroom furniture from the PRC, Separate Rate Status Applications, as well as a response to the Q&V questionnaire and the additional questions in the document package, are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents,

these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Furthermore, this notice constitutes public notification to all firms for which an antidumping duty administrative review of wooden bedroom furniture from the PRC has been requested, and that are seeking separate rate status in the review, that they must submit a timely separate rate application or certification (as appropriate) as described above, and a timely response to the Q&V questionnaire and the additional questions in the document package on the Department's Web site in order to receive consideration for separate-rate status. In other words, the Department will not give consideration to any timely separate rate certification or application made by parties who

failed to respond in a timely manner to the Q&V questionnaire and the additional questions. All information submitted by respondents in the antidumping duty administrative review of wooden bedroom furniture from the PRC is subject to verification. As noted above, the separate rate certification, the separate rate application, the Q&V questionnaire, and the additional questions will be available on the Department's Web site on the date of publication of this notice in the **Federal Register**.

**Initiation of Reviews**

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 2018.

	Period to be reviewed
<b>Antidumping Duty Proceedings</b>	
The People's Republic of China: Potassium Permanganate A-570-001 ..... Chongqing Changyuan Group Limited. Pacific Accelerator Limited.	01/1/16-12/31/16
Republic of Korea: Welded Line Pipe <sup>4</sup> A-580-876 ..... Dongbu Steel Co., Ltd. <sup>5</sup>	5/22/15-11/30/16
The People's Republic of China: Multilayered Wood Flooring <sup>6</sup> A-570-970 ..... Fine Furniture (Shanghai) Limited and Double F Limited	12/1/15-11/30/16
The People's Republic of China: Wooden Bedroom Furniture A-570-890 ..... Beautter Furniture Mfg. Co. Best Beauty Furniture Co. Ltd. C.F. Kent Co., Inc. C.F. Kent Hospitality, Inc. Century Distribution Systems, Inc. Changshu Htc Import & Export Co., Ltd. Clearwise Co., Ltd. Decca Furniture Ltd. Dongguan Chengcheng Furniture Co., Ltd. Dongguan Fortune Furniture Ltd. Dongguan Jinfeng Creative Furniture Dongguan Kingstone Furniture Co., Ltd.; Kingstone Furniture Co., Ltd. Dongguan Nova Furniture Co., Ltd. Dongguan Singways Furniture Co., Ltd. Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry, Co., Ltd., Shanghai Sunrise Furniture Co., Ltd., Fairmont Designs Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry, Co., Ltd., Taicang Fairmont Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd. Dongguan Zhisheng Furniture Co., Ltd. Dorbest Ltd.; Rui Feng Woodwork Co., Ltd. aka Rui Feng Woodwork (Dongguan) Co., Ltd.; Rui Feng Lumber Development Co., Ltd. aka Rui Feng Lumber Development (Shenzhen) Co., Ltd. Eurosa (Kunshan) Co., Ltd.; Eurosa Furniture Co., (PTE) Ltd. Evergo Furniture Manufacturing Co., Ltd. Fine Furniture (Shanghai) Ltd. Fleetwood Fine Furniture LP Fortune Furniture Ltd., Foshan Bailan Imp. & Exp. Ltd. Foshan Shunde Longjiang Zhishang Furniture Factory Fujian Lianfu Forestry Co., Ltd. (aka Fujian Wonder Pacific Inc.) Golden Well International (HK) Ltd. (Exporter) Zhangzhou Xym Furniture Product Co., Ltd. (Producer) Guangzhou Maria Yee Furnishings Ltd., Pyla HK Ltd., Maria Yee, Inc. Haining Karen Furniture Co., Ltd. Hang Hai Woodcrafts Art Factory Hangzhou Cadman Trading Co., Ltd. (Exporter) Haining Changbei Furniture Co., Ltd. (Producer) Hualing Furniture (China) Co., Ltd.; Tony House Manufacture (China) Co., Ltd.; Buysell Investments Ltd.; Tony House Industries Co., Ltd. Jiangmen Kinwai Furniture Decoration Co., Ltd.	01/1/16-12/31/16



	Period to be reviewed
<p>Jiangmen Kinwai International Furniture Co., Ltd.                      Jiangsu Dare Furniture Co., Ltd.                      Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.                      Jiangsu Yuexing Furniture Group Co., Ltd.                      Jiant Furniture Co. Ltd.                      Jiashan Zhenxuan Furniture Co., Ltd                      K Wee &amp; Co., Ltd                      Kunshan Summit Furniture Co., Ltd.                      Nanhai Jiantai Woodwork Co., Ltd., Fortune Glory Industrial Ltd.(H.K. Ltd.)                      Nantong Wangzhuang Furniture Co. Ltd.                      Nantong Yangzi Furniture Co., Ltd.                      Nathan International Ltd.; Nathan Rattan Factory                      Orient International Holding Shanghai Foreign Trade Co., Ltd.                      Passwell Corporation; Pleasant Wave Ltd.                      Perfect Line Furniture Co., Ltd.                      PuTian Jinggong Furniture Co., Ltd.                      Qingdao Liangmu Co., Ltd.                      Restonic (Dongguan) Furniture Ltd.; Restonic Far East (Samoa) Ltd.                      RiZhao Sanmu Woodworking Co., Ltd.                      Shanghai Jian Pu Export &amp; Import Co., Ltd.                      Shenyang Shining Dongxing Furniture Co., Ltd.                      Shenzhen Diamond Furniture Co., Ltd.                      Shenzhen Forest Furniture Co., Ltd.                      Shenzhen Jiafa High Grade Furniture Co., Ltd.; Golden Lion International Trading Ltd.                      Shenzhen New Fudu Furniture Co., Ltd.                      Shenzhen Wonderful Furniture Co., Ltd.                      Shenzhen Xingli Furniture Co., Ltd.                      Shing Mark Enterprise Co., Ltd.; Carven Industries Limited (BVI); Carven Industries Limited (HK); Dongguan Zhenxin Furniture Co., Ltd.; Dongguan Yongpeng Furniture Co., Ltd.                      Starwood Industries Ltd.                      Sunforce Furniture (Hui-Yang) Co., Ltd.; Sun Fung Wooden Factory; Sun Fung Co.; Shin Feng Furniture Co., Ltd.; Stupendous International Co., Ltd.                      Superwood Co., Ltd.; Lianjiang Zongyu Art Products Co., Ltd.                      Techniwood Industries Ltd.; Ningbo Furniture Industries Ltd.; Ningbo Hengrun Furniture Co., Ltd.                      Tradewinds Furniture Ltd. (Successor-In-Interest to Nanhai Jiantai Woodwork Co. Ltd.); Fortune Glory Industrial Ltd. (H.K. Ltd.)                      U-Rich Furniture (Zhangzhou) Co., Ltd.; U-Rich Furniture Ltd.                      Weimei Furniture Co., Ltd.                      Woodworth Wooden Industries (Dong Guan) Co., Ltd.                      Wuxi Yushea Furniture Co., Ltd.                      Xiamen Yongquan Sci-Tech Development Co., Ltd.                      Yeh Brothers World Trade Inc.                      Yihua Timber Industry Co., Ltd.; Guangdong Yihua Timber Industry Co., Ltd.                      Zhangjiagang Daye Hotel Furniture Co., Ltd.                      Zhangzhou Guohui Industrial &amp; Trade Co., Ltd.                      Zhejiang Tianyi Scientific &amp; Educational Equipment Co., Ltd.                      Zhong Shun Wood Art Co.                      Zhongshan Fookyik Furniture Co., Ltd.                      Zhongshan Golden King Furniture Industrial Co., Ltd.                      Zhoushan For-Strong Wood Co., Ltd.</p>	
<p style="text-align: center;"><b>Countervailing Duty Proceedings</b></p> <p>The People's Republic of China: Multilayered Wood Flooring<sup>7</sup> C-570-971 .....                      Hangzhou Dazhuang Floor Co. (dba Dasso Industrial Group Co., Ltd.)</p>	<p style="text-align: right;">1/1/15-12/31/15</p>
<p style="text-align: center;"><b>Suspension Agreements</b></p> <p>None.</p>	

**Duty Absorption Reviews**

During any administrative review covering all or part of a period falling

<sup>4</sup> In the initiation notice that published on February 13, 2017 (82 FR 10457) the POR for the above referenced case was incorrect. The period listed above is the correct POR for this case.

<sup>5</sup> The company listed above was inadvertently omitted from the initiation notice that published on February 13, 2017 (82 FR 10457).

between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or

<sup>6</sup> The The department inadvertently omitted Double F Limited from the initiation notice that published on February 13, 2017 (82 FR 10457).

<sup>7</sup> The department inadvertently omitted dba from the company listed above in the initiation notice that published on February 13, 2017 (82 FR 10457).

suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the

name(s) of the exporter or producer for which the inquiry is requested.

### Gap Period Liquidation

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

### Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in the Department’s regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (e.g., the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

### Factual Information Requirements

The Department’s regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the final rule, available at <http://enforcement.trade.gov/frn/2013/>

1304frn/2013-08227.txt, prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.<sup>8</sup> Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.<sup>9</sup> The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

### Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. See 19 CFR 351.302. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This

modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: March 9, 2017.

**Gary Taverman,**

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

[FR Doc. 2017–05166 Filed 3–14–17; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

#### Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department of Commerce (“the Department”) and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

#### Upcoming Sunset Reviews for April 2017

The following Sunset Reviews are scheduled for initiation in April 2017 and will appear in that month’s Notice of Initiation of Five-Year Sunset Reviews (“Sunset Reviews”).

<sup>8</sup> See section 782(b) of the Act.

<sup>9</sup> See *Certification of Factual Information To Import Administration During Antidumping and*

*Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (“*Final Rule*”); see also the frequently asked questions regarding the *Final Rule*, available

at [http://enforcement.trade.gov/lei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/lei/notices/factual_info_final_rule_FAQ_07172013.pdf).

Antidumping duty proceedings	Department contact
Fresh Garlic from China (A-570-831) (4th Review) .....	Jacqueline Arrowsmith, (202) 482-5255.
Stilbenic Optical Brightening Agents from China (A-570-972) (1st Review) .....	Matthew Renkey, (202) 482-2312.
Stilbenic Optical Brightening Agents from Taiwan (A-583-848) (1st Review) .....	Matthew Renkey, (202) 482-2312.
Steel Nails from United Arab Emirates (A-520-804) (1st Review) .....	Matthew Renkey, (202) 482-2312.

### Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in April 2017.

### Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in April 2017.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

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

Dated: March 8, 2017.

#### Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017-05130 Filed 3-14-17; 8:45 am]

BILLING CODE 3510-DS-P

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

RIN 0648-XF252

#### Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

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

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS announces a public meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) on April 13, 2017. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice. The meeting will be held via conference call.

**DATES:** The meeting of the PAC will be held via conference call on April 13, 2017, from 12 p.m. to 2 p.m. HST (or until business is concluded).

**ADDRESSES:** The public meeting will be conducted via conference call. For details on how to call in to the conference line, please contact Zora McGinnis, NMFS Pacific Islands Regional Office; telephone: 808-725-5037; email: [zora.mcginis@noaa.gov](mailto:zora.mcginis@noaa.gov). Documents to be considered by the PAC will be sent out via email in advance of the conference call. Members of the public who are not current PAC members should submit contact information to Zora McGinnis (telephone: 808-725-5037; email: [zora.mcginis@noaa.gov](mailto:zora.mcginis@noaa.gov)) at least 3 days in advance of the call to receive documents via email. Written comments on meeting topics or materials may be submitted by the public either electronically or by mail to Zora McGinnis at the addresses provided above; comments may be submitted up to 3 days in advance of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Zora McGinnis, NMFS Pacific Islands Regional Office; 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone:

808-725-5037; facsimile: 808-725-5215; email: [zora.mcginis@noaa.gov](mailto:zora.mcginis@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the Permanent Advisory Committee, or PAC, has been formed to advise the U.S. Commissioners to the WCPFC. Members of the PAC have been appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC. The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. More information on the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFC Web site: <http://www.wcpfc.int>.

#### Meeting Topics

The purpose of the April 13, 2017, conference call is to discuss 2017 U.S. priorities in the WCPFC, discuss outcomes of the 2016 regular session of the WCPFC (WCPFC13), and discuss potential conservation and management measures for tropical tunas and other issues of interest.

#### Special Accommodations

The conference call is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Zora McGinnis at 808-725-5037 at least 10 working days prior to the meeting.

**Authority:** 6 U.S.C. 6902 *et seq.*

Dated: March 9, 2017.

#### Karen H. Abrams,

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

[FR Doc. 2017-05066 Filed 3-14-17; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XF257

**Endangered and Threatened Species; Take of Anadromous Fish**

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

**ACTION:** Notice of availability for final Environmental Assessment and Finding of No Significant Impact.

**SUMMARY:** Notice is hereby given that the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) associated with the California Department of Fish and Wildlife (CDFW)'s Mad River Hatchery Genetics Management Plan (HGMP) for winter-run steelhead hatchery production is now available to the public. The HGMP and associated Biological Opinion are also available to the public.

*Project location:* Lower Mad River watershed, north coast, California.

**ADDRESSES:** You may access a copy of the HGMP, Final EA, FONSI, 4(d) Rule decision memo, and other documents by one of the following:

- Visit the NMFS Web site, [http://www.westcoast.fisheries.noaa.gov/hatcheries/hgmp/mad\\_river\\_w-steelhead\\_plan.html](http://www.westcoast.fisheries.noaa.gov/hatcheries/hgmp/mad_river_w-steelhead_plan.html).
- Call (707) 834–7897 and request to have a CD or hard copy mailed to you.
- Obtain a CD or hard copy by visiting the NOAA Fisheries West Coast Region California Coastal Office, 1655 Heindon Road, Arcata, CA 95521.

**FOR FURTHER INFORMATION CONTACT:** Wes Smith, Telephone: (707) 834–7897, Fax: 707–825–4840 or email: [wes.smith@noaa.gov](mailto:wes.smith@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NOAA's NMFS is the lead agency responsible for administering the Endangered Species Act (ESA) as it relates to listed salmon, steelhead, and marine species. Section 9 of the ESA prohibits take of endangered species. Section 4(d) of the ESA also gives NMFS the authority to promulgate a regulation that applies the take prohibitions of section 9 to threatened species. In 2000, NMFS issued a "4(d) rule" (65 FR 42422; 50 CFR 223.203; updated June 28, 2005, 70 FR 37160) which broadly prohibits take of threatened steelhead and salmon species. The 4(d) rule also lists certain "limits" to the take prohibitions. Limit 5 of the 4(d) rule for threatened steelhead and salmon provides that the

take prohibition does not apply to activities associated with artificial propagation programs that follow a HGMP that meets certain criteria and has been approved by NMFS. (50 CFR 223.203(b)(5)). The final decision on the HGMP is pursuant to ESA section 4 and documented in a separate decision memo. The memo is also available to the public.

CDFW's HGMP for Mad River winter-run steelhead provides the framework through which CDFW can manage hatchery operations, monitoring, and evaluation activities, while meeting requirements specified under the ESA. The hatchery program will propagate steelhead derived from the local steelhead population in the Mad River, ensuring that at least half of the Mad River Hatchery winter-run steelhead spawning pairs are hatchery spawned natural-origin and match natural-origin steelhead with their natural counterparts whenever possible. Measures will be applied in the hatchery program to reduce the risk of incidental adverse genetic, ecological, and demographic effects on natural-origin steelhead and salmon populations. CDFW runs the hatchery to create a recreational steelhead fishery in the lower Mad River watershed, north coast California. CDFW submitted the Mad River winter-run steelhead HGMP to NMFS to determine as to whether the HGMP meets the criteria of Limit 5 of the 4(d) Rule.

NMFS published notification of the HGMP and draft EA's availability for public review and comment on March 28, 2016 for 30 days (81 FR 17143) and, upon request, provided a 15-day extension notice for public review and comment on May 4, 2016 (81 FR 26775). NMFS received four comment letters. All comments were directed toward the HGMP and were addressed by CDFW. CDFW's responses and associated changes to the HGMP were reviewed by NMFS. Several minor changes were made to the final EA to ensure a thorough review and to maintain consistency.

**Species Covered in This Notice**

Southern Oregon/Northern California Coast (SONCC) coho salmon ESU (*Oncorhynchus kisutch*)  
Threatened (70 FR 37160; June 28, 2005)  
Designated critical habitat (64 FR 24049; May 5, 1999)  
California Coastal (CC) Chinook Salmon ESU (*O. tshawytscha*)  
Threatened (70 FR 37160; June 28, 2005)  
Designated critical habitat (70 FR

52488; September 2, 2005)  
Northern California (NC) steelhead DPS (*O. mykiss*)  
Threatened (71 FR 834; January 5, 2006)  
Designated critical habitat (70 FR 52488; September 2, 2005)

*Authority:* Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422; July 10, 2000, as updated in 70 FR 37160; June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 5 of the updated 4(d) rule (50 CFR 223.203(b)(5)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with artificial propagation programs provided that an HGMP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422; July 10, 2000, as updated in 70 FR 37160; June 28, 2005).

Dated: March 9, 2017.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2017–05074 Filed 3–14–17; 8:45 am]

**BILLING CODE 3510–22–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XF267

**Marine Mammals; File No. 21155**

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Karina Amaral, Federal University of Rio Grande do Sul, Zoology Department, Avenida Bento Gonçalves, 9500 Build 43435, Room 206, Porto Alegre, MI, 91.501–970, Brazil, has applied in due form for a permit to import specimens of Atlantic spotted dolphins (*Stenella frontalis*) for scientific research.

**DATES:** Written, telefaxed, or email comments must be received on or before April 14, 2017.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public

Comment” from the “Features” box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 21155 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713-0376, or by email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Carrie Hubbard, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant is requesting a permit to import 118 DNA samples from the Federal University of Rio Grande Do Sul in Brazil to the University of Michigan, Ecology and Evolutionary Biology Department in Ann Arbor, MI, for genetics research. The samples were collected between 1996 and 2016 via biopsy sampling or from stranded animals, in accordance with the laws of Brazil. Results will provide insights regarding the population structure of this species in the Southwestern Atlantic Ocean. The requested duration of the permit is five months.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 10, 2017.

**Julia Harrison,**

*Chief, Permits and Conservation Division,  
Office of Protected Resources, National  
Marine Fisheries Service.*

[FR Doc. 2017-05131 Filed 3-14-17; 8:45 am]

**BILLING CODE 3510-22-P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 11:00 a.m., Thursday, March 23, 2017.

**PLACE:** Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

### Matters To Be Considered

Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at <http://www.cftc.gov>.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, 202-418-5964.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

[FR Doc. 2017-05296 Filed 3-13-17; 4:15 pm]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0015]

### Agency Information Collection Activities; Comment Request; Application for Grants Under the Predominantly Black Institutions Formula Grant Program

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

**DATES:** Interested persons are invited to submit comments on or before May 15, 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-0015. 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 224-84, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Bernadette Miles, (202) 453-7892.

**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:* Application for Grants Under the Predominantly Black Institutions Formula Grant Program.

*OMB Control Number:* 1840-0812.

*Type of Review:* A reinstatement of a previously approved information collection.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 11.

*Total Estimated Number of Annual Burden Hours:* 220.

*Abstract:* The Higher Education Opportunity Act of 2008 amended Title III, Part A of the Higher Education Act to include Section 318—the Predominantly Black Institutions (PBI) Program. The PBI Program makes 5-year grant awards to eligible colleges and universities to plan, develop, undertake and implement programs to enhance the institution’s capacity to serve more low- and middle-income Black American students; to expand higher education opportunities for eligible students by encouraging college preparation and student persistence in secondary school and postsecondary education; and to strengthen the financial ability of the institution to serve the academic needs of these students.

Dated: March 10, 2017.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017–05129 Filed 3–14–17; 8:45 am]

**BILLING CODE 4000–01–P**

**DEPARTMENT OF EDUCATION**

**Native American Language (NAL@ED) Program; Correction**

**AGENCY:** Department of Education.

**ACTION:** Notice; correction.

**SUMMARY:** On March 9, 2017 the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** (Page 13100, Column 2 and 3) seeking public comment for an information collection entitled, “Native American Language (NAL@ED) Program”. The date of the comment period included in the notice was for 60 days after publication of the notice instead of 30 days. Interested persons are invited to submit comments on or before April 14, 2017.

The Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: March 9, 2017.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017–05079 Filed 3–14–17; 8:45 am]

**BILLING CODE 4000–01–P**

**DEPARTMENT OF EDUCATION**

**Measuring Educational Gain in the National Reporting System for Adult Education; Correction**

**AGENCY:** Department of Education (ED).

**ACTION:** Correction notice.

**SUMMARY:** On March 9, 2017, the U.S. Department of Education published a 30-day comment period notice in the **Federal Register** (82 FR 13103) seeking public comment for an information collection entitled, “Measuring Educational Gain in the National Reporting System for Adult Education.” The date of the comment period included in the notice was for 60 days after publication of the notice instead of 30 days. Interested persons are invited to submit comments on or before April 14, 2017.

The Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: March 9, 2017.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017–05080 Filed 3–14–17; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. RM98–1–000]**

**Records Governing Off-the-Record Communications; Public Notice**

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires

Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may 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, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
<i>Prohibited:</i>		
1. CP15–554–000 .....	2–23–2017	Appalachian Power.
<i>Exempt:</i>		
1. CP15–93–000 .....	2–22–2017	Advisory Council on Historic Preservation.

Docket No.	File date	Presenter or requester
2. CP14-529-000 .....	2-22-2017	Advisory Council on Historic Preservation.

Dated: March 7, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017-05125 Filed 3-14-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. OR17-8-000]

#### Medallion Pipeline Company, LLC; Notice of Petition for Declaratory Order

Take notice that on February 28, 2017, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2016), Medallion Pipeline Company, LLC (Medallion), filed a petition for a declaratory order seeking approval of overall tariff structure and terms of service for expansion of Medallion crude oil pipeline system, as more fully explained in the 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 Petitioner.

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](mailto: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 March 28, 2017.

Dated: March 7, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017-05124 Filed 3-14-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17-53-000.

*Applicants:* The Potomac Edison Company.

*Description:* Amendment to December 23, 2016 Application of The Potomac Edison Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act, et al.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303-5187.

*Comments Due:* 5 p.m. ET 3/24/17.

*Docket Numbers:* EC17-54-000.

*Applicants:* West Penn Power Company.

*Description:* Amendment to December 23, 2016 Application of West Penn Power Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act, et al.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303-5186.

*Comments Due:* 5 p.m. ET 3/24/17.

*Docket Numbers:* EC17-55-000.

*Applicants:* Monongahela Power Company.

*Description:* Amendment to December 23, 2016 Application of Monongahela Power Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act, et al.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303-5188.

*Comments Due:* 5 p.m. ET 3/24/17.

*Docket Numbers:* EC17-56-000.

*Applicants:* Metropolitan Edison Company.

*Description:* Amendment to December 23, 2016 Application of Metropolitan Edison Company for Authorization

Pursuant to Section 203(A)(1)(B) of the Federal Power Act, et al.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303-5190.

*Comments Due:* 5 p.m. ET 3/24/17.

*Docket Numbers:* EC17-57-000.

*Applicants:* Pennsylvania Electric Company.

*Description:* Amendment to December 23, 2016 Application of Pennsylvania Electric Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act, et al.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303-5191.

*Comments Due:* 5 p.m. ET 3/24/17.

*Docket Numbers:* EC17-88-000.

*Applicants:* Monongahela Power Company, Allegheny Energy Supply Company, LLC.

*Description:* Application for Authorization Pursuant to Section 203 of the Federal Power Act and Requests for Confidential Treatment, Shortened Comment Period, and Limited Waiver of the Pt. 33 Filing Requirements of Monongahela Power Company, et al.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307-5133.

*Comments Due:* 5 p.m. ET 3/28/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11-2154-006.

*Applicants:* Twin Eagle Resource Management, LLC.

*Description:* Notice of Change in Status of Twin Eagle Resource Management, LLC.

*Filed Date:* 3/6/17.

*Accession Number:* 20170306-5225.

*Comments Due:* 5 p.m. ET 3/27/17.

*Docket Numbers:* ER15-632-005; ER15-634-005; ER14-2466-006; ER14-2465-006; ER15-2728-005.

*Applicants:* CID Solar, LLC, Cottonwood Solar, LLC, RE Camelot LLC, RE Columbia Two LLC, Maricopa West Solar PV, LLC.

*Description:* Notice of Change in Status of the Dominion Companies.

*Filed Date:* 3/6/17.

*Accession Number:* 20170306-5226.

*Comments Due:* 5 p.m. ET 3/27/17.

*Docket Numbers:* ER16-2449-001.

*Applicants:* Boulder Solar II, LLC.

*Description:* Notice of Non-Material Change in Status of Boulder Solar II, LLC.

*Filed Date:* 3/6/17.

*Accession Number:* 20170306-5230.

*Comments Due:* 5 p.m. ET 3/27/17.

*Docket Numbers:* ER17-778-000.  
*Applicants:* Midcontinent Independent System Operator, Inc.  
*Description:* Report Filing: 2017-03-06 Order 825 Supplemental Filing to be effective N/A.

*Filed Date:* 3/6/17.

*Accession Number:* 20170306-5085.  
*Comments Due:* 5 p.m. ET 3/27/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: March 7, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017-05123 Filed 3-14-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER16-2449-001.

*Applicants:* Boulder Solar II, LLC.

*Description:* Supplement to March 6, 2017 Notice of Non-Material Change in Status of Boulder Solar II, LLC.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307-5252.

*Comments Due:* 5 p.m. ET 3/28/17.

*Docket Numbers:* ER17-1121-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2017-03-08 SA 3006 Duke-Jordan Creek GIA (J515) to be effective 3/3/2017.

*Filed Date:* 3/8/17.

*Accession Number:* 20170308-5102.

*Comments Due:* 5 p.m. ET 3/29/17.

*Docket Numbers:* ER17-1122-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: MAIT submits revisions to certain Service Agreements re: MAIT Integration to be effective 3/20/2007.

*Filed Date:* 3/8/17.

*Accession Number:* 20170308-5114.

*Comments Due:* 5 p.m. ET 3/29/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: March 8, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017-05127 Filed 3-14-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC16-146-000.

*Applicants:* Great Plains Energy, Westar Energy, Inc.

*Description:* Great Plains Energy Incorporated, et. al. submits order issued by the Missouri Public Service Commission, et. al.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303-5211.

*Comments Due:* 5 p.m. ET 3/24/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-3297-009.

*Applicants:* Powerex Corporation.

*Description:* Notice of Non-Material Change in Status and Request for Confidential Treatment of Powerex Corporation.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303-5210.

*Comments Due:* 5 p.m. ET 3/24/17.

*Docket Numbers:* ER13-1935-002.  
*Applicants:* South Carolina Electric & Gas Company.

*Description:* Compliance filing: Attachment K Compliance filing 3-6-2017 to be effective 1/1/2015.

*Filed Date:* 3/6/17.

*Accession Number:* 20170306-5095.

*Comments Due:* 5 p.m. ET 3/27/17.

*Docket Numbers:* ER13-2318-006; ER16-2515-001; ER16-2278-001; ER13-2317-006; ER13-2319-006.

*Applicants:* All Dams Generation, LLC, Black River Hydroelectric, LLC, Cube Yadkin Generation LLC, Lake Lynn Generation, LLC, PE Hydro Generation, LLC.

*Description:* Notice of Non-Material Change in Status of All Dams Generation, LLC, et. al.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303-5212.

*Comments Due:* 5 p.m. ET 3/24/17.

*Docket Numbers:* ER16-372-003.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Compliance filing: Compliance Filing Pursuant to the Commission's February 3, 2017 Order to be effective 5/15/2017.

*Filed Date:* 3/6/17.

*Accession Number:* 20170306-5158.

*Comments Due:* 5 p.m. ET 3/27/17.

*Docket Numbers:* ER16-711-004; ER10-2862-004; ER11-4625-004; ER13-2169-003; ER11-3634-004.

*Applicants:* Pio Pico Energy Center, LLC, Harbor Cogeneration Company, LLC, Colton Power L.P., Goal Line L.P., KES Kingsburg, L.P.

*Description:* Notice of Non-Material Change in Status of Pio Pico Energy Center, LLC.

*Filed Date:* 3/6/17.

*Accession Number:* 20170306-5210.

*Comments Due:* 5 p.m. ET 3/27/17.

*Docket Numbers:* ER16-1564-000.

*Applicants:* The AES Corporation.

*Description:* Amendment to April 29, 2016 Election for Review and Authorization of The AES Corporation pursuant to Section 1275 of the Energy Policy Act of 2015.

*Filed Date:* 2/22/17.

*Accession Number:* 20170222-5202.

*Comments Due:* 5 p.m. ET 3/17/17.

*Docket Numbers:* ER17-156-002.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2017-03-06 Compliance filing of Queue Reform Attachment X to be effective 1/4/2017.

*Filed Date:* 3/6/17.

*Accession Number:* 20170306-5159.

*Comments Due:* 5 p.m. ET 3/27/17.

*Docket Numbers:* ER17-512-002.



*Applicants:* Virginia Electric and Power Company.  
*Description:* Compliance filing: Compliance Filing—Doswell Cogentrix Informational Filing to be effective N/A.  
*Filed Date:* 3/6/17.

*Accession Number:* 20170306–5172.  
*Comments Due:* 5 p.m. ET 3/27/17.

*Docket Numbers:* ER17–1106–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 2998 RPM Access & Westar Energy Meter Agent Agr Cancellation to be effective 5/9/2017.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307–5011.  
*Comments Due:* 5 p.m. ET 3/28/17.

*Docket Numbers:* ER17–1107–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 3160 Basin Electric & MidAmerican Energy Att AO Cancellation to be effective 3/1/2017.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307–5016.  
*Comments Due:* 5 p.m. ET 3/28/17.

*Docket Numbers:* ER17–1108–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 3306 NPPD and Basin Electric Interconnection Agreement to be effective 2/21/2017.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307–5032.  
*Comments Due:* 5 p.m. ET 3/28/17.

*Docket Numbers:* ER17–1109–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 3159 Basin Electric & MidAmerican Energy Att AO Cancellation to be effective 3/1/2017.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307–5037.  
*Comments Due:* 5 p.m. ET 3/28/17.

*Docket Numbers:* ER17–1110–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 3305 CP Bloom Wind and Sunflower Electric Meter Agent Agreement to be effective 4/1/2017.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307–5041.  
*Comments Due:* 5 p.m. ET 3/28/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–05122 Filed 3–14–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17–47–000.

*Applicants:* Wisconsin Power and Light Company, Wisconsin Public Service Corporation, Madison Gas and Electric Company.

*Description:* Supplement to December 13, 2016 Joint Application (Additional Information) under Section 203 of the Federal Power Act of Wisconsin Power and Light Company, et al.

*Filed Date:* 3/3/17.

*Accession Number:* 20170303–5184.

*Comments Due:* 5 p.m. ET 3/13/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER14–1883–002.

*Applicants:* Allegheny Energy Supply Company, LLC.

*Description:* Compliance filing: Informational Filing to be effective N/A.  
*Filed Date:* 3/8/17.

*Accession Number:* 20170308–5031.

*Comments Due:* 5 p.m. ET 3/29/17.

*Docket Numbers:* ER17–1113–000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) Rate Filing: SA 803—Utility Relocation Agreement with City of Billings (Grand Avenue) to be effective 3/8/2017.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307–5212.

*Comments Due:* 5 p.m. ET 3/28/17.

*Docket Numbers:* ER17–1114–000.

*Applicants:* PacifiCorp.

*Description:* Notice of Termination of Tri-State Letter Agreement Rate Schedule No. 334 of PacifiCorp.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307–5215.

*Comments Due:* 5 p.m. ET 3/28/17.

*Docket Numbers:* ER17–1115–000.

*Applicants:* Power Ventures Group, LLC.

*Description:* Petition of Power Ventures Group, LLC for Limited Waiver of the PJM Open Access Transmission Tariff Competitive Entry Exemption Deadline.

*Filed Date:* 3/7/17.

*Accession Number:* 20170307–5246.

*Comments Due:* 5 p.m. ET 3/28/17.

*Docket Numbers:* ER17–1118–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Queue Position AB1–163, Original Service Agreement No. 4644 to be effective 2/8/2017.

*Filed Date:* 3/8/17.

*Accession Number:* 20170308–5048.

*Comments Due:* 5 p.m. ET 3/29/17.

*Docket Numbers:* ER17–1119–000.

*Applicants:* James River Genco, LLC.

*Description:* § 205(d) Rate Filing: CIS & Revisions re Limiting MBR Authority to PJM to be effective 3/9/2017.

*Filed Date:* 3/8/17.

*Accession Number:* 20170308–5050.

*Comments Due:* 5 p.m. ET 3/29/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 8, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–05126 Filed 3–14–17; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings**

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

- Docket Numbers:* RP17-451-001.  
*Applicants:* Transcontinental Gas Pipe Line Company,  
*Description:* Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.205(b): Transco Annual Fuel Tracker—Amendment to be effective 4/1/2017.  
*Filed Date:* 03/03/2017.  
*Accession Number:* 20170303-5080.  
*Comment Date:* 5:00 p.m. Eastern Time on Wednesday, March 15, 2017.  
*Docket Numbers:* RP17-495-001.  
*Applicants:* Cameron Interstate Pipeline, LLC.  
*Description:* Cameron Interstate Pipeline, LLC submits tariff filing per 154.203: Cameron Interstate Pipeline, LLC Compliance Filing—Corrected Tariff Record to be effective 4/1/2017 Type: 580.  
*Filed Date:* 03/03/2017.  
*Accession Number:* 20170303-5094.  
*Comment Date:* 5:00 p.m. Eastern Time on Wednesday, March 15, 2017.  
*Docket Numbers:* RP17-498-001.  
*Applicants:* Cameron Interstate Pipeline, LLC.  
*Description:* Cameron Interstate Pipeline, LLC submits tariff filing per 154.205(b): Cameron Interstate Pipeline Limited Section 4 Rate Change—Corrected Tariff Rec to be effective 4/1/2017.  
*Filed Date:* 03/03/2017.  
*Accession Number:* 20170303-5098.  
*Comment Date:* 5:00 p.m. Eastern Time on Wednesday, March 15, 2017.  
*Docket Numbers:* RP17-518-000.  
*Applicants:* Natural Gas Pipeline Company of America.  
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Elgin Energy Center Negotiated Rate to be effective 4/1/2017.  
*Filed Date:* 03/03/2017.  
*Accession Number:* 20170303-5029.  
*Comment Date:* 5:00 p.m. Eastern Time on Wednesday, March 15, 2017.  
*Docket Numbers:* RP17-519-000.  
*Applicants:* Texas Eastern Transmission, LP.  
*Description:* Offer of Stipulation and Agreement by Texas Eastern Transmission, LP.  
*Filed Date:* 03/03/2017.  
*Accession Number:* 20170303-5206.

*Comment Date:* 5:00 p.m. Eastern Time on Wednesday, March 15, 2017.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: March 7, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017-05128 Filed 3-14-17; 8:45 am]

**BILLING CODE 6717-01-P**

**FEDERAL MARITIME COMMISSION****Notice of Agreements Filed**

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site ([www.fmc.gov](http://www.fmc.gov)) or by contacting the Office of Agreements at (202) 523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov).

*Agreement No.:* 012182-003.

*Title:* Hyundai Glovis/EUKOR Car Carrier Inc. Space Charter Agreement.

*Parties:* Hyundai Glovis Co., Ltd. and Eukor Car Carriers, Inc.

*Filing Party:* Wayne Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

*Synopsis:* The amendment revises the agreement to reflect a more specific understanding reached by the parties with respect to the amount of space to be chartered.

*Agreement No.:* 012257-001.

*Title:* Zim/Turkon Slot Charter Agreement.

*Parties:* ZIM Integrated Shipping Services, Ltd. and Turkon Container Transportation & Shipping Inc.

*Filing Party:* Mark E. Newcomb; ZIM American Integrated Shipping Services, Co., LLC; 5801 Lake Wright Dr., Norfolk, VA 23508.

*Synopsis:* The amendment adds the port of Istanbul, Aliaga, Turkey to the geographic scope of the Agreement.

*Agreement No.:* 012307-002.

*Title:* Maersk Line/APL Slot Exchange Agreement.

*Parties:* Maersk Line A/S and APL Co. Pte. Ltd./American President Lines, Ltd. (acting as a single party).

*Filing Party:* Wayne Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

*Synopsis:* This amendment deletes the slot exchange that had occurred on the MECL1 and AZX services, converts the Agreement into a reciprocal space charter, deletes language rendered obsolete by the elimination of the slot exchange, and restates the Agreement.

*Agreement No.:* 012471.

*Title:* APL/Maersk Line Slot Charter Agreement.

*Parties:* Maersk Line A/S and APL Co. Pte. Ltd./American President Lines, Ltd. (acting as a single party).

*Filing Party:* Wayne Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

*Synopsis:* The Agreement authorizes APL to sell slots to Maersk Line on its PE1 service in the trade between the U.S. Atlantic Coast and Sri Lanka, Singapore, Malaysia and Indonesia.

*Agreement No.:* 012472.

*Title:* Yang Ming/COSCO Shipping Slot Exchange Agreement.

*Parties:* COSCO Shipping Lines Co., Ltd. and Yang Ming Marine Transport Corporation.

*Filing Party:* Joshua Stein; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

*Synopsis:* The Agreement authorizes the parties to exchange space from Yang Ming to COSCO Shipping on the service referred to as the PS2 and operated under THE Alliance Agreement (FMC Agreement No. 012439), in exchange for space from COSCO Shipping to Yang Ming on the service referred to as the CEN and operated under the OCEAN Alliance Agreement (FMC Agreement No. 012426).

By Order of the Federal Maritime Commission.

Dated: March 10, 2017.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2017-05146 Filed 3-14-17; 8:45 am]

**BILLING CODE 6731-AA-P**

**FEDERAL RESERVE SYSTEM****Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 2017.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Bradley M. Stahl, Chicago, Illinois, as an individual, to join the Stahl Family Control Group which consists of George M. Stahl, Wyoming, Illinois; Patricia L. Stahl, Wyoming, Illinois; James I. Stahl, Wyoming, Illinois; Evelyn J. Stahl, Wyoming, Illinois;* which owns Speer Bancshares, Inc., Speer, Illinois and thereby indirectly owns shares of State Bank of Speer, Speer, Illinois.

Board of Governors of the Federal Reserve System, March 10, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017-05116 Filed 3-14-17; 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 March 28, 2017.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *George M. Stahl, Wyoming, Illinois; Patricia L. Stahl, Wyoming, Illinois; James I. Stahl, Wyoming, Illinois; Evelyn J. Stahl, Wyoming, Illinois; and Bradley M. Stahl, Chicago, Illinois;* as a group acting in concert, to retain shares of Speer Bancshares, Inc., Speer, Illinois and thereby indirectly retain shares of State Bank of Speer, Speer, Illinois.

2. *Peggy L. Holmes, Chillicothe, Illinois; Zealy M. Holmes Estate (Peggy L. Holmes, executor), Chillicothe, Illinois; James R. Hicks, Chillicothe, Illinois; Emmalee Holmes-Hicks, Providence, Rhode Island; Connie Holmes Nelson, Thunder Bay, Ontario, Canada; Cailin Anne Nelson, Boulder, Colorado; Ava Isobel Quinn, Boulder, Colorado; Wendy Holmes, Minneapolis, Minnesota; David Robert Frank, Minneapolis, Minnesota; and Kira Zhibo Nelson, Minneapolis, Minnesota;* to retain shares of Speer Bancshares, Inc., Speer, Illinois and thereby retain shares of State Bank of Speer, Speer, Illinois.

*B. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Penelope Wells individually and as Co-Trustee of the Penny J. Wells Revocable Trust and the Steven J. Wells Revocable Trust, and the trusts, and Julie Pino, all of Ardmore, Oklahoma;* to retain shares of Amcorp Financial, Inc., Ardmore Oklahoma and thereby retain shares of American Nation Bank, Ardmore, Oklahoma.

Notificants also have applied to become members of the Wells Family Group.

Board of Governors of the Federal Reserve System, March 9, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017-05117 Filed 3-14-17; 8:45 am]

**BILLING CODE 6210-01-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 April 7, 2017.

*A. Federal Reserve Bank of St. Louis* (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to

*Comments.applications@stls.frb.org:*

1. *Southern Missouri Bancorp, Inc., Poplar Bluff, Missouri;* to merge with Tammcorp, Inc., Tamms, Illinois, and thereby indirectly acquire Capaha Bank, S.B., Tamms, Illinois.

Board of Governors of the Federal Reserve System, March 9, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017-05118 Filed 3-14-17; 8:45 am]

**BILLING CODE 6210-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Agency for Healthcare Research and Quality****Patient Safety Organizations: Voluntary Relinquishment From the MagMutual Patient Safety Institute, LLC**

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

**ACTION:** Notice of delisting.

**SUMMARY:** The Patient Safety and Quality Improvement Act of 2005, (Patient Safety Act) and the related

Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, establish a framework by which hospitals, doctors, and other health care providers may voluntarily report information to Patient Safety Organizations (PSOs), on a privileged and confidential basis, for the aggregation and analysis of patient safety events. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from the MagMutual Patient Safety Institute, LLC of its status as a PSO, and has delisted the PSO accordingly.

**DATES:** The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on February 21, 2017.

**ADDRESSES:** Both directories can be accessed electronically at the following HHS Web site: <http://www.pso.ahrq.gov/listed>.

**FOR FURTHER INFORMATION CONTACT:** Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Room 06N94B, Rockville, MD 20857; Telephone (toll free): (866) 403-3697; Telephone (local): (301) 427-1111; TTY (toll free): (866) 438-7231; TTY (local): (301) 427-1130; Email: [psa@ahrq.hhs.gov](mailto:psa@ahrq.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Patient Safety Act, 42 U.S.C. 299b-21 to b-26, authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" if it is found to no longer meet the requirements of the Patient Safety Act

and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from the MagMutual Patient Safety Institute, LLC, a component entity of MAG Mutual Insurance Company, PSO number P0159, to voluntarily relinquish its status as a PSO. Accordingly, the MagMutual Patient Safety Institute, LLC was delisted effective at 12:00 Midnight ET (2400) on February 21, 2017.

The MagMutual Patient Safety Institute, LLC has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO. In addition, according to sections 3.108(c)(2)(ii) and 3.108(b)(3) of the Patient Safety Rule regarding disposition of PSWP, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO Web site at <http://www.pso.ahrq.gov>.

**Sharon B. Arnold,**  
Acting Director.

[FR Doc. 2017-05073 Filed 3-14-17; 8:45 am]

**BILLING CODE 4160-90-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[CDC-2017-0028, Docket Number NIOSH-290]

**Draft Current Intelligence Bulletin: The Occupational Exposure Banding Process: Guidance for the Evaluation of Chemical Hazards; Notice of Public Meeting; Request for Comments**

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of public meeting and availability of draft document for public comment.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease

Control and Prevention (CDC) announces the availability of a draft Current Intelligence Bulletin entitled *The Occupational Exposure Banding Process: Guidance for the Evaluation of Chemical Hazards* for public comment. NIOSH is seeking comments on the draft document and plans to have a public meeting to discuss the document. The draft document can be found at [www.regulations.gov](http://www.regulations.gov) by entering CDC-2017-0028 in the search field and clicking "Search."

**Table of Contents**

- Dates
- Addresses
- For Further Information Contact
- Supplementary Information
- Background

**DATES:** A public meeting will be held on Tuesday, May 23, 2016, from 9:00 a.m. to 3:00 p.m. Eastern Time, or until the last public presenter has spoken, whichever occurs first. Please note that public comments may end before the time indicated following the last call for comments. Members of the public who wish to provide public comments should plan to attend the meeting at the start time listed. Electronic or written comments must be received by June 13, 2017.

**ADDRESSES:** The public meeting will be held at the Robert A. Taft Laboratories, Auditorium, 1150 Tusculum Avenue, Cincinnati, Ohio 45226. The meeting will also be available through a conference call phone number and Webcast live on the Internet for a limited number of participants.

**Written Comments:** You may submit written comments, identified by CDC-2017-0028 and Docket Number NIOSH-290, by either of the following two methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- **Mail:** National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C-34, Cincinnati, Ohio 45226-1998.

All information received in response to this notice must include the agency name and docket number [CDC-2017-0028; NIOSH-290]. All relevant comments received, including any personal information provided, will be posted without change to [www.regulations.gov](http://www.regulations.gov). To access the docket, read background documents or read comments, go to [www.regulations.gov](http://www.regulations.gov) and enter CDC-2017-0028 in the search field and clicking "Search." All information received in response to this notice will be available for public examination and

copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 155, Cincinnati, Ohio 45226–1998.

**FOR FURTHER INFORMATION CONTACT:** Melissa Seaton, NIOSH, Education and Information Division, 1090 Tusculum Avenue, MS C–32, Cincinnati, OH 45226, telephone (513) 533–8248, Fax (513) 533–8230 (not toll free numbers), email [MSeaton@cdc.gov](mailto:MSeaton@cdc.gov).

**SUPPLEMENTARY INFORMATION:**

*Registration:* Notification of intent to attend the meeting, for both in-person and remote participation, or to provide oral comments must be made to the NIOSH Docket Office, at [nioshdocket@cdc.gov](mailto:nioshdocket@cdc.gov), (513) 533–8611 (not a toll free number), no later than April 21, 2017 for U.S. citizens, and no later than April 7, 2017 for non-U.S. citizens, to allow sufficient time for mandatory facility security clearance procedures to be completed. Priority for attendance will be given to those providing oral comments. Other requests to attend the meeting will then be accommodated on a first-come, first-served basis. All requests to present should contain the name, address, telephone number, and relevant business affiliations of the presenter, topic of the presentation, whether you will be presenting in person or by phone, and the approximate time requested for the presentation. Oral presentations will be limited to 15 minutes per presenter. If additional time becomes available, presenters will be notified.

After reviewing the requests for presentations, NIOSH will notify the presenter when his/her presentation is scheduled. If a participant is not in attendance when his/her presentation is scheduled to begin, the remaining participants will be heard in order. After the last scheduled speaker is heard, participants who missed their assigned times may be allowed to speak, limited by time available. Oral comments given at the meeting will be recorded and included in the docket.

Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity after the scheduled speakers are heard, at the discretion of the presiding officer and limited by time available.

*Status:* The meeting is open to the public, limited only by the space available. The meeting space accommodates approximately 100 people. In addition, there will be an audio conference for those who cannot attend in person. There is no registration fee to attend this public meeting. However, those wishing to attend are encouraged to sign up by

April 21, 2017 with the contact person in this notice.

*Security Considerations:* Due to mandatory security clearance procedures at the Robert A Taft Laboratories, in-person attendees must present valid government-issued picture identification to security personnel upon entering the building and go through an airport-type security check.

*Non-U.S. citizens:* are encouraged to participate in the audio conferencing due to the extra clearance involved with in-person attendance. To attend in person, a non-U.S. citizen will have to call or send an email before April 7, 2017 to the contact person in this notice, and provide passport information. If clearance is received, you will be notified; otherwise, you will not be able to attend the meeting in person.

Non-U.S. Citizens must provide the following information in writing to the NIOSH Docket Office at the address above no later than April 7, 2017: Name; gender; date of birth; place of birth (city, province, state, country); citizenship; passport number; date of passport issue; date of passport expiration; type of visa; U.S. naturalization number (if a naturalized citizen); U.S. naturalization date (if a naturalized citizen); visitor's organization; organization address; organization telephone number; visitor's position/title within the organization. This information will be transmitted to the CDC Security Office for approval. Visitors will be notified as soon as approval has been obtained. If access approval is not granted to a non-U.S. Citizen, the individual may participate through a conference call phone number and Webcast live on the Internet.

**Background**

Occupational exposure banding is a process of quickly assigning chemicals into specific categories or bands. These bands are assigned based on a chemical's potency and the negative health outcomes associated with exposure to the chemical. The output of this process is an occupational exposure band (OEB), which corresponds to a range of exposure concentrations that is expected to be protective to worker health. Recently NIOSH has developed a process to apply the occupational exposure banding process to a broad spectrum of occupational settings. The NIOSH occupational exposure banding process uses available, but often limited, toxicological data to determine a potential range of chemical exposure levels that can be used as targets for exposure controls to reduce risk among workers.

The purpose of the public meeting and public comment period is to obtain comments on the draft document. Comments are being sought from individuals including scientists and representatives from various government agencies, industry, labor, and other stakeholders, and also the public. If there are errors of fact, unsubstantiated claims, evidence of careless experimental work, inclusion of too much information already in the literature, or statements that are inaccurate, please note such in your review comments.

I. Technical Review and Charge Questions. The authors ask that special emphasis be placed on technical review of the following issues:

1. If a chemical can cause an immediate effect (necrosis, sensitization, pulmonary edema, central nervous system (CNS) effects), should there be special guidelines for assigning a short term OEB or emphasizing the importance of keeping even short duration exposures below the OEB for those types of toxicants?

2. If a skin toxicant is a corrosive, irritant, or sensitizer, should there be any special designation assigned along with the occupational exposure band (OEB)? Additionally, please comment on the utility of using skin and eye effects to create inhalation based bands.

3. The comparison of Tier 1 and Tier 2 results for a set of chemicals showed that Tier 1 and Tier 2 produce the same band for 65% of the chemicals tested. Tier 1 is more protective for 17.5% of the chemicals, while Tier 2 is more protective for 17.5% of the chemicals. NIOSH currently recommends that both the tier 1 and tier 2 process be completed for a particular chemical. Do you agree with this recommendation? If not, what approach should NIOSH take?

4. NIOSH has proposed a number of sources of information for the different human health and toxicological endpoints under consideration. Are there other sources of information that should be recommended? Are there some sources that should be omitted?

5. In tier 1, the NIOSH method does not currently assign chemicals to an OEB based on H335 or H336 (drowsiness and dizziness). Should NIOSH include H335/H336 in the tier 1 methodology? If so, what criteria should be used for banding and why?

6. In Section 3.2 the process for assessing whether enough information is available to conduct occupational exposure banding is presented. Please comment on the use of a numerical scale (determinant scores) to document endpoint-specific data availability. Further, is the minimum value of 30 out

of a possible total of 125 (for the total determinant score) a suitable choice for the data sufficiency threshold? Is the relative weight for each score appropriate?

7. How should NIOSH consider data collected on structural analogs or related chemicals in the banding scheme?

8. Qualitative and quantitative technical criteria have been adopted for some endpoints. Is this approach adequately justified and suitably explained in the document? If not, how should the explanations be refined?

9. If a chemical has two forms (vapor or particulate) in the workplace, we have recommended that the most protective OEB take precedence. Please comment on the utility and adequacy of that recommendation.

10. Acute toxicity information may be presented in an array of different units. We have attempted to address those possibilities in the banding criteria for the acute toxicity endpoint, especially for inhalation exposures. Is this information sufficiently clear? Are suitable rubrics for unit conversions provided?

11. Does this draft document adequately describe the occupational exposure banding process in a way that supports its use in assigning ranges of exposure concentrations to protect worker health in the occupational setting?

#### Public Review

The external review of the draft document has been (1) developed in accordance with Office of Management and Budget (OMB) guidelines, (2) is consistent with NIOSH peer review practice, and (3) is meant to ensure that credible and appropriate science is reflected within the draft document.

Dated: March 10, 2017.

#### Frank Hearl,

Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2017-05115 Filed 3-14-17; 8:45 am]

BILLING CODE 4163-19-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-N-1427]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice

**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 April 14, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0466. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Hazard Analysis and Critical Control Point (HACCP) Procedures for the Safe and Sanitary Processing and Importing of Juice—21 CFR Part 120

OMB Control Number 0910-0466—Extension

FDA's regulations in part 120 (21 CFR part 120) mandate the application of HACCP procedures to the processing of fruit and vegetable juices. HACCP is a preventative system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(a)(4)). Under section 402(a)(4) of the FD&C Act, a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or rendered injurious to health. The Agency also has authority under section 361 of the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases from one State, territory, or possession to another, or from outside the United States into this country. Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), FDA is authorized to issue regulations for the efficient enforcement of that act.

Under HACCP, processors of fruit and vegetable juices establish and follow a preplanned sequence of operations and observations (the HACCP plan) designed to avoid or eliminate one or more specific food hazards, and thereby ensure that their products are safe, wholesome, and not adulterated; in compliance with section 402 of the FD&C Act. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety.

In the **Federal Register** of August 30, 2016 (81 FR 59636), 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 RECORDKEEPING BURDEN <sup>1</sup>

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
120.6(c) and 120.12(a)(1) and (b)—Require written monitoring and correction records for Sanitation Standard Operating Procedures.	1,875	365	684,375	0.1 (6 minutes) .....	68,438
120.7, 120.10(a), and 120.12(a)(2), (b) and (c)—Require written hazard analysis of food hazards.	2,300	1.1	2,530	20 .....	50,600
120.8(a) and 20.12(a)(3), (b), and (c)—Require written HACCP plan .....	1,560	1.1	1716	60 .....	102,960
120.8(b)(7) and 120.12(a)(4)(i) and (b)—Require a recordkeeping system that documents monitoring of the critical control points and other measurements as prescribed in the HACCP plan.	1,450	14,600	21,170,000	0.01 (1 minute) .....	211,700
120.10(c) and 120.12(a)(4)(ii) and (b)—Require that all corrective actions taken in response to a deviation from a critical limit be documented.	1,840	12	22,080	0.1 (6 minutes) .....	2,208
120.11(a)(1)(iv) and (a)(2) and 120.12 (a)(5) and (b)—Require records showing verification activities associated with the HACCP system.	1,840	52	95,680	0.1 (6 minutes) .....	9,568
120.11(b) and 120.12(a)(5) and (b)—Require records showing validation activities associated with the HACCP system.	1,840	1	1,840	4 .....	7,360
120.11(c) and 120.12(a)(5) and (b)—Require documentation of revalidation of the hazard analysis upon any changes that might affect the original hazard analysis (applies when a firm does not have a HACCP plan because the original hazard analysis did not reveal hazards likely to occur).	1,840	1	1,840	4 .....	7,360
120.14(a)(2), (c), and (d) and 120.12(b)—Require that juice importers have written procedures to ensure that the juice is processed in accordance with our regulations in part 120.	308	1	308	4 .....	1,232
<b>Total</b> .....					<b>461,426</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 provides our estimate of the total annual recordkeeping burden of our regulations in part 120. We base our estimate of the average burden per recordkeeping on our experience with the application of HACCP principles in food processing. We base our estimate of the number of recordkeepers on our estimate of the total number of juice manufacturing plants affected by the regulations (plants identified in our official establishment inventory plus very small apple juice and very small orange juice manufacturers). These estimates assume that every processor will prepare sanitary standard operating procedures and an HACCP plan and maintain the associated monitoring records, and that every importer will require product safety specifications. In fact, there are likely to be some small number of juice processors that, based upon their hazard analysis, determine that they are not required to have an HACCP plan under these regulations.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05105 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2013-N-0796]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Testing Communications on Medical Devices and Radiation-Emitting Products**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by April 14, 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 0910-0678. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food

and Drug Administration, Three White Flint North 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Testing Communications on Medical Devices and Radiation-Emitting Products—OMB Control Number 0910-0678—Extension**

FDA is authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) to conduct educational and public information programs relating to the safety of regulated medical devices and radiation-emitting products. FDA must conduct needed research to ensure that such programs have the highest likelihood of being effective. Improving communications about medical devices and radiation emitting products will involve many research methods, including individual in-depth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research it will provide critical knowledge needed about target audiences to develop messages and campaigns about medical device and radiation-emitting product use. Knowledge of consumer and health care professional decision making processes

will provide the better understanding of target audiences that FDA needs to design effective communication strategies, messages, and labels. These communications will aim to improve public understanding of the risks and benefits of using medical devices and radiation-emitting products by providing users with a better context in which to place risk information more completely.

Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Testing messages with a sample of the target

audience will allow FDA to refine messages while still in the developmental stage. Respondents will be asked to give their reaction to the messages in either individual or group settings.

Third, as evaluative research, it will allow FDA to ascertain the effectiveness of the messages and the distribution method of these messages in achieving the objectives of the message campaign. Evaluation of campaigns is a vital link in continuous improvement of communications at FDA.

Annually, FDA projects about 30 studies using a variety of research methods and lasting an average of 0.17 hours each (varying from 0.08 to 1.5

hours). FDA estimates the burden of this collection of information based on prior recent experience with the various types of data collection methods described earlier. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

In the **Federal Register** of October 28, 2016 (81 FR 75134), 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 <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Individual in-depth interviews .....	360	1	360	.75 (45 minutes) ....	270
General public focus group interviews .....	144	1	144	1.5 .....	216
Intercept interviews: Central location .....	200	1	200	.25 (15 minutes) ....	50
Intercept interviews: Telephone .....	4,000	1	4,000	.08 (5 minutes) .....	320
Self-administered surveys .....	2,400	1	2,400	.25 (15 minutes) ....	600
Gatekeeper reviews .....	400	1	400	.5 (30 minutes) .....	200
Omnibus surveys .....	1,200	1	1,200	.17 (10 minutes) ....	204
<b>Total (general public) .....</b>	<b>8,704</b>	<b>.....</b>	<b>.....</b>	<b>.....</b>	<b>1,860</b>
Physician focus group interviews .....	144	1	144	1.5 .....	216
<b>Total (physician) .....</b>	<b>144</b>	<b>.....</b>	<b>.....</b>	<b>.....</b>	<b>216</b>
<b>Total (overall) .....</b>	<b>8,848</b>	<b>.....</b>	<b>.....</b>	<b>.....</b>	<b>2,076</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 9, 2017.

**Leslie Kux,**  
Associate Commissioner for Policy.

[FR Doc. 2017-05097 Filed 3-14-17; 8:45 am]

BILLING CODE 4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2013-N-1089]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recommended Glossary and Educational Outreach To Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use**

**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 April 14, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0553. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Recommended Glossary and Educational Outreach To Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use**

OMB Control Number 0910-0553—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device to avoid misbranding. Section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) establishes requirements that manufacturers of biological products must submit a license application for FDA review and approval prior to marketing a biological product for introduction into interstate commerce.



In the **Federal Register** of November 30, 2004 (69 FR 69606), FDA published a notice of availability of the guidance entitled “Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.” The document provides guidance for the voluntary use of selected symbols in place of text in labeling. It provides the labeling guidance required for: (1) In vitro diagnostic devices (IVDs), intended for professional use under 21 CFR 809.10, FDA’s labeling requirements for IVDs; and (2) FDA’s labeling requirements for biologics, including IVDs under 21 CFR parts 610 and 660.

The guidance document recommends that a glossary of terms accompany each IVD to define the symbols used on that

device’s labels and/or labeling. Furthermore, the guidance recommends an educational outreach effort to enhance the understanding of newly introduced symbols. Both the glossary and educational outreach information help to ensure that IVD users have enough general familiarity with the symbols used, as well as provide a quick reference for available materials, thereby further ensuring that such labeling satisfies the labeling requirements under section 502(c) of the FD&C Act and section 351 of the PHS Act.

The likely respondents for this collection of information are IVD manufacturers who plan to use the selected symbols in place of text on the labels and/or labeling of their IVDs.

The glossary activity is inclusive of both domestic and foreign IVD manufacturers. FDA receives submissions from approximately 689 IVD manufacturers annually. The 4-hour estimate for a glossary is based on the average time necessary for a manufacturer to modify the glossary for the specific symbols used in labels or labeling for the IVDs manufactured.

In the **Federal Register** of December 5, 2016 (81 FR 87570), 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 THIRD-PARTY DISCLOSURE BURDEN <sup>1</sup>

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Glossary .....	689	1	689	4	2,756

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05106 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2009-N-0360]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration Safety Communication Readership Survey**

**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 Safety Communication Readership Survey.

**DATES:** Submit either electronic or written comments on the collection of information by May 15, 2017.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2009-N-0360 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration Safety Communication Readership Survey.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your

comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@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.

**FDA Safety Communication Readership Survey**

*OMB Control Number 0910-0341—Extension*

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 375(b)) gives FDA authority to disseminate information concerning suspected or imminent danger to public

health by any regulated product. Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) also authorizes FDA to conduct research relating to health information.

FDA's Center for Devices and Radiological Health (CDRH) carries out FDA's regulatory responsibilities regarding medical devices and radiological products. CDRH must be able to effectively communicate risk to health care practitioners, patients, caregivers, and consumers when there is a real or suspected threat to the public's health. CDRH uses safety communications to transmit information concerning these risks to user communities. Safety communications are released and available to organizations such as hospitals, nursing homes, hospices, home health care agencies, manufacturers, retail pharmacies, and other health care providers, as well as patients, caregivers, consumers, and patient advocacy groups. Through a process for identifying and addressing postmarket safety issues related to regulated products, CDRH determines when to release safety communications.

FDA seeks to evaluate the clarity, timeliness, and impact of safety communications by surveying a sample of recipients to determine the impact of safety communications on the knowledge of the recipients. Understanding how the target audiences view these publications will aid in determining what, if any, changes should be considered in their content, format, and method of dissemination. The collection of this data is an important step in determining how well CDRH is communicating risk. The results from this survey will emphasize the quality of the safety communications and customer satisfaction. This will enable us to better serve the public by improving the effectiveness of safety communications.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Public Health Notification Readership Survey .....	300	3	900	0.17 (10 minutes) ..	153

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the Safety Communication program, it is estimated that an average of three collections will be conducted per year. The total burden of response time is estimated at 10

minutes per survey. This was derived by CDRH staff completing the survey.

Dated: March 9, 2017.  
**Leslie Kux,**  
*Associate Commissioner for Policy.*  
 [FR Doc. 2017-05103 Filed 3-14-17; 8:45 am]

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2016-N-3586]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Focus Groups About Drug Products as Used by the Food and Drug Administration**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) 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 (the PRA).

**DATES:** Fax written comments on the collection of information by April 14, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0677. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Focus Groups About Drug Products as Used by the Food and Drug Administration OMB Control Number 0910-0677—Extension**

Focus groups provide an important role in gathering information because they allow for a more in-depth understanding of individuals' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research tool have three major purposes:

- To obtain information that is useful for developing variables and measures for quantitative studies;
- to better understand people's attitudes and emotions in response to topics and concepts;
- and to further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine its ideas and to help develop messages and other communications, but will generally conduct further research before making important decisions such as adopting new policies and allocating or

redirecting significant resources to support these policies.

FDA's Center for Drug Evaluation and Research, Office of the Commissioner, and any other Centers or Offices conducting focus groups about regulated drug products may need to conduct focus groups on a variety of subjects related to consumer, patient, or healthcare professional perceptions and use of drug products and related materials, including but not limited to, direct-to-consumer prescription drug promotion, physician labeling of prescription drugs, Medication Guides, over-the-counter drug labeling, emerging risk communications, patient labeling, online sales of medical products, and consumer and professional education.

Annually, FDA projects about 20 focus group studies using 160 focus groups with an average of 9 persons per group, and lasting an average of 1.75 hours each. FDA is requesting this burden for unplanned focus groups so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

In the **Federal Register** of November 7, 2016 (81 FR 78161), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received in response to the notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus Groups About Drug Products .....	1,440	1	1,440	1.75	2,520

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05099 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2013-D-0575]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) 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 April 14, 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 [aira\\_submission@omb.eop.gov](mailto:aira_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910–0765. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Guidance for Industry (GFI) on Expedited Programs for Serious Conditions—Drugs and Biologics**

*OMB Control Number 0910–0765—Extension*

The FDA has established four programs intended to facilitate and expedite development and review of new drugs to address unmet medical

needs in the treatment of serious or life-threatening conditions: (1) Fast track designation including rolling review, (2) Breakthrough therapy designation, (3) Accelerated approval, and (4) Priority review designation. In support of these, the Agency has developed the guidance document, “GFI: Expedited Programs for Serious Conditions—Drugs and Biologics.” The guidance outlines the programs’ policies and procedures and describes applicable threshold criteria, including when to submit information to FDA. Respondents to the information collection are sponsors of drug and biological products appropriate for these expedited programs.

*Priority Review Designation Request.* The guidance describes that a sponsor may expressly request priority review of an application. Based on information from FDA’s databases and information available to FDA, we estimate that approximately 48 sponsors will prepare and submit approximately 1.7 priority review designation submissions that receive a priority review in accordance with the guidance and that the added

burden for each submission will be approximately 30 hours to develop and submit to FDA as part of the application (totaling 2,400 hours).

*Breakthrough Therapy Designation Request.* The guidance describes the process for sponsors to request breakthrough therapy designation in an application. Based on information from FDA’s databases and information available to FDA, we estimate that approximately 87 sponsors will prepare approximately 1.29 breakthrough therapy designation submissions in accordance with the guidance and that the added burden for each submission will be approximately 70 hours to prepare and submit (totaling 7,910 hours).

In the **Federal Register** of November 29, 2016 (81 FR 85973), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received in response to the notice.

FDA estimates the burden of this collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Guidance on expedited programs	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Priority Review Designation Request .....	48	1.7	80	30	2,400
Breakthrough Therapy Designation Request .....	87	1.29	113	70	7,910
Total .....					10,310

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with the information collection.

The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR parts 202.1, 314, and 601; sections 505(a), 506(a)(1), 735, and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a), 356(a)(1), 379(g), and 379(h)) have been approved under OMB control numbers 0910–0686, 0910–0001, 0910–0338, 0910–0014, and 0910–0297.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017–05104 Filed 3–14–17; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2017–N–0041]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Assurance Case**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (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 associated with safety assurance cases.

**DATES:** Submit either electronic or written comments on the collection of information by May 15, 2017.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or

confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2017-N-0041 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Assurance Case.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your

comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, [PRAStaff@fda.hhs.gov](mailto: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.

#### Safety Assurance Case—OMB Control Number 0910-0766—Extension

In January 2011, the Food and Drug Administration (FDA) announced its intention to evaluate the use of assurance cases as part of our Plan of Action to strengthen the 510(k) program following the publication of the draft guidance on infusion pumps (April 26, 2010, 75 FR 21632). The initial test assurance case focused on infusion pumps because the Infusion Pump Improvement Initiative was also exploring the use of assurance cases as a means of improving premarket review. The infusion pump assurance case beta testing included infusion pump devices classified under 21 CFR 880.5725.

The assurance case consists of a structured argument, supported by a body of valid scientific evidence that provides an organized and comprehensible case that the infusion pump is comparably safe for its intended use within its environment of use. The argument should be commensurate with the potential risk posed by the infusion pump, the complexity of the infusion pump, and the familiarity with the identified risks and mitigation measures.

Assurance cases are dependent on individual product specifications, hazards, design, and documentation. For this reason, assurance cases are considered to be device-specific, meaning any newly developed device would have its own unique assurance case. If the manufacturer submits a 510(k) for modifications to a legally marketed infusion pump for which no assurance case exists, FDA recommends that manufacturers develop and submit a case for their infusion pump.

Following the completion of the assurance case beta testing, FDA has written an Infusion Pump Total Life Cycle final guidance with recommendations for how manufacturers of infusion pumps should submit an assurance case with their premarket notification (510(k)) submissions. The guidance recommends that an assurance case demonstrate mitigation of infusion pump related hazardous situations through analysis of operational, environmental, electrical, hardware, software, mechanical, biological, chemical, and use hazards, as appropriate.

FDA is requesting extension of approval for the information collection requirements contained within an

assurance case. The assurance case requires the device sponsor to explicitly describe how and why their device

meets FDA regulatory requirements, as they relate to safety.  
The respondents to this collection of information are infusion pump

manufacturers subject to FDA's laws and regulations.  
FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Assurance Case Report .....	31	1	31	112	3,472

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of 31 respondents is based on the number of manufacturers of infusion pumps listed in FDA's Registration and Listing database (FURLS). The estimated average burden per response, 112 hours, is based on FDA's expectation of the amount of information that will be contained in the report, on public comment received regarding the burden, on consultation with stakeholders/industry, and on FDA's experience in the creation of an assurance case argument structures for use in the guidance. Our estimate also reflects that some information used to support the assurance case, such as activities conducted under existing design controls, is already covered in another information collection request (OMB control number 0910-0073) and is therefore not included in the burden estimate in this information collection request. The respondents to this collection of information are infusion pump manufacturers.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05095 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2017-D-0154]

**Considerations in Demonstrating Interchangeability With a Reference Product; Draft Guidance for Industry; Availability; Extension of Comment Period**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice that appeared in the **Federal**

**Register** of January 18, 2017. In the notice, FDA requested comments on "Considerations in Demonstrating Interchangeability with a Reference Product." The Agency is taking this action in response to several requests for an extension to allow interested persons additional time to submit comments.

**DATES:** FDA is extending the comment period on the notice published January 18, 2017 (82 FR 5579). Submit either electronic or written comments by May 19, 2017. Late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 19, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of May 19, 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.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2017-D-0154 for "Considerations in Demonstrating Interchangeability With a Reference Product; Draft Guidance for Industry." Received comments, those filed in a timely manner (see **DATES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information

redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993-0002, 301-796-1042, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 18, 2017 (82 FR 5579), FDA published a notice with a 60-day comment period to request comments on “Considerations in Demonstrating Interchangeability With a Reference Product.”

The Agency has received several requests for a 60-day extension of the comment period for the notice. The requests conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the notice.

FDA has considered the requests and is extending the comment period for the notice for 60 days, until May 19, 2017. The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05102 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2016-N-3535]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Special Protocol Assessment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) 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 (the PRA).

**DATES:** Fax written comments on the collection of information by April 14, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0470. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Guidance for Industry on Special Protocol Assessment OMB Control Number 0910-0470—Extension

The “Guidance for Industry on Special Protocol Assessment” describes Agency procedures to evaluate issues related to the adequacy (*e.g.*, design, conduct, analysis) of certain proposed

studies. The guidance describes procedures for sponsors to request special protocol assessment and for the Agency to act on such requests. The guidance provides information on how the Agency interprets and applies provisions of the Food and Drug Administration Modernization Act of 1997 and the specific Prescription Drug User Fee Act of 1992 (PDUFA) goals for special protocol assessment associated with the development and review of PDUFA products. The guidance describes the following two collections of information: (1) The submission of a notice of intent to request special protocol assessment of a carcinogenicity protocol and (2) the submission of a request for special protocol assessment.

#### I. Notification for a Carcinogenicity Protocol

As described in the guidance, a sponsor interested in Agency assessment of a carcinogenicity protocol should notify the appropriate division in FDA’s Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) of an intent to request special protocol assessment at least 30 days prior to submitting the request. With such notification, the sponsor should submit relevant background information so that the Agency may review reference material related to carcinogenicity protocol design prior to receiving the carcinogenicity protocol.

#### II. Request for Special Protocol Assessment

The guidance asks that a request for special protocol assessment be submitted as an amendment to the investigational new drug application (IND) for the underlying product and that it be submitted to the Agency in triplicate with Form FDA 1571 attached. The guidance also suggests that the sponsor submit the cover letter to a request for special protocol assessment via fax to the appropriate division in CDER or CBER. Agency regulations (21 CFR 312.23(d)) state that information provided to the Agency as part of an IND is to be submitted in triplicate and with the appropriate cover form, Form FDA 1571. An IND is submitted to FDA under existing regulations in part 312 (21 CFR part 312), which specifies the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of investigational drugs and biological products. The information collection requirements resulting from the preparation and submission of an IND under part 312 have been estimated by FDA and the reporting and

recordkeeping burden has been approved by OMB under OMB control number 0910-0014.

FDA suggests that the cover letter to the request for special protocol assessment be submitted via fax to the appropriate division in CDER or CBER to enable Agency staff to prepare for the arrival of the protocol for assessment. The Agency recommends that a request for special protocol assessment be submitted as an amendment to an IND for two reasons: (1) To ensure that each request is kept in the administrative file with the entire IND and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency's tracking databases enables the appropriate Agency official to monitor progress on the evaluation of the protocol and to ensure that appropriate steps will be taken in a timely manner.

The guidance recommends that the following information should be submitted to the appropriate Center with each request for special protocol assessment so that the Center may quickly and efficiently respond to the request:

- Questions to the Agency concerning specific issues regarding the protocol; and
- All data, assumptions, and information needed to permit an adequate evaluation of the protocol, including: (1) The role of the study in the overall development of the drug; (2) information supporting the proposed

trial, including power calculations, the choice of study endpoints, and other critical design features; (3) regulatory outcomes that could be supported by the results of the study; (4) final labeling that could be supported by the results of the study; and (5) for a stability protocol, product characterization and relevant manufacturing data.

*Description of Respondents:* A sponsor, applicant, or manufacturer of a drug or biologic product regulated by the Agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who requests special protocol assessment.

*Burden Estimate:* Table 1 provides an estimate of the annual reporting burden for notifications for a carcinogenicity protocol and requests for a special protocol assessment.

*Notification for a Carcinogenicity Protocol:* Based on the number of notifications for carcinogenicity protocols and the number of carcinogenicity protocols currently submitted to CDER and CBER, CDER estimates that it will receive approximately 52 notifications of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately 28 sponsors. CBER estimates that it will receive approximately one notification of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately one sponsor. The hours per response, which is the estimated number of hours that a

sponsor would spend preparing the notification and background information to be submitted in accordance with the guidance, is estimated to be approximately 8 hours.

*Requests for Special Protocol Assessment:* Based on the number of requests for special protocol assessment currently submitted to CDER and CBER, CDER estimates that it will receive approximately 211 requests for special protocol assessment per year from approximately 112 sponsors. CBER estimates that it will receive approximately nine requests from approximately seven sponsors. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for special protocol assessment, including the time it takes to gather and copy questions to be posed to the Agency regarding the protocol and data, assumptions, and information needed to permit an adequate evaluation of the protocol. Based on the Agency's experience with these submissions, FDA estimates approximately 15 hours on average would be needed per response.

In the **Federal Register** of November 18, 2016 (81 FR 81776), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received in response to the notice.

FDA estimates the burden of this collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Notification for Carcinogenicity Protocols .....	29	1.8	53	8	424
Requests for Special Protocol Assessment .....	119	1.8	220	15	3,300
<b>Total</b> .....					<b>3,724</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05098 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2013-N-0719]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Planning for the Effects of High Absenteeism To Ensure Availability of Medically Necessary Drug Products**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) 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 (PRA).

**DATES:** Fax written comments on the collection of information by April 14, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0675. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Guidance for Industry on Planning for the Effects of High Absenteeism To Ensure Availability of Medically Necessary Drug Products OMB Control Number 0910-0675—Extension**

The guidance recommends that manufacturers of drug and therapeutic biological products and manufacturers

of raw materials and components used in those products develop a written Emergency Plan (Plan) for maintaining an adequate supply of medically necessary drug products (MNPs) during an emergency that results in high employee absenteeism. The guidance discusses the issues that should be covered by the Plan, such as: (1) Identifying a person or position title (as well as two designated alternates) with the authority to activate and deactivate the Plan and make decisions during the emergency; (2) prioritizing the manufacturer's drug products based on medical necessity; (3) identifying actions that should be taken prior to an anticipated period of high absenteeism; (4) identifying criteria for activating the Plan; (5) performing quality risk assessments to determine which manufacturing activities may be reduced to enable the company to meet a demand for MNPs; (6) returning to normal operations and conducting a post-execution assessment of the execution outcomes; and (7) testing the Plan. The guidance recommends developing a Plan for each individual manufacturing facility as well as a broader Plan that addresses multiple sites within the organization. For purposes of this information collection analysis, we consider the Plan for an individual manufacturing facility as well as the broader Plan to comprise one Plan for each manufacturer. Based on FDA's data on the number of manufacturers that would be covered by the guidance, we estimate that approximately 70 manufacturers will develop a Plan as recommended by the guidance (*i.e.*, one Plan per manufacturer to include all manufacturing facilities, sites, and drug products), and that each Plan will take approximately 500 hours to develop, maintain, and update.

The guidance also encourages manufacturers to include a procedure in their Plan for notifying the Center for Drug Evaluation and Research (CDER) when the Plan is activated and when returning to normal operations. The guidance recommends that these notifications occur within 1 day of a Plan's activation and within 1 day of a Plan's deactivation. The guidance specifies the information that should be included in these notifications, such as which drug products will be manufactured under altered procedures, which products will have manufacturing temporarily delayed, and

any anticipated or potential drug shortages. We expect that approximately two notifications (for purposes of this analysis, we consider an activation and a deactivation notification to equal one notification) will be sent to CDER by approximately two manufacturers each year, and that each notification will take approximately 16 hours to prepare and submit.

The guidance also refers to previously approved collections of information found in FDA regulations. Under the guidance, if a manufacturer obtains information after releasing an MNP under its Plan leading to suspicion that the product might be defective, CDER should be contacted immediately at [drugshortages@fda.hhs.gov](mailto:drugshortages@fda.hhs.gov) in adherence to existing recall reporting regulations (21 CFR 7.40) (OMB control number 0910-0249), or defect reporting requirements for drug application products (21 CFR 314.81(b)(1)) and therapeutic biological products regulated by CDER (21 CFR 600.14) (OMB control numbers 0910-0001 and 0910-0458, respectively).

In addition, the following collections of information found in FDA current good manufacturing practice (CGMP) regulations in part 211 (21 CFR part 211) are approved under OMB control number 0190-0139. The guidance encourages manufacturers to maintain records, in accordance with the CGMP requirements (see, *e.g.*, § 211.180) that support decisions to carry out changes to approved procedures for manufacturing and release of products under the Plan. The guidance states that a Plan should be developed, written, reviewed, and approved within the site's change control quality system in accordance with the requirements in §§ 211.100(a) and 211.160(a); execution of the Plan should be documented in accordance with the requirements described in § 211.100(b); and standard operating procedures should be reviewed and revised or supplementary procedures developed and approved to enable execution of the Plan.

In the **Federal Register** of November 3, 2016 (81 FR 76618), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received in response to the notice.

We estimate the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Absenteeism guidance	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Notify FDA of Plan Activation and De-activation .....	2	1	2	16	32

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN <sup>1</sup>

Absenteeism guidance	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Develop Initial Plan .....	70	1	70	500	35,000

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05100 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2017-N-1063]

**Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA’s regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on March 29, 2017, from 8 a.m. to 5 p.m. Submit either electronic or written comments on this document by March 28, 2017. Late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 28, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of March 28, 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.

**ADDRESSES:** Sheraton College Park North Hotel, Chesapeake Ballroom, 4095 Powder Mill Road, Beltsville, MD 20705. The hotel’s telephone number is 301-937-4422. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2017-N-1063 for “Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.” Received comments, those filed in a timely manner (see **DATES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit

both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <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 Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email: [ODAC@fda.hhs.gov](mailto:ODAC@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency’s Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

**Agenda:** During the morning session of March 29, 2017, the committee will discuss biologics license application (BLA) 761064, rituximab/hyaluronidase injection for subcutaneous use, submitted by Genentech, Inc. The proposed indications (uses) for this product are for: (1) The treatment of patients with relapsed or refractory, follicular lymphoma as a single agent; (2) previously untreated follicular lymphoma in combination with first line chemotherapy and, in patients

achieving a complete or partial response to rituximab/hyaluronidase for subcutaneous injection in combination with chemotherapy, as single-agent maintenance therapy; (3) non-progressing (including stable disease), follicular lymphoma as a single agent after first-line cyclophosphamide, vincristine, and prednisone (CVP) chemotherapy; (4) the treatment of patients with previously untreated diffuse large B-cell lymphoma (DLBCL) in combination with cyclophosphamide, doxorubicin, vincristine, prednisolone (CHOP) or other anthracycline based chemotherapy regimens; and (5) in combination with fludarabine and cyclophosphamide (FC), for the treatment of patients with previously untreated and previously treated chronic lymphocytic leukemia (CLL). During the afternoon session, the committee will discuss new drug application (NDA) 209099, for binimetinib, submitted by Array BioPharma Inc. The proposed indication (use) for this product is for the treatment of patients with unresectable or metastatic melanoma, with NRAS Q61 mutation as detected by an FDA-approved test, who have received prior treatment with checkpoint inhibitor therapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA’s Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

**Procedure:** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section) on or before March 24, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on

or before March 21, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 22, 2017.

Persons attending FDA’s advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2017-N-1063. The docket will close on March 28, 2017. Comments received on or before March 24, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Lauren D. Tesh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 10, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05188 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2016-N-3995]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Pediatric Uses of Devices; Requirement for Submission of Information on Pediatric Subpopulations That Suffer From a Disease or Condition That a Device Is Intended To Treat, Diagnose, or Cure**

**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 April 14, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0748. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A63, 11601 Landsdown St., North Bethesda, MD 20852, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Medical Devices; Pediatric Uses of Devices; Requirement for Submission of Information on Pediatric Subpopulations That Suffer From a Disease or Condition That a Device Is Intended To Treat, Diagnose, or Cure**

*OMB Control Number 0910-0748—Extension*

Section 515A(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e-1) requires applicants who submit certain medical device applications to include readily available information providing a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients. The information submitted will allow FDA to track the number of approved devices for which there is a pediatric subpopulation that suffers from the disease or condition that the device is intended to treat, diagnose, or cure and the review time for each such device application.

These requirements apply to applicants who submit humanitarian device exemption requests (HDEs), premarket approval applications (PMAs) or PMA supplements, or a product development protocol (PDP).

FDA expects to receive approximately 45 original PMA/PDP/HDE applications each year, 5 of which FDA expects to be HDEs. This estimate is based on the average of FDA's receipt of new PMA applications. The Agency estimates that 10 of the estimated 40 original PMA submissions will fail to provide the required pediatric use information and their sponsors will therefore be required to submit PMA amendments. The Agency also expects to receive approximately 700 supplements that will include the pediatric use information required by section 515A(a) of the FD&C Act and part 814 (21 CFR part 814).

All that is required is to gather, organize, and submit information that is readily available, using any approach that meets the requirements of section 515A(a) of the FD&C Act and part 814. We believe that because the applicant is required to organize and submit only readily available information, no more than 8 hours will be required to comply. Furthermore, because supplements may include readily available information on pediatric populations by referencing a previous submission, FDA estimates the average time to obtain and submit the required information in a supplement to be 2 hours. FDA estimates that the total estimated burden is 1,760 hours.

In the **Federal Register** of December 16, 2016 (81 FR 91181), 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 <sup>1</sup>

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pediatric information in an original PMA or PDP—814.20(b)(13) .....	30	1	30	8	240
Pediatric information in a PMA amendment—814.37(b)(2) .....	10	1	10	8	80
Pediatric information in a PMA supplement—814.39(c)(2) .....	700	1	700	2	1,400
Pediatric information in an HDE—814.104(b)(6) .....	5	1	5	8	40
<b>Total</b> .....					<b>1,760</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 9, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-05096 Filed 3-14-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act. To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

#### Project: Community Mental Health Services Block Grant and Substance Abuse and Prevention Treatment Block Grant FY 2018–2019 Plan and Report Guidance and Instructions (OMB No. 0930-0168)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting approval from the Office of Management and Budget (OMB) for a revision of the 2016–17 Community Mental Health Services Block Grant (MHBG) and Substance Abuse Prevention and Treatment Block Grant (SABG) Plan and Report Guidance and Instructions.

Currently, the SABG and the MHBG differ on a number of their practices (e.g., data collection at individual or aggregate levels) and statutory authorities (e.g., method of calculating MOE, stakeholder input requirements for planning, set asides for specific populations or programs, etc.). Historically, the Centers within SAMHSA that administer these block grants have had different approaches to application requirements and reporting. To compound this variation, states have different structures for accepting, planning, and accounting for the block grants and the prevention set aside within the SABG. As a result, how these dollars are spent and what is known about the services and clients that receive these funds varies by block grant and by state.

Increasingly, under the Affordable Care Act, more individuals are eligible for Medicaid and private insurance. This expansion of health insurance coverage will continue to have a significant impact on how State Mental Health Authorities (SMHAs) and Single State Agencies (SSAs) use their limited resources. In 2009, more than 39 percent of individuals with serious mental illnesses (SMI) or serious emotional disturbances (SED) were uninsured.

Sixty percent of individuals with substance use disorders whose treatment and recovery support services were supported wholly or in part by SAMHSA block grant funds were also uninsured. A substantial proportion of this population has gained health insurance coverage through Medicaid, Medicare, or private insurance. However, coverage provided by these plans and programs do not necessarily provide access to the full range of support services needed to achieve and maintain recovery for most of these individuals and their families.

Given these changes, SAMHSA has conveyed that block grant funds be directed toward four purposes: (1) To fund priority treatment and support services for individuals without insurance or who cycle in and out of health insurance coverage; (2) to fund those priority treatment and support services not covered by Medicaid, Medicare or private insurance offered through the exchanges and that demonstrate success in improving outcomes and/or supporting recovery; (3) to fund universal, selective and indicated prevention activities and services; and (4) to collect performance and outcome data to determine the ongoing effectiveness of behavioral health prevention, treatment and recovery support services and to plan the implementation of new services on a nationwide basis.

To help states meet the challenges of 2018 and beyond, and to foster the implementation and management of an integrated physical health and mental health and addiction service system, SAMHSA must establish standards and expectations that will lead to an improved system of care for individuals with or at risk of mental and substance use disorders. Therefore, this application package includes fully exercising SAMHSA's existing authority regarding states', territories' and the Red Lake Band of the Chippewa Tribe's (subsequently referred to as "states") use of block grant funds as they fully integrate behavioral health services into the broader health care continuum.

Consistent with previous applications, the FY 2018–2019 application has sections that are required and other sections where additional information is requested. The FY 2018–2019 application requires states to submit a face sheet, a table of contents, a behavioral health assessment and plan, reports of expenditures and persons served, an executive summary, and funding agreements and certifications. In addition, SAMHSA is requesting information on key areas that are critical to the states success in

addressing health care integration. Therefore, as part of this block grant planning process, SAMHSA is asking states to identify both their promising or effective strategies as well as their technical assistance needs to implement the strategies they identify in their plans for FYs 2018 and 2019.

To facilitate an efficient application process for states in FYs 2018–2019, SAMHSA convened an internal workgroup to review and modify the application for the block grant planning section. In addition, SAMHSA utilized the questions and requests for clarification from representatives from SMHAs and SSAs to inform the proposed changes to the block grants. Based on these discussions with states, SAMHSA is proposing several changes to the block grant programs as discussed in greater detail below.

#### *Changes to Assessment and Planning Activities*

The proposed revisions reflect changes within the planning section of the application. The most significant change involves a movement away from a request for multiple narrative descriptions of the state's activities in a variety of areas to a more quantitative response to specific questions, reflecting statutory or regulatory requirements where applicable, or reflecting specific uses of block grant funding. In addition, to respond to the requests from states, the required and requested sections have been clearly identified.

The FY 2016–2017 application sections that gave states policy guidance on the planning and implementation of system issues which were not authorized services under either block grant have been eliminated to avoid confusion. In addition, the statutory criteria which govern the plan, report and application have been included in the document as references.

Other specific proposed revisions are described below:

- *Health Care System, Parity and Integration*—This section is a consolidation of the FY 2016–2017 sections on the health insurance marketplace, parity, enrollment, and primary and behavioral health care integration. It is vital that SMHAs and SSAs programming and planning reflect the strong connection between behavioral and physical health. Fragmented or discontinuous care may result in inadequate diagnosis and treatment of both physical and behavioral conditions, including co-occurring disorders. Health care professionals, consumers of mental, substance use disorders, co-occurring mental, and substance use disorders

treatment recognize the need for improved coordination of care and integration of primary and behavioral health care. Health information technology, including electronic health records (EHRs), and telehealth are examples of important strategies to promote integrated care. Use of EHRs—in full compliance with applicable legal requirements—may allow providers to share information, coordinate care and improve billing practices.

- *Evidenced-based Practices for Early Serious Mental Illness for the MHBG*—In its FY 2016 appropriation, SAMHSA was directed to require that states set aside 10 percent of their MHBG allocation to support evidence-based programs that provide treatment to those with early SMI including but not limited to psychosis at any age. SAMHSA worked collaboratively with the National Institute on Mental Health (NIMH) to review evidence showing efficacy of specific practices in ameliorating SMI and promoting improved functioning. NIMH has released information on Components of Coordinated Specialty Care (CSC) for First Episode Psychosis. Results from the NIMH funded *Recovery After an Initial Schizophrenia Episode (RAISE)* initiative, a research project of the NIMH, suggest that mental health

providers across multiple disciplines can learn the principles of CSC for First Episode of Psychosis (FEP), and apply these skills to engage and treat persons in the early stages of psychotic illness.

States can implement models across a continuum, which have demonstrated efficacy, including the range of services and principles identified by NIMH. Utilizing these principles, regardless of the amount of investment, and with leveraging funds through inclusion of services reimbursed by Medicaid or private insurance, every state will be able to begin to move their system toward earlier intervention, or enhance the services already being implemented.

- *Statutory changes required by the 21st Century CURES Act*—The CURES Act required several language changes, to include: A change from Administrator of SAMHSA to Assistant Secretary for Mental Health and Substance Use; a change from “Substance Misuse Prevention” to “Substance Use Disorder Prevention” and others. In addition, the Act eliminated section 1929 governing the annual treatment needs assessment and changed the specific requirements for the state determination of need to include estimates on the number of individuals who need treatment, who are pregnant women, women with

dependent children, individuals with a co-occurring mental health and substance use disorder, persons who inject drugs, and persons who are experiencing homelessness.

*Other Changes*

While the statutory deadlines and block grant award periods remain unchanged, SAMHSA encourages states to turn in their application as early as possible to allow for a full discussion and review by SAMHSA. Applications for the MHBG-only is due no later than September 1, 2017. The application for SABG-only is due no later than October 1, 2017. A single application for MHBG and SABG is due no later than September 1, 2017.

*Estimates of Annualized Hour Burden*

The estimated annualized burden for the uniform application is 33,374 hours. Burden estimates are broken out in the following tables showing burden separately for Year 1 and Year 2. Year 1 includes the estimates of burden for the uniform application and annual reporting. Year 2 includes the estimates of burden for the recordkeeping and annual reporting. The reporting burden remains constant for both years.

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1

Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grants							
	Authorizing legislation SABG	Authorizing legislation MHBG	Implementing regulation	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Reporting: .....	Standard Form and Content. 42 U.S.C. 300x-32(a). Annual Report .....						11,160
SABG .....	42 U.S.C. 300x-52(a) ... 42 U.S.C. 300x-30-b ... 42 U.S.C. 300x-30(d)(2) Annual Report .....		45 CFR 96.122(f) ..... 45 CFR 96.134(d) .....	60 5 60	1 1 1		
MHBG .....		42 U.S.C. 300x-6(a) ..... 42 U.S.C. 300x-52(a). 42 U.S.C. 300x-4(b)(3)B.		59 59	1 1		10,974
SABG elements .....	State Plan (Covers 2 years). 42 U.S.C. 300x-22(b) ... 42 U.S.C. 300x-23 ..... 42 U.S.C. 300x-24 ..... 42 U.S.C. 300x-27 ..... 42 U.S.C. 300x-29 ..... 42 U.S.C. 300x-32(b) ...		45 CFR 96.124(c)(1) ... 45 CFR 96.126(f) ..... 45 CFR 96.127(b) ..... 45 CFR 96.131(f) ..... 45 CFR 96.133(a) ..... 45 CFR 96.122(g) .....	60 60 60 60 60 60	1 1 1 1 1 1		
MHBG elements .....		42 U.S.C. 300x-1(b) ..... 42 U.S.C. 300x-1(b)(11) ..... 42 U.S.C. 300x-2(a) .....		59 59 59	1 1 1	120 120	7,200 7,080
	Waivers .....			20	1		3,240
	42 U.S.C. 300x-24(b)(5)B). 42 U.S.C. 300x-28(d) ... 42 U.S.C. 300x-30(c) ... 42 U.S.C. 300x-31(c) ... 42 U.S.C. 300x-32(c) ... 42 U.S.C. 300x-32(e) ...		45 CFR 96.132(d) ..... 45 CFR 96.134(b) .....	5 10 1 7 10	1 1 1 1 1		
		300x-2(a)(2) ..... 300x-4(b)(3) ..... 300x-6(b) .....		10 10 7			
Recordkeeping .....	42 U.S.C. 300x-23 .....	42 U.S.C. 300x-3 .....	45 CFR 96.126(c) .....	60/59	1	20	1,200

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1—Continued

Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grants							
	Authorizing legislation SABG	Authorizing legislation MHBG	Implementing regulation	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Combined Burden .....	42 U.S.C. 300x-25 .....	.....	45 CFR 96.129(a)(13) ...	10	1	20	200
	42 U.S.C. 300x-65 .....	.....	42 CFR Part 54 .....	60	1	20	1,200
	.....	.....	.....	.....	.....	.....	42,254

Report	300x-29—Statewide Assessment of Need	300x-31(c)—Construction
300x-52(a)—Report	300x-32(b)—State Plan	300x-32(c)—Certain Territories
300x-30(b)—Exclusion of Certain Funds (SABG)	State Plan—MHBG	300x-32(e)—Waiver amendment for 1922, 1923, 1924 and 1927
300x-30(d)(2)—Maintenance of Effort (SABG)	42 U.S.C. 300x-1(b)—Criteria for Plan	Waivers—MHBG
300x-4(b)(3)B—Maintenance of Effort (MHBG)	42 U.S.C. 300x-1(b)(11)—Incidence and prevalence in the state adults with SMI and Children with SED	300x-2(a)(2)—Allocations for Systems Integrated Services for Children
State Plan—SABG	42 U.S.C. 300x-2(a)—Allocations for Systems Integrated Services for Children	300x-4(b)(3)—Waiver of Statewide Maintenance of Effort
300x-22(b)—Allocations for Women	Waivers—SABG	300x-6(b)—Waiver for Certain Territories
300x-23—Intravenous Substance Abuse	300x-24(b)(5)(B)—Rural requirement regarding EIS/HIV	Recordkeeping
300x-24—Requirements Regarding TB and HIV	300x-28(d)—Additional Agreements	300x-23—Waiting list
300x-27—Priority in Admissions to Treatment	300x-30(c)—Maintenance of Effort	300x-25—Revolving loan fund
		300x-65—Charitable Choice

TABLE 2—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 2

	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Reporting:				
SABG .....	60	1	186	11,160
MHBG .....	59	1	186	10,974
Recordkeeping .....	60/59	1	40	2,360
Combined Burden .....	60	.....	.....	24,494

The total annualized burden for the application and reporting is 33,374 hours (42,254 + 24,494 = 66,748/2 years = 33,374).

Link for the application: <http://www.samhsa.gov/grants/block-grants>.

Written comments and recommendations concerning the proposed information collection should be sent by April 14, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov). Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202-395-7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory

Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King, Statistician.

[FR Doc. 2017-05063 Filed 3-14-17; 8:45 am]

BILLING CODE 4162-20-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

[Docket No. USCG-2016-1059]

**Towing Safety Advisory Committee; April 2017 Meeting**

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Towing Safety Advisory Committee will meet in Memphis, Tennessee, 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: The Subcommittees will meet on Tuesday, April 11, 2017, from 8 a.m. to 5:30 p.m. The full Towing Safety Advisory Committee will meet on Wednesday, April 12, 2017, from 8 a.m. to 5:30 p.m. These meetings may close early if the Subcommittees or Committee have completed its business.

ADDRESSES: All meetings will be held at the Doubletree Hotel by Hilton, 5069 Sanderlin Avenue, Memphis, Tennessee 38117. The telephone number for the Doubletree Hotel is 800-222-8733. The hotel Web site is: <http://doubletree3.hilton.com/en/hotels/tennessee/doubletree-by-hilton-hotel-memphis-MEMEHD/index.html>

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the individual listed in FOR FURTHER INFORMATION CONTACT below as soon as possible.

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 April 2, 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] in your submission. Written comments should be submitted using the Federal eRulemaking Portal: <http://www.regulations.gov>. If you encounter technical difficulties, contact Mr. William J. Abernathy. Comments received will be posted without alteration at <http://www.regulations.gov> including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005 issue of the **Federal Register** (70 FR 15086).

**Docket Search:** For access to the docket to read documents or comments related to this notice, go to <http://www.regulations.gov>, and use "USCG-2016-1059" in the "Search" box, press Enter, and then click on the item you wish to view.

**FOR FURTHER INFORMATION CONTACT:**

Commandant (CG-OES-2) ATTN: Mr. William J. Abernathy, Towing Safety Advisory Committee Alternate Designated Federal Officer, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7509; telephone 202-372-1363, fax 202-372-8387, or email at [William.J.Abernathy@uscg.mil](mailto:William.J.Abernathy@uscg.mil).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (Title 5, U.S.C. Appendix). This committee is established in accordance with, and operates under the provisions of the *Federal Advisory Committee Act*. As stated in 33 U.S.C. 1231a, the Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

Further information about the Towing Safety Advisory Committee is available here: <http://www.facadatabase.gov>. Click on the search tab and type "Towing Safety" into the search form.

**Agenda of Meetings**

A copy of each draft report and presentation as well as the meeting agenda will be available at: <http://homeport.uscg.mil/tsac>.

On April 11 and 12, 2017, the Towing Safety Advisory Committee and its subcommittees will meet to review,

discuss, deliberate, and formulate recommendations, as appropriate, on the following:

*Current Subcommittees and Tasks*

- a. Articulated Tug and Barge Operations and Manning (Task 15-02)
- b. Electronic Charting Systems (Task 15-03)
- c. Subchapter M Implementation (Task 16-01)
- d. Inland Firefighting (Task 16-02)
- e. Towing Liquefied Natural Gas Barges (Task 16-03)

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 5 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.

**Notices of Future 2017 Towing Safety Advisory Committee Meetings**

To receive automatic email notices of future Towing Safety Advisory Committee meetings in 2017, go to the online docket, USCG-2016-1059 (<http://www.regulations.gov/#!docketDetail;D=USCG-2016-1059>), and select the Sign-up-for-Email-Alerts option. We plan to use the same docket number for all Towing Safety Advisory Committee meeting notices in 2017, so when the next meeting notice is published you will receive an email alert from <http://www.regulations.gov> when the notice appears in this docket, in addition to notices of other items being added to the docket.

Dated: March 10, 2017.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2017-05179 Filed 3-14-17; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**[Docket ID FEMA-2017-0002; Internal Agency Docket No. FEMA-B-1703]**

**Proposed Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before June 13, 2017.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

You may submit comments, identified by Docket No. FEMA-B-1703, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard



determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any

request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at [http://floodsrp.org/pdfs/srp\\_fact\\_sheet.pdf](http://floodsrp.org/pdfs/srp_fact_sheet.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 16, 2017.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

I. Watershed-based studies:

Community	Community map repository address
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**Lower Boise Watershed**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Ada County, Idaho and Incorporated Areas**

City of Boise .....	City Hall, 150 North Capitol Boulevard, Boise, ID 83702.
City of Eagle .....	City Hall, 660 East Civic Lane, Eagle, ID 83616.
City of Garden City .....	City Hall, 6015 North Glenwood Street, Garden City, ID 83714.
City of Meridian .....	Public Works Department, 33 East Broadway Avenue, Suite 200, Meridian, ID 83642.
City of Star .....	City Hall, 10769 West State Street, Star, ID 83669.
Unincorporated Areas of Ada County .....	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.

**Canyon County, Idaho and Incorporated Areas**

City of Caldwell .....	City Hall, 621 Cleveland Boulevard, 2nd Floor, Caldwell, ID 83605.
City of Middleton .....	City Hall, 6 North Dewey Avenue, Middleton, ID 83644.
City of Notus .....	City Hall, 375 Notus Road, Notus, ID 83656.
City of Parma .....	City Hall, 305 North 3rd Street, Parma, ID 83660.
Unincorporated Areas of Canyon County .....	Canyon County Courthouse, 1115 Albany Street, Caldwell, ID 83605.

**Lower Columbia Watershed**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Clackamas County, Oregon and Incorporated Areas**

City of Sandy .....	City Hall, 39250 Pioneer Boulevard, Sandy, OR 97055.
Unincorporated Areas of Clackamas County .....	Clackamas County Public Services, 2051 Kaen Road, Oregon City, OR 97045.

**Multnomah County, Oregon and Incorporated Areas**

City of Fairview .....	Planning Department, 1300 Northeast Village Street, Fairview, OR 97024.
City of Gresham .....	City Hall, Community Development Office, 1333 Northwest Eastman Parkway, Gresham, OR 97030.
City of Troutdale .....	City Hall, 219 East Historic Columbia River Highway, Troutdale, OR 97060.
City of Wood Village .....	City Hall, 2055 Northeast 238th Drive, Wood Village, OR 97060.

Community	Community map repository address
Unincorporated Areas of Multnomah County .....	Multnomah County Office of Land Use and Planning, 1600 Southeast 190th Avenue, Portland, OR 97233.

II. Non-watershed-based studies:

Community	Community map repository address
<b>Richland County, Ohio and Incorporated Areas</b>	

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 16-05-0350S Preliminary Date: September 30, 2016**

City of Shelby .....	Building and Zoning Department, 43 West Main Street, Shelby, OH 44875.
Unincorporated Areas of Richland County .....	Richland County Building Department, 1495 West Longview Avenue, Suite 202 A, Mansfield, OH 44906.

**Clatsop County, Oregon and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

**Project: 16-10-0559S Preliminary Date: May 16, 2016**

City of Cannon Beach .....	City Hall, Community Development, 163 East Gower Street, Cannon Beach, OR 97110.
City of Gearhart .....	City Hall, 698 Pacific Way, Gearhart, OR 97138.
City of Seaside .....	Community Development, 1387 Avenue U, Seaside, OR 97138.
City of Warrenton .....	City Hall, 225 South Main, Warrenton, OR 97146.
Unincorporated Areas of Clatsop County .....	Clatsop County Community Development, 800 Exchange Street, Suite 100, Astoria, OR 97103.

[FR Doc. 2017-05152 Filed 3-14-17; 8:45 am]  
 BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2008-0010]

**Board of Visitors for the National Fire Academy**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Committee management; request for applicants for appointment to the Board of Visitors for the National Fire Academy.

**SUMMARY:** The National Fire Academy (Academy) is requesting individuals who are interested in serving on the Board of Visitors for the National Fire Academy (Board) to apply for appointment as identified in this notice. Pursuant to the *Federal Fire Prevention and Control Act of 1974*, the Board shall review annually the programs of the Academy and shall make recommendations to the Federal Emergency Management Agency (FEMA) Administrator, through the United States Fire Administrator,

regarding the operation of the Academy and any improvements that the Board deems appropriate. The Board is composed of eight (8) members, all of whom are experts and leaders in the fields of fire safety, fire prevention, fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management, which includes emergency medical services. The Academy seeks to appoint individuals to four (4) positions on the Board that will be open due to term expiration. If other positions are vacated during the application process, candidates may be selected from the pool of applicants to fill the vacated positions.

**DATES:** Applications will be accepted until 11:59 p.m. EST March 30, 2017.

**ADDRESSES:** The preferred method of submission is via email. However, applications may also be submitted by mail. Please only submit by ONE of the following methods:

- *Email:* [Ruth.MacPhail@fema.dhs.gov](mailto:Ruth.MacPhail@fema.dhs.gov)
- *Mail:* National Fire Academy, U.S. Fire Administration, Attention: Ruth MacPhail, 16825 South Seton Avenue, Emmitsburg, Maryland 21727-8998.

**FOR FURTHER INFORMATION CONTACT:** Kirby Kiefer, Alternate Designated

Federal Officer, National Fire Academy, 16825 South Seton Avenue, Emmitsburg, Maryland 21727-8998; telephone 301-447-1117; and email [Kirby.Kiefer@fema.dhs.gov](mailto:Kirby.Kiefer@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Board is an advisory committee established in accordance with the provision of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix. The purpose of the Board is to review annually the programs of the Academy and advise the FEMA Administrator on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the FEMA Administrator, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the FEMA Administrator. The report provides detailed comments and recommendations regarding the operation of the Academy.

Individuals who are interested in serving on the Board are invited to apply for consideration for

appointment. There is no application form; however, a current resume will be required. The appointment shall be for a term of up to three years. Individuals selected for appointment shall serve as Special Government Employees (SGEs), defined in section 202(a) of title 18, United States Code. Candidates selected for appointment will be required to complete a Confidential Financial Disclosure Form (Office of Government Ethics (OGE) Form 450).

The Board shall meet as often as needed to fulfill its mission, but not less than twice each fiscal year to address its objectives and duties. The Board will meet in person at least once each fiscal year with additional meetings held via teleconference. Board members may be reimbursed for travel and per diem incurred in the performance of their duties as members of the Board. All travel for Board business must be approved in advance by the Designated Federal Officer. To the extent practical, Board members shall serve on any subcommittee that is established.

FEMA does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. FEMA strives to achieve a diverse candidate pool for all its recruitment actions.

Current DHS employees, contractors, and potential contractors will not be considered for membership. Federally registered lobbyists will not be considered for membership.

Dated: March 7, 2017.

**Kirby E. Kiefer,**

*Acting Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.*

[FR Doc. 2017-05158 Filed 3-14-17; 8:45 am]

**BILLING CODE 9111-45-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4304-DR; Docket ID FEMA-2017-0001]

#### Kansas; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA-

4304-DR), dated February 24, 2017, and related determinations.

**DATES:** Effective February 24, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 24, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from a severe winter storm during the period of January 13-16, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Barton, Clark, Comanche, Edwards, Ellsworth, Ford, Hodgeman, Jewell, Kiowa, Meade, Ness, Pawnee, Pratt, Rush, Seward, Sheridan, Stafford, and Trego Counties for Public Assistance.

All areas within the State of Kansas are eligible for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**Robert J. Fenton,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-05169 Filed 3-14-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4303-DR; Docket ID FEMA-2017-0001]

#### Nevada; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Nevada (FEMA-4303-DR), dated February 17, 2017, and related determinations.

**DATES:** Effective February 17, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 17, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Nevada resulting from severe winter storms, flooding, and mudslides during the period of January 5-14, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Nevada.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Rosalyn L. Cole, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nevada have been designated as adversely affected by this major disaster:

The counties of Douglas, Lyon, Storey, and Washoe; the independent city of Carson City; and the Pyramid Lake Paiute Tribe, the Reno-Sparks Indian Colony, and the Washoe Tribe of Nevada and California for Public Assistance.

All areas within the State of Nevada are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Robert J. Fenton,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-05168 Filed 3-14-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2016-0002; Internal Agency Docket No. FEMA-B-1672]

#### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.3 dual community.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at

both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at

both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are

accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 16, 2017.  
**Roy E. Wright,**  
*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Florida:						
Broward .....	City of Deerfield Beach (16-04-5305P).	The Honorable Jean M. Robb, Mayor, City of Deerfield Beach, 150 Northeast 2nd Avenue, Deerfield Beach, FL 33441.	Environmental Services Department, 200 Goolsby Boulevard, Deerfield Beach, FL 33442.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 28, 2017 ....	125101
Charlotte .....	Unincorporated areas of Charlotte County (16-04-6702P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Charlotte County Floodplain Management Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Apr. 4, 2017 .....	120061
Collier .....	City of Naples (16-04-8542P).	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Apr. 5, 2017 .....	125130
Escambia .....	Pensacola Beach-Santa Rosa Island Authority (16-04-6550P).	The Honorable Dave Pavlock, Chairman, Pensacola Beach-Santa Rosa Island Authority, P.O. Drawer 1208, Pensacola Beach, FL 32562.	Development Services Department, 1 Via De Luna Drive, Pensacola Beach, FL 32562.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 30, 2017 ....	125138
Lee .....	Unincorporated areas of Lee County (16-04-4231P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 24, 2017 ....	125124
Monroe .....	Unincorporated areas of Monroe County (16-04-8290P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Marathon, FL 33050.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 23, 2017 ....	125129
Monroe .....	Unincorporated areas of Monroe County (16-04-8291P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Marathon, FL 33050.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 30, 2017 ....	125129
Osceola .....	Unincorporated areas of Osceola County (16-04-3250P).	The Honorable Viviana Janer, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Community Development Department, 1 Courthouse Square, Suite 1100, Kissimmee, FL 34741.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 31, 2017 ....	120189
Georgia: Forsyth ...	Unincorporated areas of Forsyth County (16-04-4934P).	Mr. Doug Derrer, Manager, Forsyth County, 110 East Main Street, Suite 210, Cumming, GA 30040.	Forsyth County Department of Engineering, 110 East Main Street, Suite 120, Cumming, GA 30040.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 9, 2017 .....	130312
Maine: Hancock ....	Town of Gouldsboro (16-01-1304P).	The Honorable Dana Rice, Chairman, Town of Gouldsboro Board of Selectmen, 59 Main Street, Prospect Harbor, ME 04669.	Code Enforcement Office, 59 Main Street, Prospect Harbor, ME 04669.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 10, 2017 ....	230283
Massachusetts:						
Norfolk .....	Town of Cohasset (16-01-0636P).	Mr. Christopher Senior, Manager, Town of Cohasset, 41 Highland Avenue, Cohasset, MA 02025.	Town Hall, 41 Highland Avenue, Cohasset, MA 02025.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 21, 2017 ....	250236
Norfolk .....	Town of Cohasset (16-01-2031P).	Mr. Christopher Senior, Manager, Town of Cohasset, 41 Highland Avenue, Cohasset, MA 02025.	Town Hall, 41 Highland Avenue, Cohasset, MA 02025.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 20, 2017 ....	250236

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Plymouth .....	Town of Marion (16-01-2499P).	The Honorable Jonathan E. Dickerson, Chairman, Town of Marion Board of Selectmen, 2 Spring Street, Marion, MA 02738.	Town Hall, 2 Spring Street, Marion, MA 02738.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 3, 2017 .....	255213
New York: Steuben	Town of Hornellsville (16-02-1795P).	The Honorable Kenneth Isaman, Supervisor, Town of Hornellsville, 4 Park Avenue, Arkport, NY 14807.	Town Hall, 4 Park Avenue, Arkport, NY 14807.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	May. 2, 2017 .....	360777
North Carolina: Caswell .....	Unincorporated areas of Caswell County (16-04-3759P).	The Honorable William E. Carter, Chairman, Caswell County Board of Commissioners, P.O. Box 98, Yanceyville, NC 27379.	Caswell County Planning Department, 144 Main Street, Yanceyville, NC 27379.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 23, 2017 ....	370300
Catawba .....	City of Hickory (16-04-3174P).	The Honorable Rudy Wright, Mayor, City of Hickory, 76 North Center Street, Hickory, NC 28601.	City Hall, 76 North Center Street, Hickory, NC 28601.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Feb. 1, 2017 .....	370054
Edgecomb .....	Town of Tarboro (16-04-6123P).	The Honorable Taro Knight, Mayor Pro-Tem, Town of Tarboro, P.O. Box 220, Tarboro, NC 27886.	Planning and Inspections Department, 500 North Main Street, Tarboro, NC 27886.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Feb. 23, 2017 ....	370094
Greene .....	Unincorporated areas of Greene County (16-04-3348P).	The Honorable Brad Fields, Chairman, Greene County Board of Commissioners, 229 Kingold Boulevard, Suite D, Snow Hill, NC 28580.	Greene County Department of Building Inspections, 104 Hines Street, Snow Hill, NC 28580.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 7, 2017 .....	370378
Moore .....	Town of Carthage (16-04-5694P).	The Honorable Lee McGraw, Mayor, Town of Carthage, 4396 Highway 15-501, Carthage, NC 28327.	Town Hall, 4396 Highway 15-501, Carthage, NC 28327.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Apr. 6, 2017 .....	370555
Moore .....	Unincorporated areas of Moore County (16-04-5694P).	The Honorable Nick Picerno, Chairman, Moore County Board of Commissioners, P.O. Box 905, Carthage, NC 28327.	Moore County Planning and Transportation Department, 1048 Carriage Oaks Drive, Carthage, NC 28327.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Apr. 6, 2017 .....	370164
Union .....	Town of Weddington (16-04-1411P).	The Honorable Bill Deter, Mayor, Town of Weddington 1924 Weddington Road, Weddington, NC 28104.	Town Hall, 1924 Weddington Road, Weddington, NC 28104.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Dec. 15, 2016 ....	370518
Union .....	Unincorporated areas of Union County (16-04-1411P).	The Honorable Richard Helms, Chairman, Union County Board of Commissioners, 500 North Main Street, Room 921, Monroe, NC 28112.	Union County Office of Growth Management Planning Division, 500 North Main Street, Monroe, NC 28112.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Dec. 15, 2016 ....	370234
Yadkin .....	Town of Yadkinville (16-04-7376P).	The Honorable Eddie Norman, Mayor, Town of Yadkinville, P.O. Box 816, Yadkinville, NC 27055.	Town Hall, 213 Van Buren Street, Yadkinville, NC 27055.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Feb. 9, 2017 .....	370640
Yadkin .....	Unincorporated areas of Yadkin County (16-04-7376P).	The Honorable Kevin Austin, Chairman, Yadkin County Board of Commissioners, P.O. Box 220, Yadkinville, NC 27055.	Yadkin County Planning and Zoning Department, 213 East Elm Street, Yadkinville, NC 27055.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Feb. 9, 2017 .....	370400
Oklahoma: Canadian .....	City of Oklahoma City (16-06-1043P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, OK 73102.	Public Works Department, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 30, 2017 ....	405378
Canadian .....	City of Yukon (16-06-1043P).	The Honorable John Alberts, Mayor, City of Yukon, 1420 Spring Creek Drive, Yukon, OK 73099.	Development Services Department, 334 Elm Street, Yukon, OK 73099.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 30, 2017 ....	400028

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Rogers .....	City of Collinsville (16-06-2264P).	The Honorable Bud York, Mayor, City of Collinsville, P.O. Box 730, Collinsville, OK 74021.	Engineering Department, 106 North 12th Street, Collinsville, OK 74021.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Apr. 6, 2017 .....	400360
Rogers .....	Unincorporated Areas of Rogers County (16-06-2264P).	The Honorable Dan Delozier, Chairman, Rogers County Board of Commissioners, 200 South Lynn Riggs Boulevard, Clamore, OK 74017.	Rogers County Planning and Development Department, 200 South Lynn Riggs Boulevard, Clamore, OK 74017.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Apr. 6, 2017 .....	405379
Pennsylvania:						
Bucks .....	Borough of Morrisville (16-03-2671P).	Mr. Robert C. Sooby, Manager, Borough of Morrisville, 35 Union Street, Morrisville, PA 19067.	Borough Hall, 35 Union Street, Morrisville, PA 19067.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 22, 2017 ....	420194
Bucks .....	Township of Falls (16-03-2671P).	The Honorable Robert Harvie, Chairman, Township of Falls Board of Supervisors, 188 Lincoln Highway, Suite 100, Fairless Hills, PA 19030.	Township Hall, 188 Lincoln Highway, Suite 100, Fairless Hills, PA 19030.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 22, 2017 ....	420188
York .....	Township of Fairview (16-03-2653P).	The Honorable Larry Cox, Chairman, Township of Fairview Board of Supervisors, 599 Lewisberry Road, New Cumberland, PA 17070.	Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 15, 2017 ....	420923
York .....	Township of Newberry (16-03-2653P).	The Honorable Will Toothaker, Chairman, Township of Newberry, Board of Supervisors, 1915 Old Trail Road, Eppers, PA 17319.	Township Municipal Building, 1915 Old Trail Road, Eppers, PA 17319.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 15, 2017 ....	422226
Texas:						
Bell .....	Unincorporated areas of Bell County (16-06-3508P).	The Honorable John Burrows, Bell County Judge, P.O. Box 768, Belton, TX 76513.	Bell County Engineering Department, 206 North Main Street, Belton, TX 76513.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 7, 2017 .....	480706
Bell .....	Village of Salado (16-06-2289P).	The Honorable Skip Blancett, Mayor, Village of Salado, P.O. Box 219, Salado, TX 76571.	Village Hall, 301 North Stagecoach Road, Salado, TX 76571.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 24, 2017 ....	480033
Bexar .....	City of San Antonio (16-06-3198P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78284.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 20, 2017 ....	480045
Bexar .....	Unincorporated areas of Bexar County (16-06-3198P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78204.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 20, 2017 ....	480035
Dallas .....	City of Dallas (16-06-2144P).	The Honorable Mike Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Engineering Department, 320 East Jefferson Boulevard, Room 200, Dallas, TX 75203.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 13, 2017 ....	480171
Harris .....	City of Houston (16-06-1829P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Feb. 24, 2017 ....	480296
Harris .....	Unincorporated areas of Harris County (16-06-2693P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 3, 2017 .....	480287
Johnson .....	City of Burleson (16-06-3257P).	The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	City Hall, 141 West Renfro Street, Burleson, TX 76028.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 17, 2017 ....	485459
Tarrant .....	City of Keller (16-06-2452P).	The Honorable Mark Matthews, Mayor, City of Keller, P.O. Box 770, Keller, TX 76244.	Public Works Department, 1100 Bear Creek Parkway, Keller, TX 76248.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 16, 2017 ....	480602

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Travis .....	City of Austin (16-06-2294P).	The Honorable Steve Adler, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	Watershed Engineering Division, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Apr. 3, 2017 .....	480624
Travis .....	Unincorporated areas of Travis County (16-06-1784P).	The Honorable Sarah Eckhardt, Travis County Judge, 700 Lavaca Street, Austin, TX 78767.	Travis County Administration Building, 700 Lavaca Street, Austin, TX 78767.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 27, 2017 ....	481026
Virginia: Albemarle .....	Unincorporated areas of Albemarle County (16-03-1697P).	Mr. Thomas C. Foley, Albemarle County Executive, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County Community Development, Engineering Department, 401 McIntire Road, 2nd Floor, Charlottesville, VA 22902.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 22, 2017 ....	510006
Independent City.	City of Charlottesville (16-03-1697P).	Mr. Maurice Jones, Manager, City of Charlottesville, P.O. Box 911, Charlottesville, VA 22902.	Neighborhood Development Services, 610 East Market Street, Charlottesville, VA 22902.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 22, 2017 ....	510033
Stafford .....	Unincorporated areas of Stafford County (16-03-2417P).	The Honorable Robert Thomas, Jr., Chairman, Stafford County Board of Supervisors, 1300 Courthouse Road, Stafford, VA 22554.	Stafford County Administration Center, 1300 Courthouse Road, Stafford, VA 22554.	<a href="http://www.msc.fema.gov/lomc">http://www.msc.fema.gov/lomc</a>	Mar. 9, 2017 .....	510154

[FR Doc. 2017-05150 Filed 3-14-17; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-22931;  
PPWOCRADNO-PCU00RP14.R50000]

#### Notice of Intent To Repatriate Cultural Items: St. Joseph Museums, Inc., St. Joseph, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

**SUMMARY:** The St. Joseph Museums, Inc., in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the St. Joseph Museums, Inc. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to

the St. Joseph Museums, Inc., at the address in this notice by April 14, 2017.

**ADDRESSES:** Trevor Tutt, St. Joseph Museums, Inc., P.O. Box 8096, St. Joseph, MO 64508, telephone (816) 232-8471, email [trevor@stjosephmuseum.org](mailto:trevor@stjosephmuseum.org).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the St. Joseph Museums, Inc., St. Joseph, MO, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

#### History and Description of the Cultural Items

In 1942, seven unassociated funerary objects were donated to the St. Joseph Museums, Inc., by William M. Wyeth, having been removed from the King Hill site (23BN1) in Buchanan County, MO. The site was known to be a burial mound. The seven unassociated funerary objects are 2 celts; 1 stone implement; 1 projectile point; 1 knife; 1 hoe; and 1 shell necklace.

In 1951, three unassociated funerary objects were donated to the St. Joseph Museums, Inc., by Claude Madison,

having been removed from the King Hill site (23 BN 1) in Buchanan County, MO. The site was known to be a burial mound. The three unassociated funerary objects are 1 scraper or knife and 2 axe heads.

In June of 1981, four unassociated funerary objects were donated to the St. Joseph Museums, Inc., by Lester Watkins, having been removed from the King Hill site (23 BN 1) in Buchanan County, MO. The site was known to be a burial mound. The four unassociated funerary objects are 4 shell tempered pot sherds.

In May of 1982, 97 unassociated funerary objects were donated to the St. Joseph Museums, Inc., having been removed from the King Hill site (23 BN 1) in Buchanan County, MO. The site was known to be a burial mound. The 97 unassociated funerary objects are 8 stone artifacts, 1 shell, 8 scrapers, 19 pottery sherds, 26 projectile points, 4 grind stones, 3 handles, 28 animal bones.

In September of 1992, four unassociated funerary objects were donated to the St. Joseph Museums, Inc., by Bobby Sipes, having been removed from the King Hill site (23 BN 1) in Buchanan County, MO. The site was known to be a burial mound. The four unassociated funerary objects are 3 projectile points and 1 drill.

In 1995, four unassociated funerary objects were donated to the St. Joseph Museums, Inc., having been removed from the King Hill site (23 BN 1) in Buchanan County, MO. The site was known to be a burial mound. The four



unassociated funerary objects are 4 stones.

In 1999, 105 unassociated funerary objects were donated to the St. Joseph Museums, Inc., as part of the Shippee Collection, having been removed from the King Hill site (23 BN 1) in Buchanan County, MO; site 23 CP 1 in Cooper County, MO; and sites 23 PL 1, 23 PL 20, 23 PL 21 A, 23 PL 25, 23 PL 29, 23 PL 30, 23 PL 38, 23 PL 4, and 23 PL 6 in Platte County, MO. The sites were known to be burial mounds, but no human remains were donated in affiliation with these sites. The 105 unassociated funerary objects are 9 stones, 31 pottery sherds, 5 scrapers or knives, 1 pumice, 25 projectile points, 16 pieces of rock and plant samples, 1 lead nugget, 2 metate, 2 manos, 1 bag of hammer stones, 1 chopper, 5 boxes and 1 sack of pottery sherds, 1 bag of bones, 2 artifacts, 2 abraders.

#### Determinations Made by the St. Joseph Museums, Inc.

Officials of the St. Joseph Museums, Inc., have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 224 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and The Osage Nation (previously listed as the Osage Tribe).

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Trevor Tutt, St. Joseph Museums, Inc., P.O. Box 8096, St. Joseph, MO 64508, telephone (816) 232-8471, email [trevor@stjosephmuseum.org](mailto:trevor@stjosephmuseum.org), by April 14, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma;

and The Osage Nation (previously listed as the Osage Tribe) may proceed.

The St. Joseph Museums, Inc., is responsible for notifying the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and The Osage Nation (previously listed as the Osage Tribe) that this notice has been published.

Dated: February 14, 2017.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2017-05093 Filed 3-14-17; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NRNL-22998;  
PPWOCRADIO, PCU00RP14.R50000]

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting comments on the significance of properties nominated before February 18, 2017, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by March 30, 2017.

**ADDRESSES:** Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before February 18, 2017. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

#### COLORADO

##### Denver County

Our Lady of Mount Carmel Church, 3517-3549 Navajo St., Denver, SG100000820

#### GEORGIA

##### Baldwin County

Rose Hill, 1534 Irwinton Rd., Milledgeville, SG100000821

#### MASSACHUSETTS

##### Essex County

Briggs Carriage Company, 14 & 20 Cedar St., Amesbury, SG100000822

#### MISSOURI

##### Jackson County

Quality Hill Center Historic District, 817, 905, 929 Jefferson St. & 910 Pennsylvania Ave., Kansas City, SG100000824

##### Johnson County

Holden and Pine Streets Commercial Historic District, Roughly bounded by Maynard, N. College, E. Gay, W. Market, Marshall & Railroad Sts. & N. Washington Ave., Warrensburg, SG100000825

#### NEW JERSEY

##### Mercer County

Trenton Central Office of the Bell Telephone Company, 214-218 E. State St., Trenton, SG100000826

Trenton Watch Company Building—Circle F Manufacturing Company Building, 720 Monmouth St., Trenton, SG100000827

#### NEW MEXICO

##### Santa Fe County

Meem, John Gaw and Faith Bemis, House, 3707 Old Santa Fe Trail, Santa Fe, SG100000828

Nominations submitted by Federal Preservation Officers:

#### NEW YORK

##### New York County

Statue of Liberty Enlightening the World, Liberty Island, New York, SG100000829

The New York State Historic Preservation Office reviewed the nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and objects to the Period of Significance and the area of significance of the nominated property. The National Register of Historic Places will address the objection in a subsequent **Federal Register** notice.

The New Jersey State Historic Preservation Office reviewed the nomination and responded to the

Federal Preservation Officer within 45 days of receipt of the nomination and objects to the boundary of the nominated property. The National Register of Historic Places will address the objection in a subsequent **Federal Register** notice.

An additional documentation has been received for the following resource(s):

#### MINNESOTA

##### Meeker County

Litchfield Opera House, 136 N. Marshall Ave., Litchfield, AD84000019

**Authority:** 60.13 of 36 CFR 60.

Dated: February 23, 2017.

##### Julie H. Ernstein,

*Acting Chief, National Register of Historic Places/National Historic Landmarks Program.*

[FR Doc. 2017-05072 Filed 3-14-17; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-22929;  
PPWOCRADNO-PCU00RP14.R50000]

#### Notice of Intent To Repatriate Cultural Items: Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Museum of Natural History and Planetarium, Roger Williams Park, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Museum of Natural History and Planetarium, Roger Williams Park. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Museum of Natural History and Planetarium, Roger Williams Park, at the address in this notice by April 14, 2017.

**ADDRESSES:** Michael W. Kieron, Museum of Natural History and Planetarium, Roger Williams Park, 100 Elmwood Avenue, Providence, RI 02907, telephone (401) 680-7248, email *m.kieron@musnathist.com*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Museum of Natural History and Planetarium, Roger Williams Park, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

#### History and Description of the Cultural Items

In the late 1920s and early 1930s, six cultural items were removed from the Mix Cave site (PU 93) in Pulaski County, MO, by Mr. and Mrs. Edward H. Nadeau. The six unassociated funerary objects are 5 potsherds and 1 worked white-tailed deer ulna. The objects were donated to the Museum of Natural History and Planetarium, Roger Williams Park, by Mr. and Mrs. Nadeau on January 23, 1933. The objects are all labeled "Mix Cave, Pulaski Co., Mo." They were given the catalog number E2706 and the accession number 8918. The objects were part of a collection of 50 lots of American Indian objects and geological specimens collected in the 1920s by the Nadeaus. No other records related to this donation have been located.

Following an examination by representatives of The Osage Nation (previously listed as the Osage Tribe) in January 2016, the Osage Nation and the museum concurred that the objects are unassociated funerary objects. The Osage Nation considers the Mix Cave site (PU 93) a sacred site and a burial located on Osage ancestral lands.

#### Determinations Made by the Museum of Natural History and Planetarium, Roger Williams Park

Officials of the Museum of Natural History and Planetarium, Roger Williams Park, have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 6 cultural items described above are reasonably believed to have been placed with or near individual human remains

at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Osage Nation (previously listed as the Osage Tribe).

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Michael W. Kieron, Museum of Natural History and Planetarium, Roger Williams Park, 100 Elmwood Avenue, Providence, RI 02907, telephone (401) 680-7248, email *m.kieron@musnathist.com* by April 14, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Osage Nation (previously listed as the Osage Tribe) may proceed.

The Museum of Natural History and Planetarium, Roger Williams Park, is responsible for notifying The Osage Nation (previously listed as the Osage Tribe) that this notice has been published.

Dated: February 14, 2017.

##### Melanie O'Brien,

*Manager, National NAGPRA Program.*

[FR Doc. 2017-05094 Filed 3-14-17; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID BSEE-2016-0013; OMB Control Number 1014-0026; 17XE1700DX EEEE50000 EX1SF0000.DAQ000]

#### Information Collection Activities: Application for Permit To Modify (APM) and Supporting Documentation; Submitted for Office of Management and Budget (OMB) Review; Comment Request

**ACTION:** 30-Day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements

in the regulations, *Oil and Gas and Sulfur Operations in the Outer Continental Shelf*, pertaining to an Application for Permit to Modify (APM) and supporting documentation. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

**DATES:** You must submit comments by April 14, 2017.

**ADDRESSES:** Submit comments by either fax (202) 395-5806 or email (*OIRA\_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014-0026). Please provide a copy of your comments to BSEE by any of the means below.

- Electronically go to <http://www.regulations.gov>. In the Search box, enter BSEE-2016-0013 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email [kye.mason@bsee.gov](mailto:kye.mason@bsee.gov), fax (703) 787-1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014-0026 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:**

Nicole Mason, Regulations and Standards Branch, (703) 787-1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review).

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Application for Permit to Modify (APM) and all supporting documentation.

*Form(s):* BSEE-0124.

*OMB Control Number:* 1014-0026.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such

resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104-133, 110 Stat. 1321, April 26, 1996), and OMB Circular A-25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large.

Applications for permits to modify approvals are subject to cost recovery, and BSEE regulations specify service fees for these requests.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR 250 stipulate the various requirements that must be submitted with form BSEE-0124, Application for Permit to Modify (APM). The form and the numerous submittals that are included and/or attached to the form are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to

clarify, supplement, or provide additional guidance on some aspects of our regulations.

The changes to the form in this ICR include updating the citations listed under No. 18; as well as, adding several additional questions (G through M) pertaining to shearing data, BOP testing, casing pressure issues, etc. Responses are mandatory and no questions of a sensitive nature are asked. The BSEE will protect any confidential commercial or proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); section 26 of OCSLA (43 U.S.C. 1352); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection*; and 30 CFR part 252, *OCS Oil and Gas Information Program*.

The BSEE uses the information on the APM form (BSEE-0124) to ensure the well completion, workover, and decommissioning unit is fit for the intended purpose; equipment is maintained in a state of readiness and meets safety standards; each well completion, workover, and decommissioning crew is properly trained and able to promptly perform well-control activities at any time during well operations; and compliance with safety standards. The current regulations provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether the operations have encountered hydrocarbons or H<sub>2</sub>S and to ensure that H<sub>2</sub>S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H<sub>2</sub>S and zones where the presence of H<sub>2</sub>S is unknown. The information on the form is as follows:

*Heading:* Identify the well name, lease operator, type of revision and timing of the proposed modifications.

*Well at Total Depth/Surface:* Identify the unique location (area, block and lease of the proposed activity).

*Proposed or Completed Work:* Information identifying the specific activity, revision or modification for which approval is requested. This includes specific identification of equipment, engineering, and pressure test data needed by BSEE to ascertain that operations will be conducted in a manner that ensures the safety of personnel and protection of the environment.

*Question Information:* Responses to questions (a) through (m) serve to ascertain compliance with applicable

BSEE regulations and requirements and adherence to good operating practices.

*Frequency:* On occasion and as required by regulations.

*Description of Respondents:* Potential respondents comprise Federal OCS oil, gas, or sulfur lessees and/or operators.

*Estimated Reporting and Recordkeeping Hour Burden:* The estimated annual hour burden for this information collection is a total of 17,386 hours and \$308,500 non-hour cost. The following chart details the individual components and estimated

hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

**BURDEN BREAKDOWN**

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (rounded)
<b>Non-hour cost burdens</b>				
Subparts D, E, F, G, H, P, Q.	Submit APM plans (BSEE-0124). (This burden represents only the filling out of the form, the requirements are listed separately below).	1 hour .....	2,468 applications .....	2,468.
		2,468 applications × \$125 application fee = \$308,500.		
Subparts D, E, F, G, H, P, Q.	Submit Revised APM plans (BSEE-0124). (This burden represents only the filling out of the form, the requirements are listed separately below) [no fee charged].	1 hour .....	1,284 applications .....	1,284.
Subtotal .....	.....	.....	3,752 responses .....	3,752 hour burdens.
			\$308,500 non-hour cost burdens.	
<b>Subpart A</b>				
125 .....	Submit evidence of your fee for services receipt.	Exempt under 5 CFR 1320.3(h)(1).		0.
197 .....	Written confidentiality agreement .....	Exempt under 5 CFR 1320.5(d)(2).		0.
<b>Subpart C</b>				
300(b)(1), (2) .....	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM.	154 hours .....	1 request .....	154.
Subtotal of Subpart C.	.....	.....	1 response .....	154 hour burdens.
<b>Subpart D</b>				
460(a); 465 .....	There are some regulatory requirements that give respondents the option of submitting information with either their APD or APM; industry advised us that when it comes to this particular subpart, they submit a Revised APD.	Burden covered under 30 CFR 250, 1014-0025.		0.
471(c) .....	Submit SCCE capabilities for Worst Case Discharge (WCD) rate, and demonstrate that your SCCE capabilities will meet the criteria in § 250.470(f) under the changed well design. (Arctic).	10 hours .....	2 submittals .....	20.
Subtotal of Subpart D.	.....	.....	2 responses .....	20 hour burdens.

## BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Non-hour cost burdens				
<b>Subpart E</b>				
513 .....	Obtain written approval for well-completion operations. Submit information, including but not limited to, request for completion (including changes); description of well-completion procedures; statement of expected surface pressure, type and weight of completion fluids; schematic drawing; a partial electric log; H2S presence or if unknown, service fee receipt.	1 hour .....	175 submittals .....	175.
518(f) .....	Submit descriptions and calculations of production packer setting depth(s).	1 hour .....	50 submittals .....	50.
526(a) .....	Submit a notification of corrective action of the diagnostic test.	15 mins .....	68 notifications .....	17.
Subtotal of Subpart E.	.....	.....	293 responses .....	242 hour burdens.
<b>Subpart F</b>				
613(a), (b) .....	Request approval to begin other than normal workover, which includes description of procedures, changes in equipment, schematic, info about H2S, etc.	1 hour .....	802 requests .....	802.
613(c) .....	If completing a new zone, submit reason for abandonment and statement of pressure data.	20 mins .....	195 submittals .....	65.
613(d) .....	Submit work as performed 30 days after completing the well-workover operation.	20 mins .....	755 submittals .....	252.
616(a)(4) .....	Obtain approval to conduct operations without downhole check valves, describe alternate procedures and equipment to conduct operations without downhole check valves.	45 mins .....	245 approvals .....	184.
619(f) .....	Submit descriptions and calculations of production packer setting depth(s).	1 hour .....	50 submittals .....	50.
Subtotal of Subpart F.	.....	.....	2,047 responses .....	1,353 hour burdens.
<b>Subpart G</b>				
701 .....	Identify and discuss your proposed alternate procedures or equipment [the request to use alternative procedures/equipment is covered under 1014-0022].	3 hours .....	78 submittals .....	234.
702 .....	Identify and discuss the departure from requirements [the request to depart from requirements is covered under 1014-0022].	2 hours .....	55 submittals .....	110.
713 .....	Submit required information to use a MODU for well operations, including fitness & foundation requirements, contingency plan for moving off location, current monitoring (description of specific current speeds & specific measures to curtail rig operations and move off location).	1.5 hours .....	210 submittals .....	315.

## BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Non-hour cost burdens				
720(b) .....	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to, number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	1.5 hours .....	151 submittals .....	227.
721(g) .....	Request approval for test procedures and criteria for a successful negative pressure test, including any changes.	1 hour .....	380 requests .....	380.
724(b) .....	Submit certification that you have a real-time monitoring plan that meets the criteria listed.	125 .....	1 certification .....	125.
731 .....	Submit complete description of BOP system and components; schematic drawings; certification by BAVO (additional BAVO if BOP is subsea, in HTHP, or surface on floating facility); autoshear, deadman, EDS systems; certification for MIA report.	5 hours .....	260 submittals .....	1,300.
733 .....	Description of annulus monitoring plan and how you will secure the well in the event a leak is detected.	30 mins .....	248 submittals .....	124.
737(d)(2) .....	Submit test procedures for District Manager approval for initial test when using water on surface BOP.	30 mins .....	48 submittals .....	24.
737(d)(3) .....	Submit test procedures for District Manager approval to stump test a subsea BOP; including how you will test each ROV function for approval.	30 mins .....	45 submittals .....	23.
737(d)(4) .....	Submit test procedures for District Manager approval to perform an initial subsea BOP test; including how you will test each ROV function for approval.	30 mins .....	48 submittals .....	24.
737(d)(12) .....	Submit test procedures for District Manager approval, including schematics of the actual controls and circuitry of the system used during an actual autoshear or deadman event.	1 hour .....	260 submittals .....	260.
738(m) .....	Request approval from District Manager to utilize other well-control equipment; include report from BAVO on equipment design & suitability; other information required by District Manager.	2 hour .....	311 requests .....	622.
738(n) .....	Indicate which pipe/variable bore rams have no current utility or well-control purposes.	45 mins. ....	261 submittals .....	196.
Subtotal of Subpart G.	.....	.....	2,356 responses .....	3,964 hour burdens.
<b>Subpart H</b>				
801(h) .....	Request approval to temporarily remove safety device for non-routine operations.	30 mins .....	52 approvals .....	26.

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Non-hour cost burdens				
804(a) .....	Submit detailed information that demonstrates the SSSVs and related equipment capabilities re HPHT; include discussions of design verification analysis and validation, functional listing process, and procedures used; explain fit-for-service.	1 hour .....	18 submittals .....	18.
Subtotal of Subpart H.	.....	.....	70 responses .....	44 hour burdens.

**Subpart P**

It needs to be noted that for Sulfur Operations, while there may be burden hours listed that are associated with some form of an APM submittal, we have not had any sulfur leases for numerous years, therefore, we are submitting minimal burden.

1618(a), (b), (c) .....	Request approval/submit requests for changes in plans, changes in major drilling equipment, proposals to deepen, sidetrack, complete, workover, or plug back a well, or engage in similar activities; include but not limited to, detailed statement of proposed work changed; present state of well; after completion, detailed report of work done and results w/in 30 days of completion; public information copies.	1 hour .....	1 plan .....	1.
1619(b) .....	Submit duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition.	25 mins .....	1 submittal .....	1.
1622(a), (b) .....	Obtain written approval to begin operations; include description of procedures followed; changes to existing equipment, schematic drawing; zones info re H2S, etc.	20 mins .....	1 approval .....	1.
1622(c)(2) .....	Submit results of any well tests and a new schematic of the well if any subsurface equipment has been changed.	10 mins .....	1 submittal .....	1.
Subtotal of Subpart P.	.....	.....	4 responses .....	4 hour burdens.

**Subpart Q**

1704 .....	Request approval of well abandonment operations.	20 mins .....	705 requests .....	235.
1704(g) .....	Submit with a final well schematic, description, nature and quantities of material used; relating to casing string—description of methods used, size and amount of casing and depth.	1 hour .....	430 submittals .....	430.
1706(a)(4) .....	Request approval to conduct operations without downhole check valves, describe alternate procedures and equipment.	15 mins .....	503 requests .....	126.

## BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours (rounded)
Non-hour cost burdens				
1712; 1704(g) .....	Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to, reason plugging well, with relevant information; well test and pressure data; type and weight of well control fluid; a schematic listing mud and cement properties; plus testing plans. Submit Certification by a Registered Professional Engineer of the well abandonment design and procedures; certify the design.	2.5 hours .....	251 certifications .....	628.
	Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to max surface pressure and determination; description of work; well depth, perforated intervals; casing and tubing depths/details, plus locations, types, lengths, etc.	2.5 hours .....	438 submittals .....	1,095.
1721; 1704(g) .....	Submit the applicable information required to temporarily abandon a well for approval; after temporarily plugging a well, submit well schematic, description of remaining subsea wellheads, casing stubs, mudline suspension equipment and required information of this section; submit certification by a Registered Professional Engineer of the well abandonment design and procedures; certify design.	4 hours .....	1,278 submittals .....	5,112.
1722(a), (d) .....	Request approval to install a subsea protective device.	1 hour .....	18 requests .....	18.
	Submit a report including dates of trawling test and vessel used; plat showing trawl lines; description of operation and nets used; seafloor penetration depth; summary of results listed in this section; letter signed by witness of test.	2 hours .....	18 submittals .....	36.
1723(b) .....	Submit a request to perform work to remove casing stub, mudline equipment, and/or subsea protective covering.	1 hour .....	161 requests .....	161.
1743(a) .....	Submit signed certification; date of verification work and vessel; area surveyed; method used; results of survey including debris or statement that no objects were recover; a post-trawling plot or map showing area.	2 hours .....	6 certifications .....	12.
Subtotal of Subpart Q.	.....	.....	3,808 responses .....	7,853 hour burdens.
Total Burden ....	.....	.....	12,333 annual responses.	17,386 annual burden hours.
			\$308,500 non-hour cost burdens.	

\* In the future, BSEE may require electronic filing of some submissions.

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified one non-hour cost burden associated with the collection of information for a total of \$308,500. The

service fee of \$125 is required to recover the Federal Government's processing costs of the APM. We have not identified any other non-hour cost

burdens associated with this collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor



a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .” Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on September 22, 2106, we published a **Federal Register** notice (81 FR 65405) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received no comments in response to the **Federal Register** notice, nor did we receive any unsolicited comments.

*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.

*BSEE Information Collection Clearance Officer:* Nicole Mason, (703) 787-1607.

Dated: February 7, 2017.

**Eric Miller,**

*Acting Deputy Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2017-05143 Filed 3-14-17; 8:45 am]

**BILLING CODE 4310-VH-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

[Docket ID BSEE-2017-0002; OMB Control Number 1014-0022; 17XE1700DX EEEE500000 EX1SF0000.DAQ000]

#### Information Collection Activities: Oil and Gas and Sulfur Operations in the OCS—General; Proposed Collection; Comment Request

**ACTION:** 60-Day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under subpart A, *Oil and Gas and Sulfur Operations in the OCS—General*.

**DATES:** You must submit comments by May 15, 2017.

**ADDRESSES:** You may submit comments by either of the following methods listed below.

- Electronically go to <http://www.regulations.gov>. In the Search box, enter BSEE-2017-0002 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email [kye.mason@bsee.gov](mailto:kye.mason@bsee.gov), fax (703) 787-1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014-0022 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Nicole Mason, Regulations and Standards Branch, (703) 787-1607, to request additional information about this ICR.

#### SUPPLEMENTARY INFORMATION:

*Title:* 30 CFR part 250, subpart A, *Oil and Gas and Sulfur Operations in the OCS—General*.

*Form(s):* BSEE-0132, BSEE-0143, BSEE-1832.

*OMB Control Number:* 1014-0022.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the

leasing provisions of the Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCS Lands Act at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104-133, 110 Stat. 1321, April 26, 1996), and OMB Circular A-25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. A request for approval required in 30 CFR 250.171 is subject to cost recovery, and BSEE regulations specify service fees for these requests in 30 CFR 250.125.

Regulations implementing these responsibilities are among those delegated to BSEE. The regulations at 30

CFR part 250, subpart A, concern the general regulatory requirements of oil, gas, and sulfur operations in the OCS (including the associated forms), and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NLTs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information collected under the subpart A regulations to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

- Review records of formal crane operator and rigger training, crane operator qualifications, crane inspections, testing, and maintenance to ensure that lessees/operators perform operations in a safe and workmanlike manner and that equipment is maintained in a safe condition. The BSEE also uses the information to make certain that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices, and to assure that uniform methods are employed by lessees for load testing of cranes.
- Review welding plans, procedures, and records to ensure that welding is conducted in a safe and workmanlike manner by trained and experienced personnel.
- Provide lessees/operators greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.
- Ensure that injection of gas promotes conservation of natural resources and prevents waste.
- Record the agent and local agent empowered to receive notices and comply with regulatory orders issued.
- Provide for orderly development of leases through the use of information to determine the appropriateness of lessee/

operator requests for suspension of operations, including production.

- Improve safety and environmental protection on the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.
- Ascertain when the lease ceases production or when the last well ceases production in order to determine the 180th day after the date of completion of the last production. The BSEE will use this information to efficiently maintain the lessee/operator lease status.
- Allow lessees/operators who exhibit unacceptable performance an incremental approach to improving their overall performance prior to a final decision to disqualify a lessee/operator or to pursue debarment proceedings through the execution of a performance improvement plan (PIP). The subpart A regulations do not address the actual process that we will follow in pursuing the disqualification of operators under §§ 250.135 and 250.136; however, our internal enforcement procedures include allowing such operators to demonstrate a commitment to acceptable performance by the submission of a PIP.

The forms associated with this information collection request are as follows:

The BSEE Environmental Compliance Division has decided to discontinue use of BSEE Form-0011, *Internet Based Safety and Environmental Enforcement Reporting System (Isee)*, due to an evolving program and changes in management. The information submitted under § 250.193 instructs the public on what information and where to submit possible violations making the form obsolete.

Form BSEE-1832, *Incident(s) of Noncompliance (INCs)*, is used to determine that respondents have corrected all incident(s) of noncompliance identified during inspections. Everything on the INC form is filled out by a BSEE inspector/representative. The only thing industry does with this form is sign the document upon receipt and respond to BSEE when each INC has been

corrected, no later than 14 days from the date of issuance.

Form BSEE-0132, *Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics*, is used in the Gulf of Mexico OCS Region (GOMR) to obtain general information such as company name, contact, date, time, telephone number; as well as number of platforms and drilling rigs evacuated and not evacuated, and production shut-in statistics for oil (BOPD) and gas (MMSCFD).

Form BSEE-0143, *Facility/Equipment Damage Report*, is used to assess initial damage and then be aware of changes until the damaged structure or equipment is returned to service; as well as production rate at time of shut-in (BPD and/or MMCFPD), cumulative production shut-in (BPD and/or MMCFPD), and estimated time to return to service (in days).

Most responses are mandatory, while others are required to obtain or retain benefits, or are voluntary. No questions of a sensitive nature are asked. The BSEE protects information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection*, and 30 CFR part 252, *OCS Oil and Gas Information Program*.

*Frequency:* On occasion, daily, weekly, monthly, and varies by section.

*Description of Respondents:* Potential respondents comprise Federal OCS oil, gas, and sulfur lessees/operators and holders of pipeline rights-of-way.

*Estimated Reporting and Recordkeeping Hour Burden:* The estimated annual hour burden for this information collection is a total of 84,391 hours and \$1,371,458 non-hour costs. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

**BILLING CODE 4310-VH-P**

## BURDEN BREAKDOWN

Citation 30 CFR part 250, subpart A; Related Forms /NTLs	Reporting or Recordkeeping Requirement*	Hour Burde n	Average No. of Annual Responses	Annual Burden Hours (rounded )
		Non-Hour Cost Burdens		
<b>Authority and Definition of Terms</b>				
104; Form BSEE- 1832	Appeal orders or decisions; appeal INCs.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
<b>Performance Standards</b>				
109(a); 110	Submit welding, burning, and hot tapping plans.	4	51 plans	204
118; 121; 124	Apply for injection of gas; use BSEE- approved formula to determine original gas from injected.	10	6 applicatio ns	60
<b>Subtotal</b>			<b>57 Responses</b>	<b>264 Hours</b>
<b>Cost Recovery Fees</b>				
125; 126	Cost Recovery Fees, confirmation receipt, etc.; verbal approvals pertaining to fees.	Cost Recovery Fees and related items are covered individually throughout subpart A.		0
<b>Forms</b>				
130-133 (Form BSEE- 1832)	Submit "green" response copy of Form BSEE-1832, INC(s), indicating date violations corrected; or submit same info via electronic reporting.	3	2,764 forms	8,292
186(a)(3); NTL	Apply to receive administrative entitlements to eWell (electronic/digital form submittals).	Not considered information collection under 5 CFR 1320.3(h)(1).		0
192 (Form BSEE- 0132)	Daily report of evacuation statistics for natural occurrence/hurricane (GOMR Form BSEE-0132 (form takes 1 hour)) when circumstances warrant; inform BSEE when you resume production.	3	884 reports or forms	2,652
192(b) (Form BSEE- 0143)	Use Form BSEE-0143 to submit an initial damage report to the Regional Supervisor.	3	4 forms	12

192(b) (Form BSEE- 0143)	Use Form BSEE-0143 to submit subsequent damage reports on a monthly basis until damaged structure or equipment is returned to service; immediately when information changes; date item returned to service must be in final report.	1	4 forms	4
193	Report apparent violations or non-compliance.	1.5	6 reports	9
<b>Subtotal</b>			<b>3,662 Responses</b>	<b>10,969 Hours</b>
<b>Inspection of Operations</b>				
130-133	Request reconsideration from issuance of an INC.	7	222 requests	1,554
	Request waiver of 14-day response time.	1	296 waivers	296
	Notify BSEE before returning to operations if shut-in.	1	2,026 notices	2,026
133, NTL	Request reimbursement within 90 days of inspection for food, quarters, and transportation, provided to BSEE representatives. Submit supporting verifications of the meals, such as a meal log w/inspectors signature.	1.5	2 requests	3
<b>Subtotal</b>			<b>2,546 Responses</b>	<b>3,879 Hours</b>
<b>Disqualification</b>				
135 BSEE internal process	Submit PIP under BSEE implementing procedures for enforcement actions.	40	4 plans	160
<b>Subtotal</b>			<b>4 Responses</b>	<b>160 Hours</b>
<b>Special Types of Approval</b>				
140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	2	346 requests	692
140(c)	Submit letter when stopping approved flaring with required information.	Burden covered under 30 CFR part 250, subpart K (1014-0019).		0
141; 198	Request approval to use new or alternative procedures, along with supporting documentation if applicable, including BAST not specifically covered elsewhere in regulatory requirements.	22	1,430 requests	31,460

142; 198	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements, along with supporting documentation if applicable.	3.5	405 requests	1,418
145	Submit designation of agent and local agent for Regional Supervisor' and/or Regional Director's approval.	1	9 submittals	9
<b>Subtotal</b>			<b>2,190 Responses</b>	<b>33,579 Hours</b>
<b>Naming and Identifying Facilities and Wells (Does Not Include MODUs)</b>				
150; 151; 152; 154(a)	Name and identify facilities, artificial islands, MODUs, helo landing facilities etc., with signs.	4	597 new / replacement signs	2,388
150; 154(b)	Name and identify wells with signs.	2	286 new wells	572
<b>Subtotal</b>			<b>883 Responses</b>	<b>2,960 Hours</b>
<b>Suspensions</b>				
168; 171; 172; 174; 175; 177; 180(b), (d)	Request suspension of operation or production; submit schedule of work leading to commencement; supporting information; include pay.gov confirmation receipt.	10	646 requests	6,460
		$\$2,123 \text{ fee} \times 646 = \$1,371,458$		
	Submit progress reports on a suspension of operation or production as condition of approval.	3	335 reports	1,005
172(b); 177(a)	Conduct site-specific study; submit results; request payment by another party. No instances requiring this study in several years--could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	100	1 study / report	100
177(b), (c), (d)	Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document.	Burden covered under BOEM's 30 CFR part 550, subpart B (1010-0151).		0
<b>Subtotal</b>			<b>982 Responses</b>	<b>7,565 Hours</b>
			<b>\$1,371,458 Non-Hour Cost Burden</b>	
<b>Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations</b>				

180(a), (h), (i),	Notify and submit report on various lease-holding operations and lease production activities.	1	63 reports or notices	63
180(e), (j)	Request more than 180 days to resume operations; notify BSEE if operations do not begin within 180 days.	3	3 requests/notifications	9
		0.5		2
180(f), (g), (h), (i)	Submit various operation and production data to demonstrate production in paying quantities to maintain lease beyond primary term; notify BSEE when you begin conducting operations beyond its primary term.	3	384 submissions / notifications	1,152
		0.5		192
<b>Subtotal</b>			<b>450 Responses</b>	<b>1,418 Hours</b>
<b>Information and Reporting Requirements</b>				
186; NTL	Submit information and reports, as BSEE requires.	12	202 Submittals	2,424
187; 188(a-b); 189; 190; 192; NTL	Report to the District Manager immediately via oral communication and written follow-up within 15-calendar days, incidents pertaining to: fatalities; injuries; LoWC; fires; explosions; all collisions resulting in property or equipment damage >\$25K; structural damage to an OCS facility; cranes; incidents that damage or disable safety systems or equipment (including firefighting systems); include hurricane reports such as platform/rig evacuation, rig damage, P/L damage, and platform damage; operations personnel to muster for evacuation not related to weather or drills; any additional information required. If requested, submit copy marked as public information.	1.5 Oral	505 Oral reports	758
		4 Written	671 Written reports	2,684
187(d)	Report all spills of oil or other liquid pollutants.	Burden covered under 30 CFR part 254 (1014-0007).		0
188(a)(5)	Report to District Manager hydrogen sulfide (H <sub>2</sub> S) gas releases immediately by oral communication.	Burden covered under 30 CFR part 250, subpart D (1014-0018).		0

191	Submit written statement/Request compensation mileage and services for testimony re: accident investigation.	Exempt under 5 CFR 1320.4(a)(2), (c).	0
194(c)	Report archaeological discoveries.	3	7 reports
195	Notify District Manager within 5 workdays of putting well in production status (usually oral). Follow-up with either fax/email within same 5 day period (burden includes oral and written).	1	2,040 notifications
196	Request reimbursement of reproduction and processing costs of G&G data/information requested by the Regional Director.	1	1 request
197(c)	Submit confidentiality agreement.	1	1 submittal
		<b>Subtotal</b>	<b>3,427 Responses</b>
			<b>7,929 Hours</b>
<b>Recordkeeping</b>			
108(e)	Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at least 4 years; crane operator and all rigger personnel qualifications for at least 4 years; all records must be kept at the OCS fixed platform.	4	2,011 record-keepers
109(b); 113(c)	Retain welding plan and drawings of safe-welding areas at site; designated person advises in writing that it is safe to weld.	3	948 operations
132(b)(3)	During inspections, make records available as requested by inspectors.	4	1,195 requests
		<b>Subtotal</b>	<b>4,154 Responses</b>
			<b>15,668 Hours</b>
<b>TOTAL BURDEN</b>			<b>18,355 Responses</b>
			<b>84,391 Hours</b>
			<b>\$1,371,458 Non-Hour Cost Burden</b>

\* In the future, BSEE will be allowing the option of electronic reporting for certain requirements.

**BILLING CODE 4310-VH-C**

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified one non-hour cost burden. Requests for a Suspension of Operations or a Suspension of Production (§ 250.171) requires a cost recovery fee of \$2,123. We have not identified any other non-hour cost burdens associated with this collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . .”. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting

from the collection of information. Therefore, if you have other non-hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

*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.

*BSEE Information Collection Clearance Officer:* Nicole Mason, (703) 787-1607.

Dated: February 7, 2017.

**Eric Miller,**

*Acting Deputy Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2017-05144 Filed 3-14-17; 8:45 am]

**BILLING CODE 4310-VH-P**

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## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-570 and 731-TA-1346 (Preliminary)]

### Aluminum Foil From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701-TA-570 and 731-TA-1346 (Preliminary) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether there is a reasonable indication that 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 aluminum foil from China, provided for in subheadings 7607.11.30, 7607.11.60, 7607.11.90, and 7607.19.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the government of China. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by April 24, 2017. The Commission’s views must be transmitted to Commerce within five business days thereafter, or by May 1, 2017.

**DATES:** *Effective Date:* March 9, 2017.

### FOR FURTHER INFORMATION CONTACT:

Justin Enck ((202) 205-3363), 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 investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

### SUPPLEMENTARY INFORMATION:

*Background.*—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on March 9, 2017, by The Aluminum Association Trade Enforcement Working Group and its individual members.

For further information concerning the conduct of these investigations 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 B (19 CFR part 207).

*Participation in the investigation and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission’s rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*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 these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are

parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission’s Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Thursday, March 30, 2017, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to [William.bishop@usitc.gov](mailto:William.bishop@usitc.gov) and [Sharon.bellamy@usitc.gov](mailto:Sharon.bellamy@usitc.gov) (DO NOT FILE ON EDIS) on or before March 28, 2017. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission’s rules, any person may submit to the Commission on or before April 4, 2017, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. 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://www.usitc.gov/secretary/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission’s rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the 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.

*Certification.*—Pursuant to section 207.3 of the Commission’s rules, any person submitting information to the Commission in connection with this/ these investigation(s) must certify that



the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this/these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Authority:* These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 10, 2017.

**Katherine M. Hiner,**

*Acting Supervisory Attorney.*

[FR Doc. 2017-05149 Filed 3-14-17; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-564 and 731-TA-1338-1340 (Final)]

### Steel Concrete Reinforcing Bar From Japan, Taiwan, and Turkey; 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-564 and 731-TA-1338-1340 (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 steel concrete reinforcing bar (rebar) from Japan, Taiwan, and Turkey, provided for in subheadings 7213.10.00, 7214.20.00, and 7228.30.80 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be

subsidized by the government of Turkey and sold at less-than-fair-value from Japan, Taiwan, and Turkey.<sup>1</sup>

**DATES:** *Effective Date:* March 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Joanna Lo ((202) 205-1888), 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:

*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 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), and 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 Turkey of rebar. The

<sup>1</sup>For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade or lack thereof. Subject merchandise includes deformed steel wire with bar markings (e.g., mill mark, size, or grade) and which has been subjected to an elongation test. The subject merchandise includes rebar that has been further processed in the subject country or a third country, including but not limited to cutting, grinding, galvanizing, painting, coating, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the rebar. Specifically excluded are plain rounds (i.e., nondeformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (e.g., mill mark, size, or grade) and without being subject to an elongation test." See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 82 FR 12195, March 1, 2017. See also the Department of Commerce's preliminary affirmative determinations of sales at less than fair value with respect to rebar from Japan, Taiwan, and Turkey (publication in the **Federal Register** pending; filed on the Commission's electronic document information system on March 2, 2017).

investigations were requested in petitions filed on September 20, 2016, by the Rebar Trade Action Coalition and its individual members: Byer Steel Group, Inc., Cincinnati, Ohio; Commercial Metals Company, Irving, Texas; Gerdau Ameristeel U.S. Inc., Tampa, Florida; Nucor Corporation, Charlotte, North Carolina; and Steel Dynamics, Inc., Pittsboro, Indiana.

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 May 4, 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 Thursday, May 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 May 12, 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 May 17, 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 May 11, 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 May 25, 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 May 25, 2017. On June 8, 2017, 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 June 12, 2017, 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://www.usitc.gov/secretary/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf), 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: March 10, 2017.

**Katherine M. Hiner,**

*Acting Supervisory Attorney.*

[FR Doc. 2017-05148 Filed 3-14-17; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities; Comment Request; Overpayment Detection and Recovery Activities

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), Employment and Training Administration is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Overpayment Detection and Recovery Activities." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by May 15, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely

respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Ericka Parker by telephone at 202-693-3208, TTY 1-877-889-5627 (these are not toll-free numbers), or by email at [parker.ericka@dol.gov](mailto:parker.ericka@dol.gov).

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S-4519, Washington, DC 20210; by email at [parker.ericka@dol.gov](mailto:parker.ericka@dol.gov); or by fax at 202-693-3975.

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

### I. Background

Section 303(a)(1) of the Social Security Act requires a state's unemployment insurance UI law to include provisions for:

Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due . . .

Section 303(a)(5) of the Social Security Act further requires a state's UI law to include provisions for:

Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . .

Section 3304(a)(4) of the Internal Revenue Code of 1954 provides that:

all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation . . .

The Secretary of Labor has interpreted the above sections of federal law in Section 7511, Part V, ES Manual to further require a state's UI law to include provisions for such methods of administration as are, within reason, calculated to: (1) Detect benefits paid through error by the State Workforce

Agency (SWA) or through willful misrepresentation or error by the claimant or others; (2) deter claimants from obtaining benefits through willful misrepresentation; and (3) recover benefits overpaid. The ETA 227 is used to determine whether SWAs meet these requirements.

The ETA 227 contains data on the number and amounts of fraud and non-fraud overpayments established, the methods by which overpayments were detected, the amounts and methods by which overpayments were collected, the amounts of overpayments waived and written off, the accounts receivable for overpayments outstanding, and data on criminal/civil actions. These data are gathered by 53 SWAs and reported to the Department of Labor following the end of each calendar quarter. The overall effectiveness of SWAs' UI integrity efforts can be determined by examining and analyzing the data. These data are also used by SWAs as a management tool for effective UI program administration.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Overpayment Detection and Recovery Activities, OMB control number 1205-0187.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Agency:* DOL-ETA.

*Type of Review:* Extension without changes.

*Title of Collection:* Overpayment Detection and Recovery Activities.

*Form:* ETA 227.

*OMB Control Number:* 1205-0187.

*Affected Public:* State Workforce Agencies.

*Estimated Number of Respondents:* 53.

*Frequency:* Quarterly.

*Total Estimated Annual Responses:* 212.

*Estimated Average Time per Response:* 14 hours.

*Estimated Total Annual Burden*

*Hours:* 2,968.

*Total Estimated Annual Other Cost Burden:* \$0.

*Authority:* 44 U.S.C. 3506(c)(2)(A).

**Byron Zuidema,**

*Deputy Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2017-05173 Filed 3-14-17; 8:45 am]

**BILLING CODE 4510-FW-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities; Comment Request; Reemployment of Unemployment Insurance (UI) Benefit Recipients

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Reemployment of UI Benefit Recipients." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent

burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by May 15, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Valerie Rodall by telephone at 202-693-3194, TTY 1-877-889-5627 (these are not toll-free numbers), or by email at [Rodall.Valerie.J@dol.gov](mailto:Rodall.Valerie.J@dol.gov).

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Room S-4519, Washington, DC 20210; by email at [Rodall.Valerie.J@dol.gov](mailto:Rodall.Valerie.J@dol.gov); or by fax at 202-693-3975.

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Under the Government Performance and Results Act of 1993 (GPRA), the Department's Strategic Plan is an integral part of the budget process. Among the purposes of the GPRA are to improve Federal program effectiveness and public accountability by focusing on program results, service quality, and customer satisfaction.

Strategic Objective 4.1 in the Department's fiscal year (FY) 2014-2018 Strategic Plan is to provide income support when work is impossible or unavailable and facilitate return to work, which focuses on improving the operational performance and effectiveness of the Federal/state UI program. This goal is supported in part by the performance measure indicating the percentage of UI claimants reemployed by the end of the first quarter after the quarter in which they received their initial first UI benefit payment. ETA collects the data to measure the facilitation of

reemployment of UI benefit recipients through the ETA 9047 report. OMB approved the Department's request to begin collecting UI reemployment data through the ETA 9047 report on July 26, 2005. This data collection was renewed in 2014 through September 30, 2017.

ETA has also included UI reemployment as a performance measure for UI Performs, the Department's performance management system for the UI program. Per UI Program Letter (UIPL) No. 17-08 (May 14, 2008), Acceptable Levels of Performance (ALP), the minimum performance criteria for UI Performs Core Measures are set annually for each state. The ALPs take into account a state's total unemployment rate and the percentage of UI claimants who are exempt from active work search or Employment Service (ES) registration requirements because they are job-attached. Analyses of the data indicate that UI reemployment is strongly related to these two factors.

Each calendar quarter, states report on the ETA 9047 report separate counts for individuals receiving their first UI payments who are exempt from active work search or ES registration requirements, in most cases because they are job-attached with definite recall dates, and those not exempt from active work search or ES registration requirements.

States also report on the ETA 9047 report the number of those first payment recipients for whom intrastate or out-of-state employers reported wages in the subsequent quarter. States obtain these counts by crossmatching the Social Security Numbers (SSNs) of claimants who received UI first payments with the UI wage records for the subsequent calendar quarter. ETA issued instructions on obtaining out-of-state reemployment data through matching the SSNs of UI first payment recipients with UI wage records in the National Directory of New Hires in UIPL No. 1-06, Change 1 (August 2, 2006).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown

in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Reemployment of UI Benefit Recipient, OMB control number 1205-0452.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL-ETA.

*Type of Review:* Extension without changes.

*Title of Collection:* Reemployment of Unemployment Insurance Benefit Recipients.

*Form:* ETA 9047.

*OMB Control Number:* 1205-0452.

*Affected Public:* State Workforce Agencies (SWAs).

*Estimated Number of Respondents:* 53.

*Frequency:* Quarterly.

*Total Estimated Annual Responses:* 212.

*Estimated Average Time per Response:* 10 hours.

*Estimated Total Annual Burden Hours:* 2,120 hours.

*Total Estimated Annual Other Cost Burden:* \$0.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**Byron Zuidema,**

*Deputy Assistance Secretary for Employment and Training, Labor.*

[FR Doc. 2017-05177 Filed 3-14-17; 8:45 am]

**BILLING CODE 4510-FW-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities; Comment Request; Interstate Arrangement for Combining Employment and Wages

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Interstate Arrangement for Combining Employment and Wages." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by May 15, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documents; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Corey Pitts by telephone at 202-693-3357, TTY 1-877-889-5627 (these are not a toll-free numbers), or by email at [Pitts.Corey@dol.gov](mailto:Pitts.Corey@dol.gov).

Submit written comments about, or request a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S-4524, Washington, DC 20210; by email at: [Pitts.Corey@dol.gov](mailto:Pitts.Corey@dol.gov); or by fax at 202-693-3975.

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to

ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Section 3304(a)(9)(B), of the Internal Revenue Code (IRC) of 1986, requires states to participate in an arrangement for combining employment and wages covered under the different state laws for the purpose of determining unemployed workers' entitlement to unemployment compensation. The Interstate Arrangement for Combining Employment and Wages for combined wage claims (CWC), promulgated at 20 CFR 616, requires the prompt transfer of all relevant and available employment and wage data between states upon request. The Benefit Payment Promptness Standard, 20 CFR 640, requires the prompt payment of unemployment compensation including benefits paid under the CWC arrangement. The ETA 586 report provides the ETA/Office of Unemployment Insurance with information necessary to measure the scope and effect of the CWC program and to monitor the performance of each state in responding to wage transfer data requests and the payment of benefits.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205-0029.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: DOL-ETA.

Type of Review: Extension without changes.

Title of Collection: Interstate Arrangement for Combining Employment and Wages.

Form: ETA 586.

OMB Control Number: 1205-0029.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Quarterly.

Total Estimated Annual Responses: 212.

Estimated Average Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 848.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Byron Zuidema,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2017-05181 Filed 3-14-17; 8:45 am]

BILLING CODE 4510-FW-P

## DEPARTMENT OF LABOR

[Secretary's Order 03-2017]

### Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Administration and Management

Date: January 18, 2017.

1. *Purpose.* To consolidate the delegations of authority and assignments of responsibility to the Assistant Secretary for Administration and Management (ASAM) and to codify

other existing delegations not otherwise the subject of a Secretary's Order.

#### 2. Directives Affected.

A. This Order repeals and supersedes Secretary's Order 05-2009 (Delegation and Assignment of Responsibilities to the Assistant Secretary for Administration and Management).

B. The following Secretary's Order is referenced herein and remains in effect: 2-2009 (Delegation of Authority and Assignment of Responsibility to the Chief Acquisition Officer and Assistant Secretary for Administration and Management, and Related Matters).

C. This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, including without limitation 9-1989 (Data Integrity Board), 5-2001 (MRB), 1-2006 (Emergency Management) and 6-2006 (Regional Executive Committees), unless otherwise expressly so provided in this or another Order.

3. *Authority.* This Order is issued pursuant to various authorities detailed by subject area below:

A. *Performance Management.* The Government Performance and Results Act of 1993, as amended, Public Law 103-62; The Reports Consolidation Act of 2000 (Pub. L. 106-531); The Federal Information Security Modernization Act (FISMA) of 2014, 44 U.S.C. 3551 *et seq.*; OMB Circular No. A-11, Part 6, "Preparation and Submission of Strategic Plans, Annual Performance Plans, and Annual Program Performance Reports."

B. *Employee Safety and Occupational Health and Workers' Compensation Program.* Section 19 of the Occupational Safety and Health Act of 1970; Federal Employees' Compensation Act; Executive Order 12196, as amended by Executive Order 12223; 20 CFR 10; 29 CFR, Part 1960; 5 U.S.C. 7901, *et seq.*

C. *Operation and Maintenance of Departmental Buildings.* Section 2 of Reorganization Plan No. 18 of 1950, 5 U.S.C. 901; the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 581; "the Brooks Act", 40 U.S.C. 1101 *et seq.*; Public Building Act of 1959, as amended, 40 U.S.C. 601-611; 40 U.S.C. 3305; The Uniform Relocation and Real Property Acquisition Policies Act of 1970 as amended, 46 U.S.C. 4601 *et seq.*; Public Buildings Cooperative Use Act of 1976, Public Law 94-541; Rural Development Act of 1972, Public Law 92-419, as amended by Section 636 of Division F of Public Law 108-199; Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 132); Energy Independence and Security Act of 2007, Public Law 110-140; Executive Orders 12072, 12411, 13006, and 13327; Federal Property

Management Regulations, 41 CFR Chapter 101; Federal Management Regulations, 41 CFR 102.

D. *Accessibility within Department of Labor Buildings and Facilities.*

Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et. seq.*; and Section 502 of the Rehabilitation Act of 1973, 29 U.S.C. 792, as amended.

E. *Telecommunications.* Section 201 of the Federal Property and Administrative Services Act of 1949, codified at 40 U.S.C. 501.

F. *Records Management.* Presidential and Federal Records Act Amendments of 2014, Public Law 113–187; Reorganization Plan Number 6 (1950); the National Archives and Records Administration (NARA), Records Management Regulations, 36 CFR parts 1220 to 1238; 41 CFR part 102–193, General Services Administration (Creation, Maintenance and Use of Records); and the Guidance Memorandum, dated March 19, 2002, issued jointly by the Information on Security Oversight Office, National Archives and Records Administration and the Office of Information and Policy, U.S. Department of Justice, on “Safeguarding Information Regarding Weapons of Mass Destruction and Other Sensitive Records Related to Homeland Security.”

G. *Printing.* Title 44 of the United States Code, Public Printing and Documents; Joint Committee on Printing, S. Pub. 101–9, “Government Printing and Binding Regulations” (February 1990); and Federal Acquisition Regulation (FAR), Subpart 8.8, “Acquisition of Printing and Related Supplies”; OMB Memorandum M–02–07, “Procurement of Printing and Duplicating through the Government Printing Office,” dated May 3, 2002; Compact between the Office of Management and Budget and the U.S. Government Printing Office (September 16, 2008); *Government Printing Office Style Manual*, United States Government Printing Office, Washington, DC, Revised Edition, 2000; 41 CFR 101–5.1 Centralized Services in Federal Buildings or Complexes; United States Government Printing Office, Publication 310.1, *GPO Contract Terms Quality Assurance Through Attributes Program (QATAP)* dated May 1979 (Revised August 2002); *GPO Agency Procedural Handbook*, United States Government Printing Office, Publication 305.1, *Revised August 1998; The Guidelines: Best Practices for Submitting Electronic Design and Prepress Files*, United States Government Printing Office, Publication 300.6, dated August 1997, Rev. 07/04; *Guide to Federal Publishing*,

Interagency Council on Printing and Publication Services and Federal Publishers Committee, 2d edition.

H. *Environmental Stewardship.* Resource Conservation and Recovery Act; Energy Policy Act of 1992; Energy Policy Act of 2005, sec. 701, as amended; Executive Order 12843; Executive Order 13101, Executive Order 13693; and Office of Federal Procurement Policy, Policy Letter No. 92–4, dated November 2, 1992.

I. *Voluntary Health and Wellness Programs and Drug Free Workplace Program.*

1. Voluntary Health and Wellness Programs:

a. *Employee Assistance Program (EAP).* Public Law 79–658, 5 U.S.C. 7901, Health Services Programs; Public Law 99–570, Title VI, The Federal Employee Substance Abuse Education and Treatment Act of 1986, 5 U.S.C. 7361 and 7362; Drug Abuse Office and Treatment Act of 1972 as amended by Public Law 93–282 and Public Law 96–181; the Federal Employee Substance Abuse Education and Treatment Act of 1986, 5 U.S.C. 7361 *et. seq.*, codified at 5 U.S.C. 7904; 42 CFR part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); Executive Order 12564 “Drug-free Federal Workplace Program”; Civil Service Reform Act of 1978, Public Law 95–454; Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100–71, 101 Stat. 391, 468–471, codified at 5 U.S.C. 7301 note (1987); Mandatory Guidelines for Federal Workplace Drug Testing Programs, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, as amended (October 1, 2010); 29 CFR 1910.1020, Access to Employee Exposure and Medical Records; 5 CFR part 792.

b. *Physical Fitness Programs.* Public Law 79–658, 5 U.S.C. 7901, Health Services Programs.

c. *Voluntary Employee Health Service Program (VEHSP).* Public Law 79–658, 5 U.S.C. 7901, Health Services Programs; Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Public Law 104–191, 42 U.S.C. 1320d *et. seq.* (“HIPAA”); 5 U.S.C. 552a *et. seq.*; 5 CFR 293.501 *et. seq.*, Employee Medical File System Records; 5 CFR part 297, Privacy Procedures for Personnel Records.

2. *Drug-Free Workplace Program.* Privacy Act of 1974, as amended, 5 U.S.C. 552a *et. seq.*; Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100–71, codified at 5

U.S.C. 7301 note (1987); Executive Order 10450, “Security Requirements for Government Employment”; Executive Order 12564, “Drug-Free Federal Workplace Program”; Mandatory Guidelines for Federal Workplace Drug Testing Programs, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, as amended (November 1, 2004); The Department of Labor Drug-Free Workplace Plan, revised July 2004.

J. *Commercial Services Management (formerly Competitive Sourcing).* Federal Activities Inventory Reform Act of 1988 (the “FAIR Act”), 31 U.S.C. 501 Note; the Federal Acquisition Regulation (FAR); and OMB Circular A–76, Performance of Commercial Activities, as amended, including by February 11, 2005 Memorandum to Heads of Executive Departments and Agencies from Deputy Director for Management, Office of Management and Budget, Clay Johnson, III.

K. *Metric System Conversion.* Public Law 94–168, “The Metric Conversion Act of 1975”, 15 U.S.C. 205a *et. seq.*; Public Law 100–418, 5164, “The Omnibus Trade and Competitiveness Act of 1988”; Public Law 104–258, “The Savings in Construction Act of 1996,” Public Law 104–289.; and 15 CFR 273.1 *et. seq.*, “Metric Conversion Policy for Federal Agencies.”

L. *Child Care Programs for Department Employees.* 40 U.S.C. 590; Public Law 107–67, 630, codified at 40 U.S.C. 590(g); 5 CFR 792.201–792.206; “GSA Child Care Director’s Desk Guide”; GSA “Facility Management Child Care Resource Book”; Agreement Between Local 12, AFGE, AFL–CIO and the U.S. Department of Labor, effective August 29, 2013, Articles 8 and 9.

4. *Background.* This Order repeals and supersedes Secretary’s Order 05–2009 and shall constitute the primary Secretary’s Order for the Office of the Assistant Secretary for Administration and Management (“OASAM”). However, because of the central role that OASAM performs within the Department, other Secretary’s Orders also have delegations to the ASAM.

5. *Statements of Policy*

A. *Performance Management.* It is the policy of the Department to follow statutory performance management requirements and directives issued by the Office of Management and Budget and to utilize performance management tools to efficiently and effectively manage the Department’s programs.

B. *Employee Safety and Occupational Health and Workers’ Compensation Program.* It is the policy of the Department to provide its employees

with places and conditions of employment that are free from recognized hazards that are likely to cause death or serious physical harm; to comply with applicable Federal safety and health standards, requirements, and procedures; to assure prompt abatement of unsafe or unhealthful working conditions; to ensure that no employee is subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of unsafe or unhealthful working conditions; to annually inspect all of its workplaces; to provide safety and occupational health-related education for all employees; and to provide specialized training for those who are assigned safety and occupational health responsibilities; and to assist employees when workers' compensation services are sought.

**C. Operation and Maintenance of Departmental Buildings.** It is the Department's policy to properly and efficiently maintain all buildings owned by the Department or in which the Department is the primary tenant—or has received delegated authority from the General Services Administration (GSA) for operations and maintenance—and to take reasonable care to allocate fair use of all facilities and services including employee parking and general conference areas consistent with the Department's mission.

**D. Accessibility within Department of Labor Buildings and Facilities.** It is the policy of the Department to promote accessibility of buildings and facilities to individuals with disabilities, and to ensure that buildings and facilities controlled by the Department or constructed, leased or acquired with Federal financial assistance fully comply with statutory and regulatory provisions relating to compliance with architectural and programmatic accessibility standards.

**E. Telecommunications.** It is the policy of the Department to ensure the efficient and economical procurement and utilization of telecommunications services and facilities.

**F. Records Management.** It is the Department's policy to make and preserve Federal records, regardless of physical form or media, containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the Department and designed to furnish the information necessary to protect the legal and financial rights of the Department and of persons directly affected by Departmental activities. The Department will properly identify recordkeeping requirements to effectively and efficiently manage Federal records

throughout their life cycle. All Federal records shall be covered by National Archives and Records Administration (NARA) approved records retention schedules, and destroyed, retired, or transferred, only as prescribed in the approved record retention schedules. The Department recognizes that: (1) Good recordkeeping contributes to the smooth operation of agency programs by making the information needed for decision making and operations readily available; (2) provides information useful to successor officials and staff for background and analysis, facilitating transitions between Administrations; and (3) ensures accountability and protects records from inappropriate and unauthorized access and destruction.

**G. Printing.** It is the policy of the Department to plan, organize, direct and provide all printing, reproduction, and distribution services for its agencies in an efficient and economical manner, in compliance with all Federal statutes and regulations. Except for the Departmental Library, which may contact the Superintendent of Documents for purchase of publications that are produced by agencies other than the Department, and which cannot be procured through the Division of Printing and Supply Management (DPSM), only the Office of Administrative Services (OAS) in the Business Operations Center, will liaison with Joint Committee on Printing (JCP), Government Printing Office (GPO), Superintendent of Documents, or Federal Prison Industries, Inc., as it relates to matters of printing, unless otherwise specifically authorized in writing by OAS.

**H. Environmental Stewardship.** The Department of Labor shall take appropriate actions to incorporate waste prevention and recycling in its daily operations and work to increase and expand markets for recovered materials and environmentally preferable products through greater preference and demand for such products.

**I. Voluntary Health and Wellness Programs and Drug-Free Workplace Program.** It is the Department's policy to establish and support voluntary health and wellness and drug-free workplace programs that foster and enhance the health and productivity of its workforce; to comply with applicable Federal health standards, requirements, and procedures; and to support employees in staying fit, well, drug-free and productive on the job.

**J. Commercial Services Management (formerly Competitive Sourcing).** It is the policy of the Department to support the spirit and intent of commercial services management as delineated in

Office of Management and Budget Circular No. A-76 and to fully comply with all statutory and programmatic requirements pertaining to competitive sourcing and the Federal Activities Inventory Reform (FAIR) Act.

**K. Metric System Conversion.** It is the policy of the Department that the metric system of measurement is the preferred system of weights and measures for trade and commerce. Accordingly, to the extent economically feasible and with minimum disruption of operations, all agencies and organizations of the Department shall use the metric system of measurement in all grants, procurements, regulations, standards, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. Consistent with government-wide policy, the Department will also permit the continued use of traditional systems of weights and measures in non-business activities.

**L. Child Care Programs for Department Employees.** It is the policy of the Department to maintain a child care facility consistent with legal requirements and directives. It is the Department's policy to foster a quality workplace for all employees by providing child care subsidies to lower income families of Department employees to assist them in their efforts to obtain quality, licensed day care for dependent children through the age of 13 and disabled children through the age of 18.

**6. Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Administration and Management (the "ASAM").** The ASAM is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor, as set forth below:

**A. Performance Management.**

1. Overseeing the preparation of the Department's strategic plans, performance plans and performance reports consistent with statutory and OMB requirements and directions.

2. Directing the preparation of responses to OIG reports regarding top management challenges.

3. Soliciting, procuring and overseeing studies by independent entities evaluating the impact and effectiveness of Departmental programs.

**B. Employee Safety and Health and Workers' Compensation Program.**

1. Serving as the Designated Agency Safety and Health Official (DASHO)

pursuant to section 1–201(c) of Executive Order 12196, and, as such, directing the establishment, administration, and management of the Department's programs regarding safety and occupational health and workers' compensation consistent with applicable law.

2. Ensuring appropriate policy development, planning, implementation, coordination, and evaluation of the Department-wide safety, occupational health and workers' compensation program; securing the services of full-time professional staff qualified to provide technical assistance and training in the areas of safety (including ergonomics), industrial hygiene, and workers' compensation, and return-to-work services.

3. Ensuring that the Department's Office of Worker Safety and Health provides operational safety and occupational health services to agencies within the Department that do not perform these functions internally.

*C. Operation and Maintenance of Departmental Buildings.*

1. Serving as the Department's Senior Real Property Officer (SRPO) and, as such, developing policy and implementing an asset management planning process that meets the form, content and other requirements established by the Federal Real Property Council (FRPC).

2. As SRPO, monitoring the real property assets of the Department so that Departmental assets are managed consistent with the goals and objectives set forth in the Department's strategic plan prepared pursuant to 5 U.S.C. 306, the principles developed by the FRPC, and reflected in the Department's asset management plan, and such other duties and responsibilities incumbent upon the SRPO.

3. Consistent with legal authorities, including agreements and other arrangements with the General Services Administration and with other applicable lease documents relating to buildings in which the Department is the primary tenant, assuring the operation and maintenance of the Frances Perkins Building and other Departmental buildings in which the Department is the primary tenant—or has received delegated authority from the General Services Administration for operations and maintenance—including making arrangements for appropriate cleaning, utilities, fire and life safety arrangements, security arrangements, office space assignments, any parking areas (including space assignments), mail service, duplication services, building space alterations, any abatement work as appropriate.

*D. Accessibility within Department of Labor Buildings and Facilities.*

1. Developing policy and directives for the Department of Labor regarding compliance with the accessibility requirements of the Architectural Barriers Act of 1968 and any regulations promulgated pursuant to that Act.

2. Monitoring, investigating, and enforcing the provisions of the statute and regulations mentioned in paragraph a, above, with respect to the accessibility of buildings and facilities constructed, altered, or renovated by, on behalf of, or for the use of a recipient of Federal financial assistance, except for those facilities referred to in Paragraph 7.A., below relating to the Employment and Training Administration.

3. Serving as the Department's Accessibility Compliance Officer.

*E. Telecommunications.* Consistent with legal authorities, directing the acquisition and management of the Department's telecommunications assets and services for both local and long-distance.

*F. Records Management.*

1. In consultation with the Chief Information Officer (CIO) and the National Archives and Records Administration (NARA), establishing, administering, and managing the Department's Records Management Program.

2. Periodically evaluating the Department's Records Management Program to ensure that the Department's component agencies are in compliance with relevant Federal records management laws, regulations, and procedures related to the creation, maintenance and use, and disposition of Federal records, and agency recordkeeping requirements. Evaluations shall be scheduled to cover all agencies on a five-year cycle on an on-going basis. Records management program evaluations shall assess the effective implementation of the basic components of a records management program, as prescribed by NARA regulations and policies.

3. Assigning a Departmental Records Officer who will manage the day-to-day administration and management of all matters related to the Department's Records Management Program. The Departmental Records Officer shall be responsible for all matters related to the Department's Records Management Program and will coordinate with the National Archives and Records Administration.

*G. Printing.*

1. Overseeing the operation of a headquarters printing service and determining the duplicating and printing for the Department and its

agencies, including making arrangements for scheduling and delivery to meet Departmental needs and notifying agencies of changes in printing operations.

2. Formulating policy and supervising operations relating to Departmental printing, duplicating, copying, centralized mailing and distribution and related equipment programs in the National Office and the regions.

3. Implementing and guiding enforcement within the Department of all Government printing, binding, duplication, and related laws and regulations.

4. Exclusively representing, directly or through a delegee, the Department with the Joint Committee on Printing on all matters pertaining to printing.

5. Exercising technical control over all copying, printing, binding, publishing, and related or auxiliary equipment and serving as the technical or final approving authority for all requests.

*H. Environmental Stewardship.*

1. Serving as the Department's Environmental Executive and, as such, providing management oversight of all Department environmental programs, including ensuring compliance with relevant Executive Orders, and coordinating such efforts with the Chief Acquisition Officer.

2. Establishing model facility demonstration programs that include comprehensive waste reduction and recycling programs and emphasizing the procurement of recycled materials and environmentally preferable products and services.

3. Designating a Department of Labor Recycling Coordinator who shall be responsible for: (a) Coordinating the development of an effective agency waste reduction and recycling program, and the affirmative procurement plan developed in accordance with OFPP guidelines, (b) coordinating Departmental action to develop benefits, costs and savings data to measure the effectiveness of the DOL program, and (c) coordinating the development of reports required by Executive Order and OFPP policy.

*I. Voluntary Health and Wellness Programs and Drug-Free Workplace (DFW) Program.* Establishing, administering, and managing the Department's voluntary employee health and wellness, fitness, employee-assistance and DFW programs in accordance with all statutory, regulatory, and administrative requirements.

*J. Commercial Services Management (formerly Competitive Sourcing).* Fulfilling the Department's responsibilities under the Federal



Activities Inventory Reform Act of 1998 (the "FAIR Act"), Federal Acquisition Regulation (FAR), and Office of Management and Budget Circular No. A-76, and such other responsibilities as are assigned to the ASAM under Secretary's Order 2-2009 (Delegation of Authority and Assignment of Responsibility to the Chief Acquisition Officer and Assistant Secretary for Administration and Management, and Related Matters). Such commercial services management activities shall be coordinated with the Chief Acquisition Officer and Chief Human Capital Officer, as appropriate.

K. *Metric System Conversion.* Serving as the Department's "Metric Executive" and (a) provide management oversight of the Department's continued use of the metric system of measurement consistent with Departmental policy; (b) appointing a Departmental official whose primary function shall be to coordinate and monitor agency metric system efforts, and to advise the Metric Executive on status, as appropriate; (c) representing the Department on the any interagency bodies addressing issues related to metric policy; and (d) coordinating compliance with all applicable laws and regulations.

L. *Childcare Programs for Department Employees.*

1. Providing appropriate services to the child care providers located in the FPB, the BLS building and at any regional buildings where child care services are provided within Departmental offices.

2. Establishing, administering and managing the Department's child care subsidy program in accordance with all statutory, regulatory and administrative requirements.

M. *Miscellaneous Responsibilities.*

1. The ASAM will work in consultation and coordination with, as appropriate, the other Departmental officials who have authority and responsibility in the areas addressed by this order, including without limitation the Chief Acquisition Officer, the Chief Human Capital Officer, the Chief Information Officer, and the Chief Financial Officer.

2. The ASAM will perform any additional duties that are assigned to the ASAM by applicable law or regulation.

7. *Delegation of Authority and Assignment of Responsibility to Other Agency Heads.*

A. *The Assistant Secretary for Employment and Training* is delegated authority and assigned responsibility, in accordance with the policies and standards established by the ASAM, for monitoring, investigating and enforcing the laws referred to in paragraph 3.D.,

above, with respect to buildings and facilities that are financed in whole or in part by Employment and Training Administration ("ETA") grants or loans and that are subject to standards for design, construction or alteration issued by ETA under the laws authorizing such grant or loan.

B. *Agency Heads* are delegated authority and assigned responsibility for:

1. *Performance Management.* Assist the ASAM, and his or her designees, as appropriate, in the preparation of the Department's strategic plans, performance plans and performance reports and cooperate in all program evaluations;

2. *Employee Safety and Occupational Health and Workers' Compensation Program.*

a. Giving full management support to the Department's safety, occupational health and workers' compensation program as provided in this Order and assuring that identified hazards are abated.

b. Operating occupational safety and occupational health programs in their national and field offices in accordance with applicable statutory, regulatory, administrative, and contractual requirements.

c. Appointing and arranging training for sufficient numbers of staff throughout their organizations to perform collateral or full-time safety/occupational health duties and to serve on safety/occupational health committees to assist managers, employees and full-time safety/health staff in the implementation of the responsibilities outlined in this Order.

d. Providing documentation of attainment of the Department's annual safety/health and workers' compensation program goals developed to reduce employee accidents, injuries and illnesses, and contain workers' compensation costs.

e. Holding managers, supervisors and employees accountable for their adherence to established safety/health policies, rules, regulations, and procedures, especially their participation in agency Accident Review Boards (ARBs) and safety and health training.

f. Providing employees appropriate personal protective and safety/occupational health equipment.

g. Conducting analyses of Agency jobs and ensuring that all workplaces are surveyed to identify and eliminate or minimize possible ergonomic risk factors.

h. Acquiring, to the extent practicable, tools, equipment and computer

accessory furniture that is adjustable and adaptable to those using them.

i. Assuring that agency employees participate in educational and training experiences necessary to carry out their assigned duties in a safe and healthful manner.

j. Assuring, through partnership with appropriate unions, that employee representatives have the opportunity to participate in educational training experiences necessary to carry out their responsibilities.

3. *Accessibility within Department of Labor Buildings.* Adhering to the policies, standards, and directives established by the ASAM in accordance with paragraph 6.D.(1), above relating to accessibility within Department of Labor buildings and spaces occupied by agency offices.

4. *Records Management.*

a. Developing and implementing effective Records Management Programs within their respective organizations that are consistent with Departmental policy and directives.

b. Assigning an Agency Records Officer for the management and execution of the Agency's Records Management Program.

c. Ensuring that the appropriate Agency staff receives adequate records management training and participates in Departmental as well as Agency training and awareness activities.

5. *Printing.* Assuring compliance with all Government Printing Office regulations and directives and adhering to the policies, standards and directives established by the ASAM relating to printing operations.

6. *Environmental Stewardship.*

a. Promoting waste reduction and recycling of reusable materials within their agencies;

b. Requiring consideration of the following factors in acquisition planning for all agency procurement actions, and in the evaluation and award of contracts: Elimination of virgin material requirements; use of recovered materials; reuse of products; life cycle costs; recyclability; environmental preferability; waste prevention; and ultimate disposal, if appropriate;

c. Developing and implementing an agency plan for energy conservation through changes in procurement practices, investment in energy efficient technology, and reduction of demand;

d. Designating an Agency Recycling Coordinator to coordinate the development of an effective agency waste reduction and recycling program, and emphasize agency purchase and use of recycled and environmentally preferable products and services;

e. Providing data and information on agency activity for incorporation into Departmental reports;

f. Designating facility energy supervisors in Department operated facilities and ensuring a sufficient number of trained energy managers throughout the Department to implement the provisions of law and regulation relating to energy and water conservation;

g. Where programs include a project or activity involving construction or leasing of property, ensuring that the responsible program manager conducts an environmental assessment; and, analyzes findings of environmental assessments and makes final decisions regarding the significance of environmental consequences;

7. *Voluntary Health and Wellness Programs*. Supporting the Department's voluntary health and occupational wellness programs and drug-free workplace program.

8. *Commercial Services Management (formerly Competitive Sourcing)*.

a. Establishing agency procedures necessary to carry out the provisions of the law, regulation and Departmental directives relating to commercial services management.

b. Designating an agency official as the central point of contact for commercial services management and ensuring the timely and appropriate completion of required activities and notices.

8. *The Solicitor of Labor*. The Solicitor of Labor is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of all of the elements of this Order and the statutory provisions, regulations, and Executive Orders listed above. The Solicitor of Labor shall have responsibility for legal advice and assistance through rulings and interpretations of applicable laws and regulations and for drafting services. The bringing of legal proceedings under those authorities, the representation of the Secretary and other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

9. *Reservation of Secretary's Authority and Responsibility*.

A. The submission of reports and recommendations to the President and the Congress is reserved to the Secretary.

B. This Secretary's Order does not affect the authorities and responsibilities of the Office of Inspector General under the Inspector

General Act of 1978, as amended, or under Secretary's Order 4–2006.

10. *Re-delegation of Authority*. Unless identified as non-delegable under this Order, authorities delegated within this Order may be re-delegated, provided, however, that re-delegation shall in no way diminish the delegating official's responsibility.

11. *Effective Date*. This order is effective immediately.

**Edward C. Hugler,**

*Acting Secretary of Labor.*

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**BILLING CODE P**

## DEPARTMENT OF LABOR

[Secretary's Order 02–2017]

### Authority and Responsibilities for Implementation of the Chief Financial Officers Act of 1990 and Related Legislation

Date: January 18, 2017.

#### 1. Purpose

To delegate authority and assign responsibilities for implementation of the Chief Financial Officers Act of 1990 and related legislation.

#### 2. Authorities and Directives Affected

##### A. Authorities

1. Chief Financial Officers Act of 1990, as amended (Pub. L. 101–576).
2. Federal Managers' Financial Integrity Act of 1982 (Pub. L. 97–255).
3. Government Performance and Results Act of 1993 (Pub. L. 103–62).
4. Government Management Reform Act of 1994 (Pub. L. 103–356).
5. Clinger-Cohen Act of 1996 (Pub. L. 104–106, Division E).
6. Federal Financial Management Improvement Act of 1996 (Pub. L. 104–208, Title VIII).
7. Reports Consolidation Act of 2000 (Pub. L. 106–531).
8. Improper Payments Information Act of 2002 (Pub. L. 107–300).
9. Accountability of Tax Dollars Act of 2002 (Pub. L. 107–289).
10. 29 U.S.C. 563, 563a, and 564, authorizing the Working Capital Fund at the Department of Labor.

11. *Office of Management and Budget (OMB) Circular No. A–11*, Preparation, Submission and Execution of the Budget (July 1, 2016).

12. OMB Circular No. A–123, Management's Responsibility for Internal Control (July 15, 2016).

13. OMB Circular No. A–134, Financial Accounting Principles and Standards (May 20, 1993).

14. *OMB Circular No. A–136*, Financial Reporting Requirements (October 7, 2016).

15. Budget Enforcement Act of 1990 (Pub. L. 101–508, Title VIII), as amended.

16. Congressional Budget Act of 1974.

17. Balanced Budget and Emergency Deficit Control Act of 1985.

18. 31 U.S.C. Chapter 11.

#### B. Directives Affected

1. Secretary's Order 04–2009 is superseded and canceled.

2. This Order does not affect Secretary's Order 14–2006, Internal Control Program (June 20, 2006).

3. All references to the Office of the Comptroller, Office of the Assistant Secretary for Administration and Management (OASAM), in Secretary's Orders, DLMS Chapters, and other Departmental issuances shall be considered to refer to the Office of the Chief Financial Officer.

4. Directives inconsistent with this Order are rescinded to the extent of the inconsistency.

#### 3. Background and Organization

The Chief Financial Officers Act of 1990, as part of overall Federal financial management reforms, mandated the establishment of a Chief Financial Officer (CFO) and Deputy Chief Financial Officer in all Cabinet-level Federal agencies, including the Department of Labor (DOL). The CFO is appointed by the President and confirmed by the Senate, and by statute reports directly to the Secretary. The Deputy CFO is a career-reserved position in the Senior Executive Service who reports directly to the CFO. The CFO heads the Office of the Chief Financial Officer (OCFO), which has such component organization units, staffing, and funding as are authorized.

#### 4. Delegation of Authority

As specified in the CFO Act, at 31 U.S.C. 902, and as detailed in Paragraph 5 of this Order, the Chief Financial Officer is delegated authority to oversee the financial management functions of the Department.

#### 5. Assignment of Responsibilities to the Chief Financial Officer

A. As required by the CFO Act, the CFO shall—

1. Report directly to the Secretary and Deputy Secretary regarding financial management matters;

2. Oversee all financial management activities relating to the programs and operations of the Department;

3. Develop and maintain an integrated Departmental accounting and financial

management system, including financial reporting and internal controls, which—

- a. Complies with applicable accounting principles, standards, and requirements, and internal control standards;
- b. Complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;
- c. Complies with any other requirements applicable to such systems; and
- d. Provides for—
  1. Complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of Departmental management;
  2. The development and reporting of cost information;
  3. The integration of accounting and budgeting information; and
  4. The systematic measurement of financial performance;
4. Make recommendations to the Secretary regarding the selection of the Deputy Chief Financial Officer of the Department, who will have the qualifications outlined in the CFO Act at 31 U.S.C. 903;
5. Direct, manage, and provide policy guidance and oversight of Departmental financial management personnel, activities, and operations, including—
  - a. The preparation and annual revision of a Departmental plan to—
    1. Implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under 31 U.S.C. 3512(a)(3); and
    2. Comply with the requirements for financial statements and audits established under 31 U.S.C. 3515, 3521(e), and 3521(f);
  - b. The development of Departmental financial management budgets;
  - c. The recruitment, selection, and training of personnel to carry out Departmental financial management functions;
  - d. The approval and management of Departmental financial management systems design or enhancement projects;
  - e. The implementation of Departmental asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control;
  - f. Prepare and transmit an annual report to the Secretary and the Director of the Office of Management and Budget, consistent with the requirements of OMB Circular No. A-136, which shall include—

1. A description and analysis of the status of financial management of the Department;
  2. The annual financial statements prepared under 31 U.S.C. 3515;
  3. The audit report transmitted to the Secretary under 31 U.S.C. 3521(f);
  4. A summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Pub. L. 97-255); and
  5. Other information the Secretary considers appropriate to fully inform the President and the Congress concerning the financial management of the Department;
  6. Monitor the financial execution of the budget of the Department in relation to actual expenditures and prepare and submit to the Secretary timely financial performance reports; and
  7. Review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the Department for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.
- B. The CFO will have the following additional responsibilities:

### 1. Budget

- a. Issuing policy guidance and instructions to prepare the Department's performance budgets for internal decision-making, for OMB, and for the Congress.
- b. Reviewing and analyzing agency budget requests to the Department.
- c. Reviewing, analyzing, consolidating and packaging all Departmental budget submissions to the OMB and Congress to ensure technical accuracy and conformance with established policy.
- d. Coordinating all information developed in support of budget requests to OMB and to Congress.
- e. Providing staff support in preparing lead Departmental representations for press briefings and Congressional hearings on the Department's budget.
- f. Assisting the Office of Congressional and Intergovernmental Affairs in coordinating the preparation of briefing materials for the Secretary and Agency heads.
- g. Issuing policy guidance and instructions on the preparation of apportionments.
- h. Monitor the financial execution of the budget of the Department in relation to actual expenditures, and prepare and submit to the Secretary timely financial performance reports.
- i. Provide leadership, direction, coordination, and related services

concerning budget execution for the Department and its component agencies.

- j. Participate with Departmental Agency heads and other staff at a policy and decision-making level in the Departmental budget execution review process.
- k. Review the budget requests for all Departmental and component agency financial management functions; recommend to the Secretary their modification as necessary to ensure that appropriate resources are requested to effectively and efficiently perform necessary financial and related functions.
- l. Promote the development and reporting of cost information in support of the systematic measurement of performance in appropriate budget documents.
- m. Manage and oversee the Department's administrative control of funds from the time funds are allotted to the DOL agencies.

### 2. Policy Duties

- a. Develop and promulgate accounting and financial management policies for DOL and its component agencies, and review and approve component agency financial policies, procedures, and structures for adherence to the policies of DOL and other Federal agencies.
- b. Ensure compliance throughout DOL, and its component agencies, with applicable accounting standards and principles, and financial information and system functional standards, including the standards promulgated by the Federal Accounting Systems Advisory Board, the Federal Government's Standard General Ledger, the core requirements for financial systems, and the financial statement form and content guidance issued by OMB.
- c. Exercise overall responsibility for the Department's compliance with FMFIA and for the Department's fiscal integrity; serve on the Department's Internal Control Board; report directly to the Secretary on internal control matters; carry out the responsibilities specified in Secretary's Order 14-2006, Internal Control Program, for the CFO and the Internal Control Principal for financial systems and mixed systems that are significantly financial.
- d. Ensure adequate controls are in place over asset management, including cash management operations, credit management and debt collection operations, and real property, equipment, and inventories.
- e. Participate with Departmental Agency heads and other staff in the policy review of proposed legislative

and program initiatives from a financial management perspective.

f. Ensure that component agencies gather timely and accurate financial information to manage and oversee major procurements.

g. Develop policies and procedures for investigating potential violations of the Anti-Deficiency Act; working under policies established by the CFO, and in cooperation with the ASAM and the Solicitor of Labor, notify the Secretary of Anti-Deficiency Act violations, and transmit agency reports of Anti-Deficiency Act violations to the Secretary for transmittal to the President, Congress, OMB, and the Government Accountability Office, as applicable.

### 3. Financial Systems Duties

. Review and approve the design and operation of component agency financial, accounting, and asset systems, specifically including the financial aspects of grant management systems, debt collection systems, and other systems defined by FFMIA.

a. Provide oversight of, and issue core requirements and standards related to, component agency financial systems, activities, and operations, including preparation and revision of agency financial management plans and financial performance reports.

b. In coordination with the ASAM, establish policies, procedures, and other guidelines to prescribe the form, content, and frequency of accounting information to be reported from component agency systems to meet DOL and central Federal agency information requirements.

c. Participate in the review and approval process of information systems that provide, at least in part, financial and/or program performance data.

d. In consultation with the Chief Information Officer (CIO), ensure that the accounting, financial, asset management, and other information systems of the Department are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the Department.

e. Ensure, in consultation with the CIO, that program information systems provide financial, budget, and programmatic data on a reliable, consistent and timely basis to agency financial management systems.

f. Recommend to the Secretary any information resource management and budget decisions affecting financial management processes, systems, and operations.

g. Consult with the CIO to ensure sufficient oversight and security exist to

maintain the integrity of information systems that affect the preparation and presentation of the Department's financial statements.

### 4. External Reporting Duties

. Prepare the financial management components of the annual Performance and Accountability Report (PAR) for transmittal to the Secretary and the Director of OMB. The PAR will meet the requirements of OMB Circular No. A-136, and shall include, in part—

1. A description and analysis of the status of financial management of the Department;

2. The Department's annual financial statements and accounting reports, including, where appropriate, pertinent performance measures;

3. The audit report transmitted to the Secretary;

4. The annual report required to be submitted to the President and the Congress under the FMFIA;

5. The report required by the Improper Payments Information Act;

6. The Management Assurance Statement required by OMB Circular No. A-123;

7. The annual financial management report required by the Chief Financial Officers Act; and

8. Other information the Secretary considers appropriate to fully inform the President and the Congress concerning the financial management of the Department.

a. Prepare the semi-annual audit resolution reports required by the Amendments to the Inspector General Act.

b. Coordinate and manage financial management reporting requirements as may be imposed by OMB, the Department of the Treasury, other central Federal agencies, and Congress.

c. In coordination with the ASAM and Agency heads, develop reporting mechanisms that integrate program performance and financial data, and facilitate the display of such data in budget documents, financial statements, and other pertinent communications.

d. In consultation with the CIO, ensure financial statements support:

1. Assessments and revisions of mission-related and administrative processes of the Department; and

2. Measurement of the performance of investments made by the Department in information systems.

### 5. Financial Management Personnel Duties

. Provide oversight of, and issue core requirements and standards related to, component agency financial management personnel.

a. Provide policy advice and assistance to DOL executives, including component agency heads, on all personnel matters affecting financial management personnel throughout the DOL and its component agencies, and on budget and staffing levels for component agency financial functions.

b. Review all proposed personnel selections, skill requirements, performance standards, and position descriptions for financial management personnel at the GS-15 level and above throughout the DOL and its component agencies; discuss any problems with the component agency head and appeal any unresolved issue to the Secretary through the Deputy Secretary.

c. Manage a comprehensive training and development program for budget analysts, accountants, financial managers, and financial technicians; ensure that staff skills are commensurate with requirements; and implement a Continuing Professional Education (or similar) program.

### 6. Financial Programmatic Duties

. Manage Departmental programs on audit resolution, travel management, cash management, debt collection, asset management, and financial management activities.

a. Manage centralized Departmental accounting functions for fund and cost accounting, capitalized assets accounting, grant accounting, DOL employee compensation and benefits, and voucher, commercial bill, and other payments.

b. Exercise Departmental approval authority over interagency transactions involving component agency program funds, such as for investment or transfer.

c. Establish and chair a CFO Advisory Council within DOL to provide a forum for component organizations to advise and support the CFO in matters affecting the financial community. The Advisory Council will facilitate the dissemination of financial policies established by the CFO to component agencies.

d. Maintain and operate a Working Capital Fund (WCF) and related accounts offering, as appropriate and advantageous to the Department, a comprehensive program of centralized services funded by customer agency reimbursements in advance that:

1. Ensures customer agencies access to meaningful information on the full costs of those centralized services, conditions for usage, and the cost allocation formulas employed in the lawful distribution of annual charges against the respective agency appropriation accounts; and

2. Ensures, through the creation and regular convening of a Working Capital Fund Committee, the opportunities for meaningful and informed customer agency participation or representation in reviewing WCF activities, costs, and charges, and in recommending changes or improvements to the CFO.

3. Is operated on the basis of agency reimbursement agreements between customers and service providers and timely cost assessments and related adjustments for services provided or offered.

e. Provide technical reviews of finance offices in the DOL and its component agencies, and oversee component agency financial systems as defined in the FFMIA.

f. Appraise centralized and decentralized operations and organizations to determine more effective and cost-efficient methods of performing required financial functions.

g. Serve as the Department's Improper Payment Reduction Coordinator, with responsibilities including, but not limited to:

1. Coordinating the establishment of policies and procedures for assessing Departmental, component agency, and program risks of improper payments;

2. Coordinating Departmental, component agency, and program management actions to reduce improper payments. These duties include:

i. Assigning responsibility for specific areas of improper payment-related activities to appropriate component agency, program, or activity officials;

ii. Coordinating the development of detailed action plans to determine the nature and extent of possible improper payments for all DOL programs and activities spending Federal funds;

iii. Assisting component agency and program management in identifying cost-effective control activities to address identified risk areas;

iv. Assisting component agency and program management in establishing improper payment reduction goals or targets and measuring performance against those goals to determine progress made and areas needing additional action;

v. Developing procedures for working with OMB and the Congress to address barriers encountered that inhibit actions to reduce improper payments; and

vi. Coordinating periodic reporting, through publicly available documents, to the Secretary, OMB, and the Congress on the progress made in achieving improper payment reduction targets and future action plans for controlling improper payments; and

3. Providing a quarterly status report to the Deputy Secretary on

Departmental activities to identify and reduce improper payments.

C. In addition to the authority otherwise provided in this Order, the CFO—

1. Shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which are the property of the Department or which are available to the Department, and which relate to programs and operations with respect to which the CFO has responsibilities;

2. May request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Order from any Federal, State, or local governmental entity; and

3. To the extent and in such amounts as may be provided in advance by appropriations Acts, may—

a. Enter into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services; and

b. Make such payments as may be necessary to carry out the provisions of this Order.

#### **6. Assignment of Responsibilities to Other Individuals**

A. Unless modified by this Order, the heads of component Agencies retain previously delegated responsibilities and authority. In the context of the Department's financial management program, they are specifically charged with the responsibility to—

1. In consultation with the CFO and the CIO, define program information needs and develop strategies, systems, and capabilities to meet those needs.

2. Perform transaction and operational level financial functions in accordance with policies, requirements, and procedures established by the CFO.

3. Direct financial staffs and functions in their respective component agencies consistent with those policies and procedures established by the CFO.

4. Facilitate the CFO's oversight responsibilities with respect to financial operations and component agency program financial systems by providing and maintaining system documentation, audit trails, summary or detailed transaction data, and such other information as the CFO may require.

5. Fully solicit, consider, and cooperate with the CFO in the review of proposed appointment, promotion, and other personnel actions affecting financial management staff at the GS-15 level and above.

6. Manage grants, procurement, property, debt management/accounts receivable, and other management

systems for their respective component agencies, in a manner consistent with the CFO's responsibilities prescribed in this Order.

B. Agency Heads are delegated authority and assigned responsibility for:

1. Budget

a. In accordance with established policies and guidelines, developing agency budget proposals for the budget years for consideration during the internal decision process and for the Department's submission to OMB based on the Secretary's decisions.

b. Providing information in support of budget proposals, through the ASAM or identified designee, for the OMB submission and Budget Justifications for Congress.

c. Ensuring information provided in the agency budget is consistent with the Department's strategic plan and performance requirements.

d. Meeting with OMB staff and testifying before Congress to expand upon and answer questions pertaining to the Department's budget request in support of their respective agency programs.

C. The Inspector General—

1. Retains full responsibility for previously delegated budget and financial management activities pertaining to his or her own office, but will participate with the CFO in integrating such delegated assignments with the overall financial management program of the Department.

2. Will participate, where appropriate, in joint reviews with the CFO of selected financial management functions, operations, and systems.

3. Will participate with the CFO in the resolution of audit issues, findings, and recommendations, including those involved in the annual financial statements, consistent with its statutory responsibilities for managing an audit program.

D. The Solicitor of Labor is responsible for providing legal advice and assistance to the Secretary, Deputy Secretary, CFO, Working Capital Fund Committee established pursuant to paragraph 5 above, and all other Department of Labor officials who are assigned responsibilities for implementation of this Order, except as provided in Secretary's Order 4-2006 with respect to the Office of Inspector General.

#### **7. Communications**

In consonance with the assignments of responsibility above, the Office of the Chief Financial Officer shall ensure that the Agency Administrative Officers are apprised of communications to

component agency financial staff. Similarly, component agencies shall keep the Chief Financial Officer apprised of directives and other communications affecting their financial staff.

### 8. Reservations of Authority

A. Unless otherwise stated in this Order, the submission of reports and recommendations to the President and the Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary.

B. Except as provided in Paragraph (5)(D)(1), this Order does not provide to the CFO any access greater than permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of the Office of Inspector General.

### 9. Redelegations and Transfers of Authority

Unless provided otherwise in this or another Secretary's Order, the authority delegated in this Order may be redelegated or transferred, as permitted by law or regulation.

### 10. Effective Date

This Order is effective immediately.

Edward C. Hugler,

*Acting Secretary of Labor.*

[FR Doc. 2017-05183 Filed 3-14-17; 8:45 am]

BILLING CODE P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2006-0040]

#### SGS North America, Inc.: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of SGS North America, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before March 30, 2017.

**ADDRESSES:** Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA-2006-0040, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3508, Washington, DC 20210; telephone: (202) 693-2350 (TTY number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 10:00 a.m.-2:30 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2006-0040). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before March 30, 2017 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S.

Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210, or by fax to (202) 693-1644.

#### FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: [meilinger.francis@dol.gov](mailto:meilinger.francis@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; phone: (202) 693-2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that SGS North America, Inc. (SGS), is applying for expansion of its current recognition as an NRTL. SGS requests the addition of two test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary

finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including SGS, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

SGS currently has nine facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: SGS North America, Inc. 620 Old Peachtree Road, Suwanee, Georgia 30024. A complete list of SGS's scope of recognition is available at <https://www.osha.gov/dts/otpca/nrtl/sgs.html>.

## II. General Background on the Application

SGS submitted an application, dated May 28, 2014 (OSHA-2006-0040-0032), to expand its recognition to include two additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the appropriate test standards found in SGS's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 201 .....	Garage Equipment.
UL 844 .....	Electric Lighting Fixtures for Use in Hazardous Locations.

## III. Preliminary Findings on the Application

SGS submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file, and pertinent information, indicate that SGS can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these two test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of SGS's application.

OSHA welcomes public comment as to whether SGS meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments

should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N-3508, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at <http://www.regulations.gov> under Docket No. OSHA-2006-0040.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant SGS's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

## IV. Authority and Signature

Dorothy Dougherty, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on March 7, 2017.

**Dorothy Dougherty,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2017-05190 Filed 3-14-17; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2013-0030]

### International Association of Plumbing and Mechanical Officials EGS: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of International Association of Plumbing and Mechanical Officials EGS (IAPMO) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before March 30, 2017.

**ADDRESSES:** Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA-2013-0030, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3508, Washington, DC 20210; telephone: (202) 693-2350 (TTY number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 10: a.m.-3:00 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2013-0030). OSHA places comments and other materials, including any personal information, in the public docket

without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket*: To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period*: Submit requests for an extension of the comment period on or before March 30, 2017 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210, or by fax to (202) 693-1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries*: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information*: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; phone: (202) 693-2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that International Association of Plumbing and Mechanical Officials EGS (IAPMO) is applying for expansion of its current

recognition as an NRTL. IAPMO requests the addition of four test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including IAPMO, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

IAPMO currently has one facility (site) recognized by OSHA for product testing and certification, with its headquarters located at: International Association of Plumbing and Mechanical Officials EGS, 5001 East Philadelphia Street, Ontario, CA 91761. A complete list of IAPMO's scope of recognition is available at <https://www.osha.gov/dts/otpca/nrtl/iapmo.html>.

##### II. General Background on the Application

On January 12, 2016, IAPMO submitted an application to expand its recognition to include eight additional test standards (OSHA-2013-0030-0006). OSHA staff performed a detailed analysis of the application packed and reviewed other pertinent information.

OSHA also performed an on-site review of IAPMO's testing facility on March 1-2, 2016, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. IAPMO addressed these issues sufficiently, and OSHA staff preliminarily determined that OSHA should grant the application to expand IAPMO's recognition to include four of the eight requested standards.

Table 1 below lists the appropriate test standards found in IAPMO's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN IAPMO'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 875 .....	Standard for Electric Dry-Bath Heaters.
UL 979 .....	Standard for Water Treatment Appliances.
UL 1241 ...	Standard for Junction Boxes for Swimming Pool Luminaires.
UL 1261 ...	Standard for Electric Water Heaters for Pools and Tubs.

##### III. Preliminary Findings on the Application

IAPMO submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file, other pertinent documentation, and its detailed on-site assessment indicate that IAPMO can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these four test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of IAPMO's application.

OSHA welcomes public comment as to whether IAPMO meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office,



Room N-3508, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at <http://www.regulations.gov> under Docket No. OSHA-2013-0030.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant IAPMO's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

#### IV. Authority and Signature

Dorothy Dougherty, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on March 7, 2017.

**Dorothy Dougherty,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2017-05182 Filed 3-14-17; 8:45 am]

BILLING CODE 4510-26-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17-013)]

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

**DATES:** Thursday, March 30, 2017, 1:00-5:30 p.m.; and Friday, March 31, 2017, 9:00 a.m.-12:00 p.m. All times are Local Time.

**ADDRESSES:** NASA Headquarters, Room 9H40 (Program Review Center), 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358-1148.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll-free number 1-888-957-9873 or toll number 1-210-234-0004, numeric passcode: 4568996, followed by the # sign, on both days. If dialing in, please "mute" your phone. To join via WebEx, the link is <https://nasa.webex.com/>. The meeting number on March 30 is 995 106 625 and the password is MAR2017! (case sensitive). The meeting number on March 31 is 999 913 571 and the password is MAR2017\$ (case sensitive). The agenda for the meeting will include reports from the following:

- Aeronautics Committee
- Human Exploration and Operations Committee
- Institutional Committee
- Science Committee
- Technology, Innovation and Engineering Committee
- Ad Hoc Task Force on STEM Education

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, Public Law 109-13, any attendees with driver's licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the "List of the Acceptable Documents" on Form I-9]. Non-compliant states/territories are: Maine, Minnesota, Missouri, Montana, and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To

expedite admittance, attendees that are U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status 3 working days in advance. Information should be sent to Ms. Marla King via email at [marla.k.king@nasa.gov](mailto:marla.k.king@nasa.gov). It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2017-05171 Filed 3-14-17; 8:45 am]

BILLING CODE 7510-13-P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit modification request received and permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated and permits issued under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification and permit issued.

**DATES:** March 9, 2017-September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov).

**SUPPLEMENTARY INFORMATION:** The Foundation issued a permit (ACA 2017-019) to Jerry McDonald, Principal in Charge, Leidos Innovations Group, Antarctic Support Contract, on October 30, 2016. The issued permit allows the permit holder entry into five Antarctic Specially Protected Areas (ASPAs) in the Antarctic Peninsula region. The Antarctic Support Contractor's staff provides routine logistics support in the transport of science teams and supporting personnel, and in field camp put-in and take-out. Entry into an ASPA would occur only to support a science project for which a permit has been issued. Entry needs and requirements will be reviewed by ASC Environmental

Health and Safety Department prior to entry and reported per standard procedures.

Now the applicant proposes a permit modification to enter APSA No. 126 (Byers Peninsula, Livingston Island) for the purposes described in this permit. The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

The permit modification was issued on March 9, 2017.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Office of Polar Programs.*

[FR Doc. 2017-05078 Filed 3-14-17; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341; NRC-2017-0072]

### DTE Electric Company; Fermi, Unit 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. NFP-43, issued to DTE Electric Company (DTE), for operation of the Fermi, Unit 2. The proposed amendment revises technical specifications (TS) for emergency core cooling system (ECCS) instrumentation (TS 3.3.5.1) and reactor core isolation cooling (RCIC) system instrumentation (TS 3.3.5.2). The proposed changes add footnotes indicating that the injection functions of “Drywell Pressure—High” for high-pressure coolant injection (HPCI) and “Manual Initiation” for HPCI and RCIC are not required to be operable under low reactor pressure conditions.

**DATES:** Submit comments by April 14, 2017. Requests for a hearing or petition for leave to intervene must be filed by May 15, 2017.

**ADDRESSES:** Please refer to Docket ID NRC-2017-0072 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-2017-0072. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the project manager listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN-12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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

#### FOR FURTHER INFORMATION CONTACT:

Sujata Goetz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-8004, email: [Sujata.Goetz@NRC.gov](mailto:Sujata.Goetz@NRC.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Obtaining Information and Submitting Comments

###### A. Obtaining Information

Please refer to Docket ID NRC-2017-0072 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0072.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The “License Amendment Request to Revise Technical Specifications for Emergency Core Cooling System Instrumentation and Reactor Core Isolation Cooling System Instrumentation” is available in ADAMS under Accession No. ML17055A365.

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

##### B. Submitting Comments

Please include Docket ID NRC-2017-0072 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

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

##### II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. NFP-43, issued to DTE, for operation of the Fermi, Unit 2, located in Monroe County, Michigan. The proposed amendment requests modification of the TSs for emergency core cooling system (ECCS) instrumentation (TS 3.3.5.1) and reactor core isolation cooling (RCIC) system instrumentation (TS 3.3.5.2). The proposed changes add footnotes indicating that the injection functions of “Drywell Pressure—High” for HPCI and “Manual Initiation” for HPCI and RCIC are not required to be operable under low reactor pressure conditions.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2)

create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes involve the addition of clarifying footnotes to the HPCI [High Pressure Cooling Injection] and RCIC [Reactor Core Isolation Cooling] actuation instrumentation TS [Technical Specification] to reflect the as-built plant design and operability requirements of HPCI and RCIC instrumentation as described in the Fermi 2 UFSAR [Updated Final Safety Analysis Report].

HPCI is an initiator of the increase in reactor coolant inventory accident in UFSAR (Reference 7.1) Section 15.5.1. However, the accident assumes inadvertent manual startup of HPCI. The change being requested in this amendment is administrative in nature and does not make any changes to the HPCI system or procedures that would increase the probability for inadvertent manual startup of HPCI. RCIC is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not increased. In addition, the manual initiation of HPCI and RCIC are not credited to mitigate the consequences of design basis accidents or transients within the current Fermi 2 design and licensing basis and automatic actuation of the HPCI system on the high drywell pressure signal is not required for the HPCI to perform its system safety functions in mitigating the consequences of a LOCA initiating at low reactor pressure.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not alter the protection system design, create new failure modes, or change any modes of operation. The proposed changes do not involve a physical alteration of the plant, and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes have no adverse effect on plant operation. The plant response to the design basis accidents does not change.

The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

#### **Opportunity To Request a Hearing and Petition for Leave To Intervene**

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations

are accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the “Electronic Submissions (E-Filing)” section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 15, 2017. The petition must be filed in accordance with the filing instructions in the “Electronic Submissions (E-Filing)” section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her

position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

#### Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/>

[getting-started.html](#). Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the “Contact Us” link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention:

Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated February 23, 2017.

*Attorney for licensee:* Jon P. Christinidis, Expert Attorney—Regulatory, DTE Energy, 688 WCB, One Energy Plaza, Detroit, MI 48226.

*Acting NRC Branch Chief:* Kimberly J. Green.

Dated at Rockville, Maryland, this 7 day of March 2017.

For the Nuclear Regulatory Commission.

**Sujata Goetz,**

*Project Manager, Division of Operating Reactor Licensing, Office of New Reactor Regulation.*

[FR Doc. 2017-05120 Filed 3-14-17; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2016-0219]

### Information Collection: NRC Form 536, "Operator Licensing Examination Data"

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Renewal of existing information collection; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 536, "Operator Licensing Examination Data."

**DATES:** Submit comments by May 15, 2017. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0219. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David Cullison, Office of Information Services, Mail Stop: T-5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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

**FOR FURTHER INFORMATION CONTACT:** David Cullison, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [INFOCOLLECTS.Resource@NRC.GOV](mailto:INFOCOLLECTS.Resource@NRC.GOV).

#### SUPPLEMENTARY INFORMATION:

##### I. Obtaining Information and Submitting Comments

###### A. Obtaining Information

Please refer to Docket ID NRC-2016-0219 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0219. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2016-0219 on this Web site.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Number ML17005A103. The NRC Form 536, "Operator Licensing Examination Data," Draft Supporting Statement is available in ADAMS under Accession No. ML17005A114.

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

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [INFOCOLLECTS.Resource@NRC.GOV](mailto:INFOCOLLECTS.Resource@NRC.GOV).

###### B. Submitting Comments

Please include Docket ID NRC-2016-0219 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly

disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 536, "Operator Licensing Examination Data".
2. *OMB approval number:* 3150-0131.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 536.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:*

(a) All holders of operating licenses for nuclear power reactors under the provision of title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

(b) All holders of, or applicants for, a limited work authorization, early site permit, or combined licenses issued under 10 CFR part 52, "Licenses, Certifications and Approval for Nuclear Power Plants."

7. *The estimated number of annual responses:* 100.

8. *The estimated number of annual respondents:* 100.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 75 (0.75 hour per form × 100).

10. *Abstract:* The NRC is requesting renewal of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for initial operator licensing examinations; (2) the estimated dates of the examinations, and (3) if the examinations will be facility developed or NRC developed. This information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear power industry.

## III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: March 10, 2017.

For the Nuclear Regulatory Commission.

**David Cullison,**

*NRC Clearance Officer, Information Collection Branch, Office of the Chief Information Officer.*

[FR Doc. 2017-05108 Filed 3-14-17; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2015-0272]

### Assessment of Abnormal Radioactive Discharges in Ground Water to the Unrestricted Area at Nuclear Power Plant Sites

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing Regulatory Guide (RG) 4.25, "Assessment of Abnormal Radioactive Discharges in Ground Water to the Unrestricted Area at Nuclear Power Plant Sites," as a new guide (Revision 0). The guide describes an approach that the NRC staff considers acceptable for use in assessing abnormal discharges of radionuclides in ground water from the subsurface to the unrestricted area at commercial nuclear power plant sites.

**DATES:** Revision 0 to RG 4.25 is available on March 15, 2017.

**ADDRESSES:** Please refer to Docket ID NRC-2015-0272 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0272. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER**

**INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). Regulatory Guide 4.25 is available in ADAMS under Accession No. ML16253A333.

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

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Nicholson, telephone: 301-415-2471, email: [Thomas.Nicholson@nrc.gov](mailto:Thomas.Nicholson@nrc.gov); and Edward O'Donnell, telephone: 301-415-3317, email: [Edward.ODonnell@nrc.gov](mailto:Edward.ODonnell@nrc.gov). Both are staff members of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

#### I. Discussion

The NRC is issuing a new guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 0 of RG 4.25 was issued with a temporary identification of Draft Regulatory Guide, DG-4025. The guide is being issued to provide guidance to licensees on acceptable methods to determine the quantity of licensed material (*i.e.*, radionuclides) in abnormal discharge into the unrestricted area through the ground water discharge pathway at commercial nuclear power plants. American National Standards Institute/American Nuclear Society (ANSI/ANS)-2.17-2010 (R2016), "Evaluation of Subsurface Radionuclide Transport at Commercial Nuclear Power Plants," provides such methods. The

ANSI/ANS standard does not specify the use of any specific ground water flow and transport model. It provides a graded, risk-informed approach for evaluating the effects of subsurface radionuclide transport. The ground water flow and transport model developed by licensees should be a site-specific model, based on the complexity of geologic and hydrologic conditions, the types of radioactive materials and facility design, the types and effectiveness of engineered and natural barriers, and the proximity to surface water and ground water receptors. A facility that has less significant radionuclide source term, minor subsurface contamination, simple or well-understood hydrogeology, or limited effects on ground water resources generally requires less extensive site characterization, mathematical modeling, and performance-confirmation measures than a facility with significant residual radioactivity that has the potential to exceed national radiation protection standards. The appendix to RG 4.25 provides a simple ground water flow and transport model that is acceptable for use with simple hydrogeologic conditions and geometry such as steady-state saturated flow in homogeneous porous sand layers.

## II. Additional Information

The DG-4025 was published in the **Federal Register** on December 11, 2015 (80 FR 77028) for a 60-day public comment period. The public comment period closed on February 9, 2016. Public comments on DG-4025 and the staff responses to the public comments are available under ADAMS under Accession No. ML16253A330.

## III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

## IV. Backfitting and Issue Finality

Regulatory Guide 4.25 describes a method that the staff of the NRC considers acceptable for assessing abnormal, inadvertent radioactive releases which may result in discharges of contaminated ground water from the subsurface to the unrestricted area at commercial nuclear power plant sites. Issuance of this RG does not constitute backfitting as defined in section 50.109 of title 10 of the Code of Federal Regulations (10 CFR) (the Backfit Rule) and is not otherwise be inconsistent with the issue finality provisions in 10

CFR part 52. As discussed in the "Implementation" section of this RG, the NRC has no current intention to impose this guide on holders of current operating licenses or combined licenses.

This RG may be applied to applications for operating licenses, combined licenses, early site permits, and certified design rules docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in the Backfit Rule or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

Dated: March 10, 2017.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2017-05170 Filed 3-14-17; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL SERVICE

### Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

**DATES AND TIMES:** Tuesday, April 4, 2017, at 9:00 a.m.

**PLACE:** Washington, DC.

**STATUS:** Closed.

#### Matters To Be Considered

*Tuesday, April 4, 2017, at 9:00 a.m.*

1. Strategic Issues.
2. Financial Matters.
3. Personnel Matters and Compensation Issues.
4. Executive Session—Discussion of prior agenda items and Temporary Emergency Committee governance.

**GENERAL COUNSEL CERTIFICATION:** The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

**CONTACT PERSON FOR MORE INFORMATION:** Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-1000. Telephone: (202) 268-4800.

**Julie S. Moore.**

*Secretary.*

[FR Doc. 2017-05303 Filed 3-13-17; 4:15 pm]

**BILLING CODE 7710-12-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80191; File No. SR-FICC-2017-802]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Advance Notice To Implement the Capped Contingency Liquidity Facility in the Government Securities Division Rulebook

March 9, 2017.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934,<sup>2</sup> notice is hereby given that on March 1, 2017, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the advance notice SR-FICC-2017-802 ("Advance Notice") as described in Items I, II and III below, which Items have been prepared by FICC.<sup>3</sup> The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of amendments to FICC's Government Securities Division ("GSD") Rulebook (the "GSD Rules")<sup>4</sup> in order to include a committed liquidity resource (referred to as the "Capped Contingency Liquidity Facility" ("CCLF")). This facility would provide FICC with additional liquid financial resources to meet its cash settlement obligations in the event of a default of the largest family of affiliated Netting Members<sup>5</sup> (an "Affiliated Family") of GSD, as described in greater detail below.

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> On March 1, 2017, FICC filed this Advance Notice as a proposed rule change (SR-FICC-2017-002) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4, 17 CFR 240.19b-4. A copy of the proposed rule change is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

<sup>4</sup> GSD Rules, available at [www.dtcc.com/legal/rules-and-procedures.aspx](http://www.dtcc.com/legal/rules-and-procedures.aspx). Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the GSD Rules.

<sup>5</sup> As defined in the GSD Rules, the term "Netting Member" means a Member that is a Member of the Comparison System and the Netting System. *Id.*

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

### (A) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants or Others

#### The Proposal Addresses a Risk That Spans Beyond "Extreme but Plausible"

FICC has received feedback that the proposed rule change seeks to address a risk that is not reasonable given the current structure of the short-term tri-party repurchase market ("repo") in U.S. Government securities. Commenters have explained that a committed liquidity tool such as CCLF is unnecessary because the repo market remained robust during periods of historical market stress and would continue to adequately perform during the next crisis. They have also noted that U.S. Treasury securities continue to be considered a "risk-free" instrument.

While FICC believes that historical market behavior allows market participants to observe trends in the repo market, FICC also believes that the adoption of CCLF would better position FICC to protect itself and its Netting Members should the repurchase financing market materially contract in the future. Additionally, the proposed rule change would adhere to the Commission's Rule 17Ad-22(e)(7)(i) which requires FICC to maintain sufficient liquid resources to effect same-day settlement of payment obligations in the event of a default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.<sup>6</sup>

#### The Proposal May Impact Behavior of Smaller Market Participants

FICC has also received feedback that the proposed rule change would create concentration risk by forcing smaller Netting Members to clear through large financial institutions or exit the business. Commenters have explained that the funding obligation under the

CCLF proposal may significantly impact their available capital or operating profiles. As a result, the CCLF proposal may force certain Netting Members to (1) clear through other financial institutions or (2) terminate their membership with FICC and engage in bilateral arrangements.

FICC values each Netting Member and does not wish to force any Netting Member to clear through larger Netting Members or exit the business as a result of this proposed rule change. However, FICC believes that all Netting Members should endeavor to maintain suitable capital to meet FICC's enhanced participation requirements so that such Members do not have to clear through larger financial institutions or exit the business. Because each Netting Member is in the best position to monitor and manage the liquidity risks presented by its own activity, FICC believes that Netting Members should endeavor to manage their own liquidity. In an effort to enable each Netting Member to prepare for its liquidity funding obligation, FICC would provide a liquidity funding report to each Netting Member on a daily basis. This report would enable each Netting Member to prepare for its maximum funding obligations and alter its trading behavior should it desire to minimize the liquidity risk that it presents to FICC.

FICC is cognizant that Netting Members would need to incorporate their respective funding obligation into their internal liquidity plans and evaluate the appropriate course of action for their firm based on the economic impact that such Netting Members believe the funding obligation imposes. Given the added liquidity cost, as noted in the feedback, FICC would implement the proposed rule change 12 months after the later date of the Commission's no objection of this Advance Notice filing or its approval of FICC's related proposed rule change ("Rule Filing"). During this 12-month period, FICC would periodically provide Netting Members with estimates of their Individual Total Amounts. The deferred implementation and the estimate Individual Total Amounts are designed to give Netting Members the opportunity to assess the impact of their Individual Total Amount on their business profile and make any changes that such Netting Members deem necessary to lower their respective allocation.

As noted above, FICC understands that Netting Members must be able to plan for their funding obligations. At the same time, FICC also believes that it is critical that Netting Members understand the risks that their own

activity presents to FICC, and be prepared to monitor their own activity and alter their behavior in order to minimize the liquidity risk they present to FICC.

### (B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

#### Nature of the Proposed Change

FICC is proposing to amend the GSD Rules to include CCLF, which would be a rules-based committed liquidity facility designed to help ensure that FICC maintains sufficient liquid financial resources to meet its cash settlement obligations in the event of a default of the Affiliated Family to which FICC has the largest exposure in extreme but plausible market conditions, as required by Commission Rule 17Ad-22(b)(3).<sup>7</sup> This proposal is also designed to comply with newly adopted Commission Rule 17Ad-22(e)(7).<sup>8</sup> As of April 11, 2017, Commission Rule 17Ad-22(e)(7) will require FICC to have policies and procedures reasonably designed to effectively monitor, measure, and manage liquidity risk.

#### A. Background

FICC occupies an important role in the securities settlement system by interposing itself as a central counterparty between Netting Members that are counterparties to transactions cleared by GSD ("GSD Transactions"), thereby reducing the risk faced by Netting Members.<sup>9</sup> To manage the counterparty risk, FICC requires each Netting Member to deposit margin (referred to in the GSD Rules as "Required Fund Deposits") into the Clearing Fund, which constitutes the financial resources that FICC could use to cover potential losses resulting from a Netting Member default. In addition to collecting and maintaining financial resources to cover default losses, FICC also maintains liquid resources to satisfy its settlement obligations in the event of a Netting Member default. Upon regulatory approval and completion of a 12-month phase-in period, as described below, CCLF would become an additional liquid resource

<sup>7</sup> See 17 CFR 240.17Ad-22(b)(3).

<sup>8</sup> See 17 CFR 240.17Ad-22(e)(7).

<sup>9</sup> FICC operates two divisions—GSD and MBSD. GSD provides trade comparison, netting, risk management, settlement and central counterparty services for the U.S. government securities market, while MBSD provides the same services for the U.S. mortgage-backed securities market. Because GSD and MBSD are separate divisions of FICC, each division maintains its own rules, members, margin from their respective members, Clearing Fund, and liquid resources.

<sup>6</sup> See 17 CFR 240.17Ad-22(e)(7)(i).



available to FICC as part of its liquidity risk management framework for GSD.<sup>10</sup>

## B. Overview of the Proposal

CCLF would only be invoked if FICC declared a “CCLF Event,” that is, if FICC has ceased to act for a Netting Member in accordance to GSD Rule 22A<sup>11</sup> (referred to as a “default”) and subsequent to such default, FICC determines that it does not have the ability to obtain sufficient liquidity from GSD’s Clearing Fund, by entering into repurchase transactions using securities in the Clearing Fund or securities that were destined to the defaulting Netting Member, or through uncommitted bank loans with its Clearing Agent Banks. Upon declaration of a CCLF Event, each Netting Member may be called upon to enter into repurchase transactions with FICC (“CCLF Transactions”) up to a previously determined capped dollar amount, as described below.

### 1. Declaration of a CCLF Event

Following a default, FICC would first obtain liquidity through other available liquid resources, as described above. If and only if, FICC determines that these sources of liquidity are not able to generate sufficient cash to pay the non-defaulting Netting Members, FICC would declare a CCLF Event by issuing an Important Notice informing all Netting Members of FICC’s need to make such a declaration and enter into CCLF Transactions, as necessary.<sup>12</sup>

### 2. CCLF Transactions

During a CCLF Event, FICC would meet its liquidity need by initiating CCLF Transactions with non-defaulting Netting Members. Each CCLF Transaction would be governed by the terms of the September 1996 Securities Industry and Financial Markets Association Master Repurchase Agreement,<sup>13</sup> which would be

incorporated by reference into the GSD Rules as a master repurchase agreement between FICC as seller and each Netting Member as buyer with certain modifications as outlined in the GSD Rules (the “CCLF MRA”).

Each Netting Member would be obligated to enter into CCLF Transactions up to a capped dollar amount. FICC would first identify the non-defaulting Netting Members that are obligated to deliver securities destined for the defaulting Netting Member (“Direct Affected Members”) and FICC’s cash payment obligation to such Direct Affected Member that FICC would need to finance through CCLF to cover the defaulting Netting Member’s failure to deliver cash (the “Financing Amount”). FICC would notify each Direct Affected Member of its Financing Amount and whether such Direct Affected Member should deliver to FICC or suppress any securities that were destined for the defaulting Netting Member. FICC would then initiate CCLF Transactions with each Direct Affected Member for its purchase of the securities (the “Financed Securities”) that were destined for the defaulting Netting Member.<sup>14</sup> The aggregate purchase price of the CCLF Transactions with the Direct Affected Member would equal but never exceed its maximum funding obligation (the “Individual Total Amount”).<sup>15</sup>

If any Direct Affected Member’s Financing Amount exceeds its Individual Total Amount (the “Remaining Financing Amount”), FICC would advise (A) each other Direct Affected Member whose Financing Amount is less than its Individual Total Amount, and (B) each Netting Member that has not otherwise entered into CCLF Transactions with FICC (the “Indirect Affected Members,” and together with the Direct Affected Members, “Affected Members”) that FICC intends to initiate CCLF Transactions with them for the Remaining Financing Amount.

other than in the case of any Netting Member that is a registered investment company, then Annex VII would be applicable to such Member. At the time of this filing, there are no registered investment companies that are also GSD Netting Members. If a registered investment company would become a GSD Netting Member, then Annex VII would be applicable to such Member.

<sup>14</sup> It should be noted that FICC would have the authority to initiate CCLF Transactions in respect of any securities that are in the Direct Affected Member’s portfolio which are bound to the defaulting Netting Member.

<sup>15</sup> As described in Section C herein, a Netting Member’s Individual Total Amount represents such Member’s maximum liquidity funding obligation. The Individual Total Amount would be based on a Netting Member’s observed peak historical liquidity need.

The order in which FICC would enter into CCLF Transactions for the Remaining Financing Amount would be based upon the Affected Members that have the most funding available within their Individual Total Amounts. No Affected Member would be obligated to enter into CCLF Transactions greater than its Individual Total Amount.

During a CCLF Event, FICC would engage its investment advisor subject to the approval of its Board and seek to minimize liquidation losses on the Financed Securities through hedging, strategic dispositions, or other investment transactions as determined by FICC under relevant market conditions. Once FICC completes the liquidation of the underlying securities by selling them to a new buyer, FICC would instruct the Affected Member to close the repo trade and deliver the Financed Securities to FICC to complete settlement on the contractual settlement date of the liquidating trade. FICC would endeavor to unwind the CCLF Transactions based on the order that it enters into the Liquidating Trades. Each CCLF Transaction would remain open until the earlier of (x) such time that FICC has liquidated the Affected Member’s Financed Securities, (y) such time that FICC has obtained liquidity through its available liquid resources or (z) 30 or 60 calendar days after entry into the CCLF Transaction for U.S. government bonds and mortgage-backed securities, respectively.

The original GSD Transactions, which FICC is obligated to settle, are independent from the CCLF Transactions. The proposed rule change would clarify that, under the original GSD Transaction, FICC’s obligation to pay cash to a Direct Affected Member, and the Direct Affected Member’s obligation to deliver securities, would be deemed satisfied by entry into CCLF Transactions, and that such settlement would be final.

### C. CCLF Sizing and Allocation

As noted above, FICC would only enter into CCLF Transactions with a Netting Member in an amount that is up to such Netting Member’s maximum funding obligation. This amount would be based on each Netting Member’s observed peak historical liquidity need. Initially, FICC would calculate the Netting Member’s peak historical liquidity need based on a six-month look-back period.

FICC’s liquidity need during a CCLF Event would be determined by the cash settlement obligations presented by the default of a Netting Member and an Affiliated Family. FICC would include an additional amount (*i.e.*, a buffer) to

<sup>10</sup> In 2012, FICC amended the MBSR Rules to create a CCLF for managing MBSR’s liquidity risk. FICC is proposing to amend the GSD Rules to create a CCLF for managing GSD’s liquidity risk. Because this CCLF is for GSD only, the description of the proposal should be understood within the framework of the GSD Rules. See Securities Exchange Act Release No. 34–66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (SR–FICC–2008–01); MBSR Rule 17, MBSR Rules, available at [www.dtcc.com/legal/rules-and-procedures.aspx](http://www.dtcc.com/legal/rules-and-procedures.aspx).

<sup>11</sup> GSD Rules, *supra* note 4.

<sup>12</sup> Such Important Notice would also advise Netting Members to review their most recent liquidity funding reports to determine their respective maximum funding obligations.

<sup>13</sup> The September 1996 Securities Industry and Financial Markets Association Master Repurchase Agreement (the “SIFMA MRA”) is available at <http://www.sifma.org/services/standard-forms-and-documentation/mra,-gmra,-msla-and-msftas/>. The SIFMA MRA would be incorporated by reference into the GSD Rules without referenced annexes,

account for changes in Netting Members' cash settlement obligations that may not be observed during the six-month look-back period during which CCLF would be sized. The buffer would also account for the possibility that the defaulting Netting Member is the largest CCLF contributor. FICC would allocate its observed liquidity need among all Netting Members based on their historical settlement activity. Netting Members that present the highest cash settlement obligations would be required to maintain higher funding obligations.

Listed below are the steps that FICC would take to size and allocate each Netting Member's CCLF requirement.

#### Step 1: CCLF Sizing

##### Historical Cover 1 Liquidity Requirement

FICC's historical liquidity need for the six-month look-back period would be an amount equal to the dollar amount of the largest sum of an Affiliated Family's obligation to receive GSD eligible securities plus the net dollar amount of its Funds-Only Settlement Amount<sup>16</sup> (collectively, the "Historical Cover 1 Liquidity Requirement"). FICC believes that it is appropriate to calculate the Historical Cover 1 Liquidity Requirement in this manner because the default of the largest Affiliated Family would generate the highest liquidity need for FICC.

##### Liquidity Buffer

The Historical Cover 1 Liquidity Requirement would be based on the largest Affiliated Family's activity during a six-month look-back period. However, FICC is cognizant that the Historical Cover 1 Liquidity Requirement would not account for changes in a Netting Member's current trading behavior, which may result in a liquidity need that is greater than the Historical Cover 1 Liquidity Requirement. As a result, FICC proposes to add an additional amount to the Historical Cover 1 Liquidity Requirement as a buffer (the "Liquidity Buffer") to arrive at FICC's anticipated total liquidity need for GSD during a CCLF Event.

<sup>16</sup> The Funds-Only Settlement Amount reflects the amount that FICC collects and passes to the contra-side once FICC marks the securities in a Netting Member's portfolio to the current market value. This amount is the difference between the contract value vs. the current market value of a Netting Member's GSD portfolio. FICC would consider this amount when calculating the Historical Cover 1 Liquidity Requirement because in the event that an Affiliated Family defaults, the Funds-Only Settlement Amount would also reflect the cash obligation to non-defaulting Netting Members.

Under the proposed rule change, the Liquidity Buffer would be 20% to 30% of the Historical Cover 1 Liquidity Requirement, subject to a minimum amount of \$15 billion. FICC believes that 20% to 30% of the Historical Cover 1 Liquidity Requirement is appropriate based on its analysis of the calculated coefficient of variation<sup>17</sup> with respect to Affiliated Families' liquidity needs throughout 2015 and 2016.<sup>18</sup> FICC also believes that the \$15 billion minimum dollar amount is necessary to cover changes in a Netting Member's trading activity that could exceed the amount that is implied by the calculated coefficient of variation.

FICC would have the discretion to adjust the Liquidity Buffer based on its analysis of the stability of the Historical Cover 1 Liquidity Requirement over the look-back periods of 3-, 6-, 12-, and 24-months. Should FICC observe changes in the stability of the Historical Cover 1 Liquidity Requirements, FICC would have the discretion to increase the six-month look-back period to help ensure that the calculation of its liquidity need appropriately accounts for variability in the Historical Cover 1 Liquidity Requirement. This would help FICC to ensure that its liquidity resources are sufficient under a wide range of potential market scenarios that may lead to a change in Netting Member behavior. FICC would also analyze the trading behavior of Netting Members that present larger liquidity needs than the majority of the Netting Members (as described below).

##### Aggregate Total Amount

FICC's anticipated total liquidity need during a CCLF Event (*i.e.*, the sum of the Historical Cover 1 Liquidity Requirement plus the Liquidity Buffer) would be referred to as the "Aggregate Total Amount."

<sup>17</sup> The "coefficient of variation" is a statistical measurement that is calculated as the standard deviation divided by the mean. It is a typical approach used to compare variability across different data sets.

<sup>18</sup> In connection with this proposed rule change, the coefficient of variation would be used to set the Liquidity Buffer by quantifying the variance of each Affiliated Family's daily liquidity need. During this period, FICC observed that the coefficient of variation ranged from an average of 15%–19% for Affiliated Families with liquidity needs above \$50 billion, and an average of 18%–21% for Affiliated Families with liquidity needs above \$35 billion. Based on the calculated coefficient of variation, FICC believes that an amount equaling 20% to 30% of the Historical Cover 1 Liquidity Requirement subject to a minimum of \$15 billion would be an appropriate Liquidity Buffer.

##### Step 2: FICC's Allocation of the Aggregate Total Amount Among Netting Members

##### (A) FICC's Allocation of the Aggregate Regular Amount Among Netting Members

After FICC determines the Aggregate Total Amount, which initially would be set to the Historical Cover 1 Liquidity Requirement plus the greater of 20% of the Historical Cover 1 Liquidity Requirement or \$15 billion. FICC would allocate the Aggregate Total Amount among Netting Members in order to arrive at each Netting Member's Individual Total Amount. FICC would take a two-tiered approach in its allocation of the Aggregate Total Amount. First, FICC would determine the portion of the Aggregate Total Amount that should be allocated among all Netting Members ("Aggregate Regular Amount"). Then, FICC would allocate the remainder of the Aggregate Total Amount (the "Aggregate Supplemental Amount") among Netting Members that incur liquidity needs above the Aggregate Regular Amount within the six-month look-back period. FICC believes that this two-tiered approach reflects FICC's consideration of fairness, transparency and the burdens of the funding obligations on each Netting Member's management of its own liquidity.

Under the proposed rule change, FICC would set the Aggregate Regular Amount at \$15 billion. FICC believes that this amount is appropriate because FICC observed that from 2015 to 2016, the average Netting Member's liquidity need was approximately \$7 billion, with a majority of Netting Members' liquidity needs not exceeding an amount of \$15 billion.<sup>19</sup> Based on that analysis, FICC believes that the Aggregate Regular Amount should capture the liquidity needs of a majority of the Netting Members. Thus, FICC believes that setting the Aggregate Regular Amount at \$15 billion is appropriate.

Under the proposal, the Aggregate Regular Amount would be allocated among all Netting Members, but Netting Members with larger Receive Obligations would be required to contribute a larger amount. FICC believes that this approach is appropriate because a defaulting Netting Member's Receive Obligations are the primary cash settlement obligations that

<sup>19</sup> From 2015 to 2016, 59% of all Netting Members presented average liquidity needs between \$0 to \$5 billion, 78% of all Netting Members presented average liquidity needs between \$0 and \$10 billion, and 85% of all Netting Members presented average liquidity needs between \$0 and \$15 billion.

FICC would have to satisfy as a result of the default of a Netting Member or an Affiliated Family. However, FICC also believes that some portion of the Aggregate Regular Amount should be allocated based on Netting Members' aggregate Deliver Obligations since FICC guarantees both sides of a GSD Transaction and all Netting Members benefit from FICC's risk mitigation. As a result, FICC is proposing to allocate the Aggregate Regular Amount based on a scaling factor. Given that the Aggregate Regular Amount is sized at \$15 billion and covers approximately 80% of Netting Members' observed liquidity needs, FICC proposes to set the scaling factor in the range of 65%–85% to the value of Netting Members' Receive Obligations and set the scaling factor in the range of 15%–35% to the value of Netting Members' Deliver Obligations.

Initially, FICC would assign a 20% weighting percentage to a Netting Member's aggregate Deliver Obligations (the "Deliver Scaling Factor") and the remaining percentage difference, 80% in this case, to a Netting Member's aggregate Receive Obligations ("Receive Scaling Factor"). FICC would have the discretion to adjust these scaling factors based on a quarterly analysis that would, in part, assess Netting Members' observed liquidity needs that are at or below \$15 billion. This assessment would ensure that the Aggregate Regular Amount would be appropriately allocated across all Netting Members.

FICC would calculate a Netting Member's portion of the Aggregate Regular Amount (its "Individual Regular Amount") by adding (a) and (b) below.

(a) FICC would (x) divide the absolute value of a Netting Member's peak Receive Obligations by the absolute

value of the sum of all Netting Members' peak Receive Obligations, then (y) multiply such resulting value by the Aggregate Regular Amount, then (z) multiply the resulting value by the Receive Scaling Factor (which would initially be 80%).

(b) FICC would (x) divide the absolute value of a Netting Member's peak Deliver Obligations by the absolute value of the sum of all Netting Members' peak Deliver Obligations, then (y) multiply such resulting value by the Aggregate Regular Amount, then (z) multiply the resulting value by the Deliver Scaling Factor (which would initially be 20%).

(B) FICC's Allocation of the Aggregate Supplemental Amount Among Netting Members

The remainder of the Aggregate Total Amount (*i.e.*, the Aggregate Supplemental Amount) would be allocated among Netting Members that present liquidity needs in excess of the Aggregate Regular Amount.

FICC would allocate the Aggregate Supplemental Amount across liquidity tiers ("Liquidity Tiers"). The allocation to each Liquidity Tier would be based on how many times (*i.e.*, "observations") the Netting Members' daily liquidity needs have reached the respective Liquidity Tier. This assignment would result in a larger proportion of the Aggregate Supplemental Amount being borne by those Netting Members who present the highest liquidity needs.

FICC would set the Liquidity Tiers in \$5 billion increments. FICC believes that this increment would appropriately distinguish Netting Members that present the highest liquidity needs on a frequent basis and allocate more of the Individual Supplemental Amount to

Netting Members in the top Liquidity Tiers. Increments set to an amount greater than \$5 billion would provide FICC with less ability to allocate the Aggregate Supplemental Amount to Netting Members with the highest liquidity needs.<sup>20</sup>

FICC would have the discretion to reduce any one or all of the Liquidity Tiers to \$2.5 billion if FICC determines that the majority of the Netting Members' liquidity needs in such Liquidity Tiers are above or below the midpoint of the Liquidity Tier.

Once the Liquidity Tiers are set, FICC would first allocate the Aggregate Supplemental Amount to each Liquidity Tier in proportion to the total number of observations across all Liquidity Tiers. Next, FICC would allocate the Individual Supplemental Amount to each Netting Member in accordance with each Netting Member's liquidity needs within each Liquidity Tier. This allocation would be based on such Netting Member's number of observations within each Liquidity Tier in proportion to the aggregate of all Netting Member's observations within a particular Liquidity Tier. The sum of a Netting Member's allocation across all Liquidity Tiers would be such Netting Member's Individual Supplemental Amount.

FICC would sum each Netting Member's Individual Regular Amount and its Individual Supplemental Amount (if any) to arrive at such Netting Member's Individual Total Amount.

CCLF Parameters as of January 2017

Table 1 includes the actual values FICC would set for each step described above, as of January 1, 2017.<sup>21</sup> These values would be reset every six months.

Table 1:  
\$ billion

CCLF sizing: Components of the aggregate total amount

Step	Component	Size
1	Historical Cover 1 Liquidity Requirement	\$58.84
	Liquidity Buffer (20% of the Historical Cover 1 Liquidity Requirement subject to a minimum of \$15B).	15.00
2	Aggregate Total Amount	73.84
2a	Aggregate Regular Amount	15.00
2b	Receive Scaling Factor (80% of the Aggregate Regular Amount)	\$12.00
	Deliver Scaling Factor (20% of the Aggregate Regular Amount)	3.00
2c	Aggregate Supplemental Amount	58.84
	Liquidity Tier 1 (\$15–\$20B)	21.04
	Liquidity Tier 2 (\$20–\$25B)	14.29
	Liquidity Tier 3 (\$25–\$30B)	10.32

<sup>20</sup>For example, assume that there are two Netting Members and each Netting Member has 125 liquidity observations each across a six-month period. Member A has 125 observations within the \$15–\$20 billion Liquidity Tier and Member B has 125 observations equally dispersed between the

\$15–\$20 billion and \$20–\$25 billion Liquidity Tiers. Under the proposed rule change, Member B would have a higher Individual Supplemental Amount than Member A, because Member B would be allocated a pro-rata share of the Aggregate

Supplemental Amount for the \$20–\$25 billion Liquidity Tier.

<sup>21</sup>As noted above, FICC would use a six-month look-back period. On January 1, 2017, the look-back period would be July 1, 2016 through December 31, 2016.

Step			
	Liquidity Tier 4 (\$30–\$35B) .....	.....	6.14
	Liquidity Tier 5 (\$35–\$40B) .....	.....	3.32
	Liquidity Tier 6 (\$40–\$45B) .....	.....	1.86
	Liquidity Tier 7 (\$45–\$50B) .....	.....	1.10
	Liquidity Tier 8 (\$50–\$55B) .....	.....	0.62
	Liquidity Tier 9 (\$55–\$60B) .....	.....	0.14

The example in Table 2 reflects the allocation of the CCLF size for a hypothetical Netting Member. This

example is based on a six-month look-back period of July 1, 2016 through December 31, 2016.

Table 2:  
\$ billion

CCLF sizing: Components of the aggregate total amount				Allocation of aggregate total amount hypothetical member A	
Step	Component	Size		Member A's percentage (Y)	Member A's allocation of the component (Z) = (X) * (Y)
			(X)		
2a .....	Aggregate Regular Amount .....	\$15.00	.....	.....	.....
2b .....	Receive Scaling Factor (80% of the Aggregate Regular Amount).	.....	\$12.00	5.0	\$0.60
	Deliver Scaling Factor (20% of the Aggregate Regular Amount).		\$3.00	2.5	0.08
				Member A's Individual Regular Amount	0.68
2c .....	Aggregate Supplemental Amount .....	58.84	.....	.....	.....
	Liquidity Tier 1 (\$15–\$20B) .....	.....	21.04	8.5	1.79
	Liquidity Tier 2 (\$20–\$25B) .....	.....	14.29	13.0	1.86
	Liquidity Tier 3 (\$25–\$30B) .....	.....	10.32	16.0	1.65
	Liquidity Tier 4 (\$30–\$35B) .....	.....	6.14	20.0	1.23
	Liquidity Tier 5 (\$35–\$40B) .....	.....	3.32	35.0	1.16
	Liquidity Tier 6 (\$40–\$45B) .....	.....	1.86	52.0	0.97
	Liquidity Tier 7 (\$45–\$50B) .....	.....	1.10	65.0	0.72
	Liquidity Tier 8 (\$50–\$55B) .....	.....	0.62	80.0	0.50
	Liquidity Tier 9 (\$55–\$60B) .....	.....	0.14	100.0	0.14
				Member A's Individual Supplemental Amount	10.01
				Member A's Individual Total Amount	10.68

D. FICC's Ongoing Assessment of the Sufficiency of CCLF

As described above, the Aggregate Total Amount and each Netting Member's Individual Total Amount (*i.e.*, each Netting Member's allocation of the Aggregate Total Amount) would initially be calculated using a six-month look-back period that FICC would reset every six months ("reset period"). On a quarterly basis, FICC's Liquidity Product Risk Unit<sup>22</sup> would assess the following parameters that it uses to calculate the Aggregate Total Amount

and may recommend to the Board's Risk Committee changes to such parameters:

- Peak daily liquidity need for the largest Affiliated Family;
- the Liquidity Buffer;
- the Aggregate Regular Amount;
- the Aggregate Supplemental Amount;
- the Deliver Scaling Factor and the Receive Scaling Factor used to allocate the Aggregate Regular Amount;
- the increments for the Liquidity Tiers; and
- the length of the look-back period and the reset period for the Aggregate Total Amount.

In the event that any changes to the above-referenced parameters result in an increase in a Netting Member's

Individual Total Amount, such increase would be effective as of the next reset.

Additionally, on a daily basis, FICC would examine the Aggregate Total Amount to ensure that such amount is sufficient to satisfy FICC's liquidity needs. If FICC determines that the Aggregate Total Amount is insufficient to satisfy its liquidity needs, FICC may modify the length of the look-back or reset periods or otherwise increase the Aggregate Total Amount.

Any increase in the Aggregate Total Amount resulting from the Liquidity Product Risk Unit's quarterly assessments or FICC's daily monitoring would be subject to the approvals, as set forth in Table 3 below.

Table 3:

<sup>22</sup> FICC's Liquidity Product Risk Unit is responsible for assessing the liquidity needs of GSD and MBSD.

Increase in aggregate total amount	Required approval level
≤ \$500 mil .....	Managing Director, Financial Risk Management.
\$501 mil to \$1.0 B .....	Group Chief Risk Officer.
\$1.1 B to \$1.9 B .....	Management Risk Committee, or designee.
≥ \$2.0 B .....	Chair of the Board Risk Committee, or designee.

If FICC increases a Netting Member’s Individual Total Amount as a result of its daily monitoring, such increase will not be effective until ten (10) Business Days after FICC provides an Important Notice regarding the increase.

If FICC determines that its liquidity needs may be satisfied with a lower Aggregate Total Amount, a reduction in the Aggregate Total Amount would be reflected at the conclusion of the reset period.

**E. Implementation of the Proposed Rule Change and Required Attestation From Each Netting Member**

The CCLF proposal would become operative 12 months after the later date of the Commission’s no objection of this Advance Notice and its approval of the Rule Filing. During this 12-month period, FICC would periodically provide each Netting Member with estimated Individual Total Amounts. The delayed implementation and the estimated Individual Total Amounts are designed to give Netting Members the opportunity to assess the impact that the CCLF proposal would have on their business profile.

Prior to the effective date, FICC would add a legend to the GSD Rules to state that the specified changes to the GSD Rules are approved but not yet operative and to provide the date such approved changes would become operative. The legend would also include the file numbers of this Advance Notice and the approved Rule Filing and would state that once operative, the legend would automatically be removed from the GSD Rules.

As of the implementation date and annually thereafter, FICC would require that each Netting Member attest that its Individual Total Amount has been incorporated into its liquidity plans.<sup>23</sup> This required attestation would be from authorized officers of the Netting Member or otherwise in form and substance satisfactory to FICC making the following certification: (1) Such officers have read and understand the GSD Rules, including the CCLF rules, (2) the Netting Member’s Individual

Total Amount has been incorporated into the Netting Member’s liquidity planning, (3) the Netting Member acknowledges and agrees that its Individual Total Amount may be changed at the conclusion of any reset period or otherwise upon ten (10) Business Days’ Notice, (4) the Netting Member will incorporate any changes to its Individual Total Amount into its liquidity planning, and (5) the Netting Member will continually reassess its liquidity plans and related operational plans, including in the event of any changes to such Netting Member’s Individual Total Amount, to ensure such Netting Member’s ability to meet its Individual Total Amount. FICC may require any Netting Member to provide FICC with a new certification in the foregoing form at any time, including upon a change to a Netting Member’s Individual Total Amount or in the event that a Netting Member undergoes a change in its corporate structure.

In addition to the above, on a quarterly basis, FICC’s Counterparty Credit Risk Management group would conduct due diligence to assess each Netting Member’s ability to meet its Individual Total Amount. This due diligence would include a review of all information that the Netting Member has provided FICC in connection with its ongoing reporting obligations pursuant to the GSD Rules and a review of other publicly available information. Additionally, FICC would test its operational procedures for invoking a CCLF Event. Pursuant to GSD Rule 3 Section 6, Netting Members would be required to participate in such tests. If a Netting Member fails to participate in such testing when required by FICC, FICC may take disciplinary measures as set forth in GSD Rule 3 Section 7.

**F. FICC’s Commitment to Enhanced Transparency**

FICC understands that each Netting Member must be able to evaluate the risks of its membership and plan for its funding obligations. Additionally, FICC believes that it is critical that each Netting Member understands the risks that its activity presents to FICC, and that each Netting Member should be prepared to monitor its activity and alter its behavior in order to minimize the liquidity risk that it presents to FICC. Accordingly, on each Business Day,

FICC would make a liquidity funding report available to each Netting Member that would include the following:

1. The Netting Member’s Individual Total Amount, Individual Regular Amount and, if applicable, its Individual Supplemental Amount;
2. FICC’s Aggregate Total Amount, Aggregate Regular Amount and Aggregate Supplemental Amount; and
3. FICC’s regulatory liquidity requirements as of the prior Business Day.

The liquidity funding report would be provided for informational purposes only. Pursuant to the proposed rule change, upon a CCLF Event, each Netting Member would be required to enter into CCLF Transactions having an aggregate purchase price up to its Individual Total Amount as calculated by FICC.

**G. Proposed Changes to the GSD Rules GSD Rule 1—Definitions**

In order to help effectuate the proposed changes, FICC proposes to add the following defined terms to the GSD Rule 1: Affected Member; Aggregate Regular Amount; Aggregate Supplemental Amount; Aggregate Total Amount; CCLF Event; CCLF MRA; CCLF MRA Termination Date; CCLF Transaction; Deliver Scaling Factor; Direct Affected Member; Financed Securities; Financing Amount; Historical Cover 1 Liquidity Requirement; Indirect Affected Member; Individual Regular Amount; Individual Supplemental Amount; Individual Total Amount; Liquidating Trade; Liquidity Buffer; Liquidity Need; Liquidity Percentage; Liquidity Tier; Look-Back Period; Observation; Receive Scaling Factor; Relative Inter-Tier Frequency; Relative Intra-Tier Frequency; Relevant Securities; Remaining Financing Amount; Required Attestation; and SIFMA MRA.

**Rule 22A—Procedures for When the Corporation Ceases To Act**

FICC is proposing to amend Rule 22A to include a new section in this Rule. This new section would be entitled “Section 2a.” Proposed Section 2a would incorporate the CCLF MRA into the GSD Rules subject to the amendments proposed therein. In addition, the proposed section would include (1) the notification process that

<sup>23</sup> The attestation would not refer to the actual dollar amount that has been allocated as the Individual Total Amount. Each Netting Member’s Individual Total Amount would be made available to such Member via GSD’s access controlled portal Web site.

would occur once FICC invokes a CCLF Event; (2) the CCLF Transactions that FICC would enter into once it invokes a CCLF Event; (3) disclosure of each relevant CCLF sizing component that FICC would assess; (4) the calculation that FICC would use to determine each Netting Member's Individual Regular Amount and Individual Supplemental Amount, if applicable; and (5) a description of the officers' certificate that each Netting Member would be required to provide certifying that, among other things, its Individual Total Amount has been incorporated into its liquidity plans.

#### Anticipated Effect on and Management of Risks

FICC believes that the proposed change to amend the GSD Rules to include the CCLF, a committed liquidity resource in the event of a Netting Member default, would provide FICC with sufficient committed liquid financial resources to meet the cash settlement obligations of a defaulting Netting Member.

FICC's proposed change comprises a rules-based committed liquidity facility that is designed to help ensure that FICC maintains sufficient liquid financial resources to meet its cash settlement obligations of a Netting Member. This change would affect FICC's management of risk because it would provide additional liquidity resources if FICC could not obtain sufficient liquidity from GSD's Clearing Fund, by entering into repurchase transactions using securities in the Clearing Fund or securities that were destined to the defaulting Netting Member, or through uncommitted bank loans with its Clearing Agent Banks. Thus, the proposed change would enhance FICC's risk management capabilities because it provide committed liquidity resources from its Netting Members based on each Netting Member's observed peak historical liquidity need.

FICC has also managed the effect of the overall proposal by conducting extensive outreach with Netting Members regarding the proposed changes, educating such Members on reasons for these proposed changes, and explaining the importance of this proposal to FICC's overall risk management functions. FICC has invited all Netting Members to customer forums in an effort to provide transparency regarding the changes and the expected impact across the membership, and has provided each Netting Member with an individual impact study. In addition, FICC's Financial Risk Management team and Relationship Management team have been available to answer all

questions. Such communication gives Netting Members the opportunity to manage any impact to their own risk profile.

In an effort to help Netting Members further manage the effect of this proposal, FICC would delay the implementation of the CCLF proposal as described above. During the 12-month implementation period, FICC would periodically provide each Netting Member with estimated Individual Total Amounts. The delayed implementation and the estimated Individual Total Amounts are designed to give Netting Members the opportunity to assess the impact that the CCLF proposal would have on their business profile.

#### Consistency With the Clearing Supervision Act

The proposed changes, which have been described in detail above, would be consistent with Section 805(b) of the Clearing Supervision Act.<sup>24</sup> The objectives and principles of Section 805(b) include, among other things, the promotion of robust risk management.<sup>25</sup> FICC believes the proposed changes would promote this objective because the CCLF proposal would give FICC access to additional liquidity in the event that its other liquidity resources are insufficient upon the default of a Netting Member. Thus the proposed change would help ensure that FICC has sufficient funds to meet its cash settlement obligations to its non-defaulting Netting Members. As a result, FICC believes that the proposed changes are also consistent with Commission Rules 17Ad-22(b)(3), (d)(9) and (e)(7).<sup>26</sup>

Commission Rule 17Ad-22(b)(3) requires a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.<sup>27</sup> As described above, FICC would size CCLF based on the peak liquidity need that would be generated by the default of its largest participant family (its Historical Cover 1 Liquidity Requirement), plus an additional Liquidity Buffer to account for unexpected Netting Member trading behavior that could increase FICC's Historical Cover 1 Liquidity Requirement or a situation in which its

largest Netting Member defaults and cannot contribute to the CCLF. Thus, FICC believes that the proposal would be consistent with Commission Rule 17Ad-22(b)(3) because it is designed to provide FICC with sufficient financial resources to withstand a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.

Commission Rule 17Ad-22(d)(9) requires a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services.<sup>28</sup> As described above, on each Business Day, FICC would make a liquidity funding report available to each Netting Member. This report would include (1) the Netting Member's Individual Total Amount, Individual Regular Amount and, to the extent applicable, its Individual Supplemental Amount; (2) FICC's Aggregate Total Amount, Aggregate Regular Amount and Aggregate Supplemental Amount; and (3) FICC's regulatory liquidity requirements as of the prior Business Day. This report would enable each Netting Member to prepare for its maximum funding obligations and alter its trading behavior should it desire to minimize the liquidity risk it presents to FICC. FICC believes that the proposed rule change would be consistent with Commission Rule 17Ad-22(d)(9) because the liquidity funding report would provide Netting Members with sufficient information to identify and evaluate the risks and costs associated with using the services that FICC provides through GSD.

Commission Rule 17Ad-22(e)(7) which was recently adopted by the Commission, will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by FICC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.<sup>29</sup>

Commission Rule 17Ad-22(e)(7)(i) will require FICC to maintain sufficient liquid resources to effect same-day settlement of payment obligations in the event of a default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but

<sup>24</sup> See 12 U.S.C. 5464(b).

<sup>25</sup> *Id.*

<sup>26</sup> See 17 CFR 240.17Ad-22(b)(3), (b)(9) and (e)(7).

<sup>27</sup> See 17 CFR 240.17Ad-22(b)(3).

<sup>28</sup> See 17 CFR 240.17Ad-22(d)(9).

<sup>29</sup> See 17 CFR 240.17Ad-22(e)(7).

plausible market conditions.<sup>30</sup> FICC believes that the proposal would be consistent with Commission Rule 17Ad-22(e)(7)(i) because CCLF would be sized based on the peak liquidity need that would be generated by the default of its largest participant family (its Historical Cover 1 Liquidity Requirement), plus an additional Liquidity Buffer, which would help FICC maintain sufficient liquid resources to settle the cash obligations of an Affiliated Family that would generate the largest aggregate payment obligation for FICC in extreme but plausible market conditions.

Commission Rule 17Ad-22(e)(7)(ii) will require FICC to hold qualifying liquid resources sufficient to satisfy payment obligations owed to clearing members.<sup>31</sup> FICC believes that the proposed rule change would be consistent with Commission Rule 17Ad-22(e)(7)(ii) because the CCLF MRA would be a committed arrangement and all CCLF Transactions entered into pursuant to the CCLF MRA would be readily available and the related assets would be convertible into cash in order to settle cash obligations owed to non-defaulting Netting Members.

Commission Rule 17Ad-22(e)(7)(iv) will require FICC to undertake due diligence that confirms that it has a reasonable basis to believe each of its liquidity providers has: (a) Sufficient information to understand and manage the liquidity provider's liquidity risks; and (b) the capacity to perform as required under its commitments to provide liquidity.<sup>32</sup> As described above, on a quarterly basis, FICC would conduct due diligence to assess each Netting Member's ability to meet its Individual Total Amount. This due diligence would include a review of all information that the Netting Member has provided FICC in connection with its ongoing reporting requirements pursuant to the GSD Rules as well as a review of other publicly available information. As a result, FICC believes that its due diligence of Netting Members would be consistent with Commission Rule 17Ad-22(e)(7)(iv).

Additionally, Commission Rule 17Ad-22(e)(7)(v) will require FICC to maintain and test with each liquidity provider, to the extent practicable, FICC's procedures and operational capacity for accessing its relevant liquid resources.<sup>33</sup> As described above, FICC would test its operational procedures for

invoking a CCLF Event and pursuant to GSD Rule 3 Section 6, Netting Members would be required to participate in such tests. As a result, FICC believes that its testing of its capability to invoke a CCLF MRA would be consistent with Commission Rule 17Ad-22(e)(7)(v).

### III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the Advance Notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2017-802 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-FICC-2017-802. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2017-802 and should be submitted on or before March 30, 2017.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80192; File No. SR-NASDAQ-2017-026]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7018(a) To Adopt Two Credits

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1,

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>30</sup> See 17 CFR 240.17Ad-22(e)(7)(i).

<sup>31</sup> See 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>32</sup> See 17 CFR 240.17Ad-22(e)(7)(iv).

<sup>33</sup> See 17 CFR 240.17Ad-22(e)(7)(v).

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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend the Exchange’s transaction fees at Rule 7018(a) to adopt two new credits provided to a member for displayed quotes/orders that provide liquidity.

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 the proposed rule change is to amend Rule 7018(a), concerning the fees and credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at \$1 or more that it [sic] trades. The Exchange is proposing to adopt two new credits provided to a member for displayed quotes/orders that provide liquidity. Currently under Rules 7018(a)(1)–(3), the Exchange provides credits ranging from \$0.0015 per share executed to \$0.00305 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) if they qualify by meeting the requirements of the various credit

tiers under the rules.<sup>3</sup> As described below, the Exchange is providing two new credits of \$0.0026 and \$0.0027 per share executed.

##### **First Credit**

The Exchange is proposing to provide a new credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) under Rule 7018(a), which will apply to securities of all three Tapes<sup>4</sup> under Rule 7018(a)(1)–(3). Specifically, the Exchange is adopting [sic] to provide a \$0.0027 per share executed credit to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity if the member: (i) Has shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.40% of Consolidated Volume<sup>5</sup> during the month, and (ii) has shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.15% of Consolidated Volume during the month, and (iii) provides a daily average of at least 800,000 shares of non-displayed liquidity through one or more of its Nasdaq Market Center MPIDs through one or more of its Nasdaq Market Center MPIDs [sic] during the month.

##### **Second Credit**

The Exchange is proposing to provide a new credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) under Rule 7018(a), which will apply to securities of all three Tapes under Rule 7018(a)(1)–(3). Specifically, the Exchange is proposing to provide a

<sup>3</sup> Under Rule 7018(a)(2), the Exchange also provides a credit of \$0.0001 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), and under Rule 7018(a)(3), the Exchange provides credits of \$0.0001 and \$0.0002 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders). These credits are provided in addition to the credits provided for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity.

<sup>4</sup> Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

<sup>5</sup> Rule 7018(a) defines “Consolidated Volume” as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member’s trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity.

\$0.0026 per share executed to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity if the member: (i) Has shares of liquidity provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its Nasdaq Market Center MPIDs that represents [sic] at least 800,000 shares a day on average during the month, and (ii) doubles the daily average share volume provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its Nasdaq Market Center MPIDs during the month versus the member’s daily average share volume provided in securities that are listed on exchanges other than NASDAQ or NYSE in January 2017.

##### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

##### **First Credit**

The Exchange believes that the \$0.0027 per share executed credit of the proposed credit tier is reasonable because it is consistent with other credits that the Exchange provides to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. As a general principle, the Exchange chooses to offer credits to members in return for market improving behavior. As noted above, the Exchange provides credits ranging from \$0.0015 per share executed to \$0.00305 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), and the Exchange applies progressively more stringent requirements in return for higher per share executed credits. Accordingly, the \$0.0027 per share executed credit is reasonable.

The proposed \$0.0027 per share executed credit tier is an equitable allocation and is not unfairly discriminatory because it is similar to other credit tiers provided under Rule 7018(a). The proposed credit will be provided to members that not only

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).



contribute to the Exchange by removing liquidity in all securities through one or more of its [sic] Nasdaq Market Center MPIDs that represent more than 0.40% of Consolidated Volume during the month, but also provide liquidity in all securities through one or more of its [sic] Nasdaq Market Center MPIDs that represent more than 0.15% of Consolidated Volume during the month, and maintain a daily average of at least 800,000 shares of non-displayed liquidity through one or more of its [sic] Nasdaq Market Center MPIDs during the month. Thus, the proposed criteria requires a significant level of market participation, by being both a remover and provider of liquidity, both displayed and non-displayed.

The Exchange currently provides a \$0.0027 per share executed credit to a member with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.65% of Consolidated Volume during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.10% of Consolidated Volume during the month. The proposed credit tier requires the member to access less liquidity and provide more liquidity, as measured by Consolidated Volume, but also requires the member to additionally maintain a significant level of non-displayed liquidity. Moreover, since a member achieving this credit tier will be both accessing and providing liquidity, the proposed credit tier will benefit other members by encouraging more liquidity on the Exchange, as well as increasing the likelihood that members [sic] resting limit orders may be accessed by members seeking to attain this credit tier. The Exchange seeks to encourage such behavior. As a consequence, the Exchange believes that the proposed credit tier is comparable to the existing credit and therefore an equitable allocation and is not unfairly discriminatory. Last, the Exchange believes the new credit is an equitable allocation and is not unfairly discriminatory because it is one of many possible means by which a member may qualify for a credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) under Rule 7018(a).

#### Second Credit

The Exchange believes that the \$0.0026 per share executed credit of the proposed credit tier is reasonable because it is consistent with other credits that the Exchange provides to members for displayed quotes/orders

(other than Supplemental Orders or Designated Retail Orders) that provide liquidity. As noted above, the Exchange provides credits ranging from \$0.0015 per share executed to \$0.00305 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders), and the Exchange applies progressively more stringent requirements in return for higher per share executed credits. Accordingly, the \$0.0026 per share executed credit is reasonable.

The proposed \$0.0026 per share executed credit tier is an equitable allocation and is not unfairly discriminatory because it is consistent with other credits provided under Rule 7018(a). The proposed credit will be provided to members that have shares of liquidity provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its [sic] Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average during the month and also doubles the daily average share volume provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its [sic] Nasdaq Market Center MPIDs during the month versus the member's daily average share volume provided in securities that are listed on exchanges other than NASDAQ or NYSE in January 2017. The Exchange notes that requiring a member to increase its participation in Tape B securities as measured by its daily average share volume compared to its daily average share volume in the month of January 2017 will ensure that the member [sic] increasing its participation in the market in securities that are listed on exchanges other than NASDAQ or NYSE. The Exchange is also requiring the member provide a significant level of liquidity [sic] provided in securities that are listed on exchanges other than NASDAQ or NYSE through one or more of its Nasdaq Market Center MPIDs that represents at least 800,000 shares a day on average. The Exchange does not currently have a credit under Rule 7018(a) that measures a member's eligibility for a credit based on activity compared to a prior month's activity; however, the Exchange does use a benchmark date against which performance is measured under the Nasdaq Growth Program.<sup>8</sup> Last, the

<sup>8</sup> See the "Growth Baseline" of Rule 7014(j). The Exchange notes that other markets also apply similar benchmarking concepts. For example, Bats BZX Exchange, provides a credit of \$0.0030 per share if the member increases its Total Consolidated Volume for adding liquidity by 0.15% or more in comparison to its volume in April 2016, and assesses a fee of \$0.00295 per share if the member

Exchange believes the new credit is an equitable allocation and is not unfairly discriminatory because it is one of many possible means by which a member may qualify for a credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) under Rule 7018(a).

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed new credits provided to a member for execution of securities of each of the three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed changes are designed to reward market-improving behavior by providing two new credit tiers based on various measures of such behavior, which may encourage other market venues to provide similar credits to improve their market quality. Thus, the Exchange does not believe that the proposed changes will impose any burden on competition, but may rather promote competition.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the

increases its Total Consolidated Volume for removing liquidity by 0.05% or more in comparison to its July 2016 volume. Similarly, Bats EDGX Exchange pays a credit of \$0.0032 per share if the member increases its Total Consolidated Volume for adding liquidity by 0.10% or more in comparison to its volume in January 2017.

Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-026 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-2017-026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2017-026, and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-05081 Filed 3-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80187; File No. SR-BatsEDGA-2017-04]

**Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees**

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2017, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii)

of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to EDGA Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at [www.bats.com](http://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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify its fee schedule to enhance its pricing for orders executed at the midpoint of the National Best Bid and Offer ("NBBO") by: (i) Adopting new fee codes MM and MT; (ii) modifying footnote 2 to reflect new fee codes MM and MT; and (iii) adding two new tiers under new footnote 13, entitled "Midpoint Add and Remove Tiers."

Fee Codes MM and MT

The Exchange proposes to amend its fee schedule to add two new fee codes, MM and MT. Fee code MM would be appended to non-displayed orders that add liquidity at the midpoint of the NBBO. Fee code MT would be

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

appended to non-displayed orders that remove liquidity at the midpoint of the NBBO. Orders that yield fee code MT [sic] or MT would be charged a reduced fee of \$0.0008 per share in securities priced at or above \$1.00 and 0.08% of the total dollar value of the order for securities priced below \$1.00 per share.

In addition, the Exchange proposes to expand the volume requirements for fee codes HA<sup>6</sup> and HR<sup>7</sup> under footnote 2 of the fee schedule to include proposed fee codes MM and MT. Footnote 2 currently states that rates for fee codes HA and HR are contingent upon Member adding or removing an ADV of at least 1,000,000 shares non-displayed (hidden) (yields fee codes HA, HR, DM, DT and RP) or Member adding an ADV of at least 8,000,000 shares (displayed and non-displayed). Footnote 2 further states that for securities priced at or above \$1.00, Members not meeting either minimum will be charged \$0.0030 per share for fee codes HA and HR. For securities priced below \$1.00, Members not meeting either minimum will be charged 0.30% of the dollar value of the transaction.

The Exchange proposes to amend footnote 2 of the fee schedule to state that the Exchange will assess a charge of \$0.0030 per share for Member's orders that yield fee codes MM or MT in securities over \$1.00 and a fee of 0.30% of the dollar value of the transaction for Members' orders that yield Flags MM or MT in securities priced below \$1.00 where Members do not satisfy the volume requirement of the footnote 2. Therefore, the Exchange proposes to revise footnote 2 to state, "[r]ates for fee codes HA and HR, MM and MT are contingent upon Member adding or removing an ADV of at least 1,000,000 shares non-displayed (hidden) (yields fee codes HA, HR, DM, DT, MM, MT and RP) or Member adding an ADV of at least 8,000,000 shares (displayed and non-displayed). For securities priced at or above \$1.00, Members not meeting either minimum will be charged \$0.0030 per share for fee codes HA, and HR, MM and MT. For securities priced below \$1.00, Members not meeting

either minimum will be charged 0.30% of the dollar value of the transaction."

#### New Midpoint Add and Remove Tiers

The Exchange proposes to offer two additional tiers under a new footnote 13 of the fee schedule, entitled "Midpoint Add and Remove Tiers." Under proposed Tier 1, orders that yield new fee codes MM or MT would be charged a reduced fee of \$0.0006 per share where the Member has an ADV<sup>8</sup> equal to or greater than 1,200,000 shares in orders that yield fee codes MM or MT. Under proposed Tier 2, orders that yield new fee codes MM or MT would be charged a reduced fee of \$0.0004 per share where the Member has an ADV equal to or greater than 2,500,000 shares in orders that yield fee codes MM or MT.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule March 1, 2017.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>10</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes proposed rule change represents an equitable allocation of reasonable dues, fees, and other charges because the reduced fee provided by fee codes MM and MT as well as the proposed tiers are intended to encourage Members to add liquidity at the midpoint of the NBBO. The Exchange believes that Members that add liquidity at the midpoint of the NBBO may receive the benefit of price improvement, and its associated lower rate would be a reasonable means by which to encourage the use of such orders. In addition, the Exchange believes that by encouraging the use of orders yielding MM and MT, Members seeking price improvement would be more motivated to direct their orders to the Exchange because they would have a heightened expectation of the availability of liquidity at the midpoint of the NBBO. In addition, the Exchange also believes that the proposed fee changes are non-discriminatory because

they would apply uniformly to all Members.

Lastly, the Exchange further believes that the proposed Midpoint Add and Remove tiers which would provide a reduced fee for orders that yield fee codes MM or MT where that Member satisfies certain ADV requirements in orders yielding fee codes MM or MT will further incentivize Members entering orders seeking an execution at the midpoint of the NBBO. In sum, the proposed tiers are designed to promote functionality and, in particular, to attract liquidity, which benefits all market participants by providing additional trading opportunities at the midpoint of the NBBO and increased price improvement opportunities.

In addition, volume-based rebates such as that proposed herein have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and rebates, because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes the proposed rule change provides pricing incentives that will enhance competition amongst exchange [sic] for orders eligible to execute at the midpoint of the NBBO. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or from pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal would not

<sup>6</sup> Fee code HA is appended to non-displayed orders that add liquidity and provided a reduced fee of \$0.0010 per share for orders in securities priced at or above \$1.00 and \$0.10 of the trades dollar value in securities priced below \$1.00. See the Exchange's fee schedule available at [http://www.bats.com/us/equities/membership/fee\\_schedule/edga/](http://www.bats.com/us/equities/membership/fee_schedule/edga/).

<sup>7</sup> Fee code HR is appended to non-displayed orders that remove liquidity and provided a reduced fee of \$0.0010 per share for orders in securities priced at or above \$1.00 and \$0.10 of the trades dollar value in securities priced below \$1.00. See the Exchange's fee schedule available at [http://www.bats.com/us/equities/membership/fee\\_schedule/edga/](http://www.bats.com/us/equities/membership/fee_schedule/edga/).

<sup>8</sup> ADV means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis. *Id.*

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

burden intramarket competition because the proposed rates would apply uniformly to all Members.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>12</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsEDGA-2017-04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File No. SR-BatsEDGA-2017-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BatsEDGA-2017-04, and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-05088 Filed 3-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80189; File No. SR-NYSEArca-2017-01]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Amending the NYSE Arca Equities Rule 5 and Rule 8 Series**

March 9, 2017.

**I. Introduction**

On January 6, 2017, NYSE Arca, Inc. ("Exchange" or "Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the NYSE Arca Equities Rule ("Rule") 5 and Rule 8 Series to add specific continued listing standards for exchange-traded products ("ETPs") and to specify the delisting procedures for these products. The proposed rule

change was published for comment in the **Federal Register** on January 25, 2017.<sup>3</sup> On February 10, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original proposal. On March 6, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the original proposal, as modified by Amendment No. 1.<sup>4</sup> The Commission received nine comment letters on the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

<sup>3</sup> See Securities Exchange Act Release No. 79834 (January 18, 2017), 82 FR 8444.

<sup>4</sup> In Amendment No. 2, the Exchange: (i) Further amended rules within the Rule 5 and Rule 8 Series to reflect that certain listing requirements (including certain statements or representations in rule filings for the listing and trading of specific products) apply on an initial and ongoing basis; (ii) further amended rules within the Rule 5 and Rule 8 Series to consistently state that the Exchange will maintain surveillance procedures for listed products and will initiate delisting proceedings if continued listing requirements are not maintained; (iii) further amended rules within the Rule 5 and Rule 8 Series to provide that, in a rule filing to list and trade a product, all statements or representations regarding the applicability of Exchange listing rules (including, for example, statements and representations related to the dissemination of the intraday indicative value and index value, as applicable) specified in such rule filing constitute continued listing requirements; (iv) specified an implementation date for the proposed changes; and (v) made other technical, clarifying, and conforming changes throughout the Rule 5 and Rule 8 Series. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nysearca-2017-01/nysearca201701-1618319-137048.pdf>.

<sup>5</sup> See Letters to Brent J. Fields, Secretary, Commission, from David W. Blass, General Counsel, Investment Company Institute, dated January 12, 2017 ("ICI Letter"); Anna Paglia, Head of Legal, Invesco PowerShares Capital Management LLC, dated February 10, 2017 ("PowerShares Letter"); Steven Price, SVP, Director of Distribution Services and Chief Compliance Officer, ALPS Distributors, Inc., ALPS Portfolio Solutions Distributor, Inc., dated February 10, 2017 ("ALPS Letter"); James E. Ross, Executive Vice President and Chairman, Global SPDR Business, State Street Global Advisors, dated February 13, 2017 ("SSGA Letter"); Samara Cohen, Managing Director, U.S. Head of iShares Capital Markets, Joanne Medero, Managing Director, Government Relations & Public Policy, and Deepa Damre, Managing Director, Legal & Compliance, BlackRock, Inc., dated February 14, 2017 ("BlackRock Letter"); Peter K. Ewing, Senior Vice President, Northern Trust Investments, Inc., dated February 14, 2017 ("NTI Letter"); Ryan Louvar, General Counsel, WisdomTree Asset Management, Inc., dated February 15, 2017 ("WisdomTree Letter"); Kevin McCarthy, Senior Managing Director, Nuveen Fund Advisors, LLC, dated February 15, 2017 ("Nuveen Letter"); and Matthew B. Farber, Assistant General Counsel, First Trust Advisors L.P., dated February 23, 2017 ("First Trust Letter").

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange proposes to amend the Rule 5 and Rule 8 Series to specify continued listing requirements for ETPs listed under those rules, which include products listed pursuant to Rule 19b-4(e) under the Act (“generically-listed products”) and products listed pursuant to proposed rule changes filed with the Commission (“non-generically-listed products”).<sup>6</sup>

The Exchange also proposes to amend the Rule 5 and Rule 8 Series to specify issuer notification requirements related to failures to comply with continued listing requirements. Specifically, the Exchange proposes to amend Rule 5.2(b) to require an issuer with securities listed under Rule 5.2 or Rule 8 to promptly notify the Exchange after the issuer becomes aware of any non-compliance by the issuer with the applicable continued listing requirements of Rule 5.2, Rule 5.5, or Rule 8.<sup>7</sup> As proposed, the Exchange would initiate delisting proceedings for a product listed under the Rule 5 or Rule 8 Series if any of its continued listing requirements (including those set forth in an Exchange Rule and those set forth in an applicable proposed rule change) is not continuously maintained.

The Exchange also proposes to amend Rule 5.5(m) to specify the delisting procedures for products listed under the Rule 5 and Rule 8 Series. According to the Exchange, listed ETPs are currently subject to the delisting procedures in Rule 5.5(m). The Exchange notes that, under Rule 5.5(m), it has the discretion to offer non-compliant issuers the opportunity to submit a plan to regain compliance.<sup>8</sup> If such a plan is accepted, non-compliant issuers are afforded a cure period to regain compliance.

Finally, the Exchange proposes to make conforming and technical changes throughout the Rule 5 and Rule 8 Series

to maintain consistency in its rules. For example, the Exchange proposes to consistently use the language “initiate delisting proceedings under Rule 5.5(m)” when describing the delisting procedures for a product that fails to meet continued listing requirements;<sup>9</sup> and consistently reflect that delisting “following the initial twelve month period following . . . commencement of trading on the Corporation” only applies to the record/beneficial holder, number of shares issued and outstanding, and the market value of shares issued and outstanding requirements.<sup>10</sup>

The Exchange proposes to implement the rule changes by October 1, 2017.

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be 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 Commission received nine comment letters that express concerns regarding the proposal.<sup>13</sup> First, commenters question how an ETF, especially one that uses indexes established and maintained by unaffiliated third parties, would comply with the proposed rules, and how the Exchange would enforce them.<sup>14</sup>

Commenters assert that it would be unrealistic to anticipate that an ETF could ensure that an unaffiliated index complies with the initial listing standards on an ongoing basis, and express concern that an equity-index ETF, through no action of its own, could see certain of the constituent securities of the unaffiliated index fall below the listing requirements.<sup>15</sup> One commenter believes that even if a third party index provider was amenable to changes to an underlying index that would allow an ETF to regain compliance with the continued listing standards, it is unlikely that the ETF would be able to formulate a compliance plan within 45 calendar days of the Exchange staff's notification.<sup>16</sup> Second, commenters argue that the proposal would provide for unfair discrimination because the proposed rules would result in differential treatment of ETFs as compared to other securities (*e.g.*, common stock).<sup>17</sup> Commenters believe that the continued listing standards for equity securities generally differ from the initial listing standards, whereas the proposed ETF continued listing standards would be the same as the initial listing standards.<sup>18</sup> Third, commenters assert that the proposal provides no explanation or evidence regarding the potential manipulation of ETFs under the current rules, or how the proposal would reduce the potential for manipulation.<sup>19</sup> One commenter also believes that significant compliance enhancements could be required to ensure proper and continuous testing of securities held in an index, and questions how this type of testing would enhance investor protection.<sup>20</sup>

The Commission believes that the proposal is consistent with the Act. As the Commission previously stated, the development, implementation, and enforcement of standards governing the initial and continued listing of securities on an exchange are activities of critical importance to financial markets and the investing public.<sup>21</sup> Once a security has been approved for initial listing, continued listing criteria allow an exchange to monitor the status and trading characteristics of that issue

<sup>6</sup> See *infra* notes 29–31 and accompanying text. The Exchange also proposes to amend the requirement to delist a product if, following the initial 12-month period following commencement of trading on the Exchange, there are fewer than 50 record and/or beneficial holders of the listed product for 30 or more consecutive trading days, by deleting the threshold of “30 or more consecutive trading days.” See, *e.g.*, proposed changes to Rule 5.5(g)(2)(a)(1).

<sup>7</sup> The Exchange also proposes to specify issuer notification requirements in the product listing rules within the Rule 5 and Rule 8 Series. See, *e.g.*, proposed Rules 5.2(j)(2)(G) and 8.100(e).

<sup>8</sup> Similarly, other exchanges' delisting procedures for ETPs provide that, under certain circumstances, the exchange may accept and review an issuer's plan to regain compliance. See, *e.g.*, Securities Exchange Act Release No. 79784 (January 12, 2017), 82 FR 6664, 6665 (January 19, 2017) (SR–NASDAQ–2016–135).

<sup>9</sup> See, *e.g.*, proposed changes to Rules 5.5(g)(2)(a) and 8.100(f)(2)(i).

<sup>10</sup> See, *e.g.*, proposed changes to Rule 8.200(d)(2); see also, *e.g.*, Rule 8.200, Commentary .02(d)(2) (currently applying the twelve month threshold only to the record/beneficial holder, number of shares issued and outstanding, and market value of shares issued and outstanding requirements for certain Trust Issued Receipts).

<sup>11</sup> 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).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See *supra* note 5.

<sup>14</sup> See ICI Letter at 1–2; see also PowerShares Letter at 1; SSGA Letter at 1; BlackRock Letter at 1–2; and Nuveen Letter at 1. The Commission notes that the ALPS Letter, NTI Letter, WisdomTree Letter, and First Trust Letter also express general support for all the views expressed in the ICI Letter.

<sup>15</sup> See ICI Letter at 1–3; see also PowerShares Letter at 2; SSGA Letter at 1; BlackRock Letter at 2; and Nuveen Letter at 2.

<sup>16</sup> See BlackRock Letter at 2.

<sup>17</sup> See ICI Letter at 2; see also PowerShares Letter at 1; SSGA Letter at 1; and Nuveen Letter at 1–2.

<sup>18</sup> See ICI Letter at 2; see also Nuveen Letter at 1–2.

<sup>19</sup> See ICI Letter at 2; see also PowerShares Letter at 1–2; SSGA Letter at 1; and Nuveen Letter at 2.

<sup>20</sup> See BlackRock Letter at 2.

<sup>21</sup> See, *e.g.*, Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148, 55152 (September 6, 2011) (SR–BATS–2011–018).

to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

With respect to commenters' concerns regarding the inability of certain ETFs to assure compliance with the proposal, the Commission believes that a variety of means are available to ETP (including ETF) issuers to monitor for a product's compliance with the continued listing standards. For example, information regarding the composition of a third party index may be publicly available, or may be obtained from the index provider pursuant to provisions in the index licensing agreement, so that the ETP issuer can monitor its compliance on an ongoing basis. If an index approaches the thresholds set forth in the continued listing standards, the issuer may decide to engage in discussions with the index provider regarding potential modifications to the index so that the ETP can continue to be listed on the Exchange. If an index provider is unwilling to modify the index in order to comply with the Exchange's listing requirements, the Exchange may submit a rule proposal to continue to list the product based on the index.<sup>22</sup> Moreover, as noted below, the listing standards that address the index composition with respect to certain index-based ETPs already apply equally on an initial and ongoing basis,<sup>23</sup> so some ETP issuers should have experience complying with these requirements. With respect to commenters' questions regarding the Exchange's enforcement of the proposed continued listing requirements, the Commission notes that the Exchange is proposing to apply its existing delisting procedures to products listed under the Rule 5 and Rule 8 Series, rather than adopting new delisting procedures for these products.

With respect to commenters' concerns that the proposed listing standards would treat ETPs fundamentally differently than other types of listed equity securities, the Commission notes that ETPs and other types of equity securities each have certain listing

standards that are higher on an initial basis and lower on a continuing basis.<sup>24</sup> Similarly, ETPs and other types of equity securities each have certain listing standards that are the same on an initial and continuing basis.<sup>25</sup> In fact, the listing standards that address the index composition with respect to certain index-based ETPs already apply equally on an initial and ongoing basis.<sup>26</sup>

Finally, with respect to commenters' questions regarding the purpose of the proposal and its impact on the potential for manipulation and investor protection, the Commission notes that, in approving a wide variety of ETP listing standards, including standards that apply to underlying indexes or portfolios, the Commission has consistently explained that these standards, among other things,<sup>27</sup> are

<sup>24</sup> See, e.g., Rule 8.202, Commentary .04(a) (requiring a minimum of 100,000 shares of a series of Currency Trust Shares to be outstanding at commencement of trading); and Rule 8.202(e)(2)(ii) (requiring 50,000 Currency Trust Shares issued and outstanding for continued listing).

<sup>25</sup> See, e.g., Rule 5.2(c) (requiring at least 400 public beneficial holders for the initial listing of common stock on the Exchange under the Alternate Listing Requirements); and Rule 5.5(b) (requiring at least 400 public beneficial holders as one option for the continued listing of common stock on the Exchange).

<sup>26</sup> See Rule 5.2(j)(6)(B)(IV) (setting forth the initial and continued listing requirements for Fixed Income Index-Linked Securities and stating that "[t]he Corporation will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained"). The Commission also notes that ETPs are structurally different from other types of equity securities. See Securities Exchange Act Release No. 53142 (January 19, 2006), 71 FR 4180, 4182 and 4187 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities, stating that "[a]n Index Security, just like an ETF, derives its value by reference to the underlying index. For this reason, the Commission has required that markets that list index based securities monitor the qualifications of not just the actual security (e.g., the ETF, index option, or Index Securities), but also of the underlying indexes (and of the index providers)," and where the NASD stated that "[i]n contrast to a typical corporate security (e.g., a share of common stock of a corporation), whose value is determined by the interplay of supply and demand in the marketplace, the fair value of an index-based security can be determined only by reference to the underlying index itself, which is a proprietary creation of the particular index provider. For this reason, the Commission has always required that markets that list or trade index-based securities continuously monitor the qualifications of not just the actual securities being traded (e.g., exchange-traded funds ('ETF'), index options, or Index Securities), but also of the underlying indexes and of the index providers.").

<sup>27</sup> See, e.g., Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that "the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading

intended to reduce the potential for manipulation by assuring that the ETP is sufficiently broad-based, and that the components of an index or portfolio underlying an ETP are adequately capitalized, sufficiently liquid, and that no one stock dominates the index.<sup>28</sup>

in unregistered securities" and that "the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs" and that "by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs"; 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that "[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities"); 34758 (September 30, 1994), 59 FR 50943, 50945-46 (October 6, 1994) (SR-NASD-94-49) (approving listing standards for Selected Equity-Linked Debt Securities ("SEEDS") and stating that "the listing standards and issuance restrictions should help to reduce the likelihood of any adverse market impact on the securities underlying SEEDS," and where the NASD stated that "the proposed numerical, quantitative listing standards should ensure that only substantial companies capable of meeting their contingent obligations created by SEEDS are able to list such products on Nasdaq").

<sup>28</sup> See, e.g., Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66996-97 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that standards related to the composition of an index or portfolio underlying an ETF "are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index" and that "[t]aken together, the Commission finds that these standards are reasonably designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements, will permit the listing only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation"); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that the listing standards for Index-Linked Securities, including minimum market capitalization, monthly trading volume, and relative weight requirements "are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should significantly minimize the potential for [] manipulation."); 78397 (July 22, 2016), 81 FR 49320, 49324-25 (July 27, 2016) (SR-NYSEArca-2015-110) (approving generic listing standards for Managed Fund Shares, noting the Exchange's statement that the proposed requirements for Managed Fund Shares are based in large part on the generic listing criteria currently applicable to Investment Company Units and stating that "the Commission believes that this is an appropriate

<sup>22</sup> The Commission also notes that the Exchange may preemptively submit a rule proposal to provide for the continued listing of a specific product where the underlying index is approaching thresholds in the continued listing requirements, but has not yet fallen below those thresholds (i.e., submit a rule proposal before the delisting procedures are triggered).

For an example of an exchange rule proposal to continue the listing of a product that no longer meets generic listing standards, see Securities Exchange Act Release No. 57320 (February 13, 2008), 73 FR 9395 (February 20, 2008) (SR-NYSEArca-2008-15).

<sup>23</sup> See *infra* note 26 and accompanying text.

For exchange listing standards to effectively achieve their goals, including to effectively address the potential for manipulation of a listed ETP, their application cannot be linked to only a single point in time (*i.e.*, the time of initial listing). Instead, they must be applied on an ongoing basis. The Commission notes that, currently, certain provisions within the Rule 5 and Rule 8 Series impose specific listing requirements on an initial basis, without imposing ongoing listing requirements that are intended to achieve the same goals as these initial listing requirements.<sup>29</sup> To fill this gap, the proposal would specify that certain listing requirements in the Rule 5 and Rule 8 Series apply both on an initial and ongoing basis, rather than only at the time of initial listing.<sup>30</sup> Also, with respect to non-generically listed products, the Exchange proposes to amend the Rule 5 and Rule 8 Series to state that all statements or representations in the proposed rule change regarding: (i) The description of the index, portfolio, or reference asset (as applicable to a specific product); (ii) limitations on index, portfolio holdings, or reference assets (as applicable to a specific product); or (iii) the applicability of Exchange listing rules (including, for example, statements and representations related to the dissemination of the intraday indicative value and index value, as applicable) specified in the proposed rule change

approach with respect to underlying asset classes covered by the existing generic standards, because the mere addition of active management to an ETF portfolio that would qualify for generic listing as an index-based ETF should not affect the portfolio's susceptibility to manipulation<sup>31</sup>).

<sup>29</sup> Moreover, certain of the listing requirements do not explicitly state that they apply on an ongoing, as well as initial, basis. In these cases, the proposal would make explicit that the requirements apply both on an initial and ongoing basis. *See, e.g.*, proposed changes to Rule 8.100, Commentary .01(b) and (c) (making explicit that, for Portfolio Depository Receipts overlying an equity index or portfolio, requirements related to index methodology and index value dissemination, as well as intraday indicative value dissemination, apply on an initial and ongoing basis); proposed changes to Rule 5.2(j)(6)(A)(e) (making explicit that, for Index-Linked Securities, the requirement related to tangible net worth applies on an initial and ongoing basis); proposed changes to Rule 5.2(j)(7), Commentary .03 (making explicit that, for Trust Certificates, requirements related to the qualifications of a trustee and changes to a trustee apply on an initial and ongoing basis).

<sup>30</sup> For example, current Rule 8.100, Commentary .01(a) sets forth requirements for component stocks of an index or portfolio underlying a series of generically-listed Portfolio Depository Receipts, which apply upon initial listing. These requirements include, for example, minimum market value, minimum monthly trading volume, and concentration limits for the component stocks. The proposal would specify that these requirements apply both on an initial and continued basis.

constitute continued listing requirements.<sup>31</sup>

Because the proposal specifies continued listing requirements for products listed pursuant to the Rule 5 and Rule 8 Series, the Commission believes the proposal is designed to achieve on a continuing basis the goals of the listing requirements, including ensuring that the Exchange lists products that are not susceptible to manipulation and maintaining fair and orderly markets for the listed products. In particular,<sup>32</sup> the Commission believes that the proposal is designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio underlying a listed product;<sup>33</sup> provide transparency regarding the components of an index or portfolio underlying a listed product;<sup>34</sup> ensure that there is adequate liquidity in the listed product itself;<sup>35</sup> and provide timely and fair disclosure of useful information that

<sup>31</sup> The Commission notes that it has approved proposed rule changes for the listing and trading of ETPs that included similar representations. *See, e.g.*, Securities Exchange Act Release No. 77548 (April 6, 2016), 81 FR 21626, 21630 (April 12, 2016) (SR-NASDAQ-2015-161). The Commission also notes that similar types of requirements exist in the Exchange's rules. *See, e.g.*, Rule 8.100, Commentary .01(b) and (c) (setting forth, among other things, index value dissemination and intraday indicative value dissemination requirements for certain generically-listed Portfolio Depository Receipts).

<sup>32</sup> *See also supra* notes 27–28 (noting additional goals of the ETP listing standards).

<sup>33</sup> For example, as proposed, the requirements under Rule 8.100, Commentary .01(a)(A), including minimum market value and minimum monthly trading volume requirements for components of the index or portfolio underlying Portfolio Depository Receipts, would apply both on an initial and ongoing basis. Also, for non-generically listed products, the proposal would provide that statements or representations made in the proposed rule changes relating to the description of the index or portfolio, among other things, constitute continued listing requirements. *See, e.g.*, proposed Rule 8.100(e).

<sup>34</sup> For example, as proposed, the requirements under Rule 8.100, Commentary .01(a)(A), including the requirement that components of the index or portfolio underlying Portfolio Depository Receipts be exchange-listed and NMS stocks, would apply both on an initial and ongoing basis.

<sup>35</sup> For example, the Exchange proposes to amend Rule 5.2(j)(2) to explicitly provide that listing requirements for Equity-Linked Notes ("ELNs") apply both on an initial and ongoing basis, including, for example, the minimum public distribution of an issue of ELNs.

The Commission also believes that the proposal to delete the threshold of "30 or more consecutive trading days" in the requirements for the number of beneficial and/or record holders is consistent with the goal of ensuring that there is adequate liquidity in the listed product on an ongoing basis. As proposed, the Exchange would initiate delisting proceedings for a product if it fails to comply with the minimum number of beneficial and/or record holder requirement, even if the non-compliance does not continue for 30 consecutive trading days. *See supra* note 6.

may be necessary to price the listed product.<sup>36</sup> Moreover, the Commission believes that the proposal to require an issuer to notify the Exchange of its failures to comply with continued listing requirements would supplement the Exchange's own surveillance of the listed products.<sup>37</sup>

As noted above, the proposal specifies the delisting procedures for products listed pursuant to the Rule 5 and Rule 8 Series. The Commission believes that the proposed amendments to Rule 5.5(m) would provide transparency regarding the process that the Exchange will follow if a listed product fails to meet its continued listing requirements. Also, as noted above, the proposed delisting procedures already exist and are not novel.

Finally, the Commission believes that the conforming and technical proposed changes do not raise novel issues, are designed to further the goals of the listing standards, and provide clarity and consistency in the Exchange's rules.

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act.

#### IV. Accelerated Approval of Amendment No. 2

As noted above, in Amendment No. 2, the Exchange: (i) Further amended rules within the Rule 5 and Rule 8 Series to reflect that certain listing requirements (including certain statements or representations in rule filings for the listing and trading of specific products) apply on an initial and ongoing basis; (ii) further amended rules within the Rule 5 and Rule 8 Series to consistently state that the Exchange will maintain surveillance procedures for listed products and will initiate delisting proceedings if continued listing requirements are not maintained; (iii) further amended rules within the Rule 5 and Rule 8 Series to provide that, in

<sup>36</sup> For example, the proposed changes to Rule 8.100, Commentary .01(b) and (c) would make explicit that the requirements related to the dissemination of the value of the index underlying Portfolio Depository Receipts and the intraday indicative value for Portfolio Depository Receipts apply on an initial and ongoing basis.

<sup>37</sup> The Commission notes that the concept of issuer notification is not novel. For example, in connection with its proposal to adopt generic listing standards for Managed Fund Shares, the Exchange stated that, prior to listing pursuant to the generic listing standards, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. *See* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320, 49324 (July 27, 2016) (SR-NYSEArca-2015-110).

a rule filing to list and trade a product, all statements or representations regarding the applicability of Exchange listing rules (including, for example, statements and representations related to the dissemination of the intraday indicative value and index value, as applicable) specified in such rule filing constitute continued listing requirements; (iv) specified an implementation date for the proposed changes; and (v) made other technical, clarifying, and conforming changes throughout the Rule 5 and Rule 8 Series. The Commission believes that Amendment No. 2 furthers the goals of the proposed rule change as discussed above, enhances consistency between the Exchange's proposal and recently approved proposals from other exchanges,<sup>38</sup> and provides clarity and consistency within the Exchange's rules. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

#### V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-01 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2017-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-01 and should be submitted on or before April 5, 2017.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2017-01), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80184; File No. SR-ISEGemini-2017-09]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2017, ISE Gemini, LLC ("ISE Gemini" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and

II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Schedule of Fees to (1) eliminate fees and rebates for trades in Calpine Corporation executed on February 27-28, 2017, and (2) modify the Exchange's average daily volume calculation for March 2017.

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.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 the proposed rule change is to amend the Schedule of Fees to (1) eliminate fees and rebates for trades in Calpine Corporation ("CPN") executed on February 27-28, 2017, and (2) modify the Exchange's average daily volume ("ADV") calculation for March 2017. These changes are both being made in connection with the migration of the Exchange's trading system to the Nasdaq INET technology, which is scheduled to begin on February 27, 2017.

The Exchange will launch its re-platformed INET trading system beginning with a single symbol—CPN—on February 27, 2017. The Exchange proposes to eliminate fees and rebates for trades in options overlying Symbol CPN executed on the INET trading system during the last two trading days of the month, *i.e.*, February 27-28, 2017. Because the Exchange is eliminating fees and rebates for trades in this

<sup>38</sup> See Securities Exchange Act Release Nos. 79784 (January 12, 2017), 82 FR 6664 (January 19, 2017) (SR-NASDAQ-2016-135) and 80169 (March 7, 2017) (SR-BatsBZX-2016-80).

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.



symbol, during this two day period trades in options overlying Symbol CPN will not be counted towards a member's tier for February activity. The proposed change would allow the Exchange to bill February fees solely based on activity traded on the current T7 trading system,

and is an inducement for members to trade the first symbol launched on the INET trading system as there would be no transaction fees for doing so.

In addition, the Exchange currently provides volume-based maker rebates to Market Maker<sup>3</sup> and Priority Customer<sup>4</sup> orders in four tiers based on a member's

ADV in the following categories: (1) Total Affiliated Member ADV,<sup>5</sup> and (2) Priority Customer Maker ADV,<sup>6</sup> as shown in the table below.<sup>7</sup> In addition, the Exchange charges volume based taker fees to market participants based on achieving these volume thresholds.

TABLE 1

Tier	Total affiliated member ADV	Priority customer maker ADV
Tier 1 .....	0–99,999 .....	0–19,999.
Tier 2 .....	100,000–224,999 .....	20,000–99,999.
Tier 3 .....	225,000–349,999 .....	100,000–149,999.
Tier 4 .....	350,000 or more .....	150,000 or more.

The Exchange proposes to provide two alternatives for calculation of ADV during the month of March, *i.e.*, the first month where members will be charged for trading activity on the INET trading system. In particular, for March 2017 only, all Qualifying Tier Threshold ADV calculations will be based on the better of (1) the member's full month ADV for the period of March 1–31, 2017, or (2) the member's ADV for the period of March 1–24, 2017. March 1–24, 2017 represents a partial month where, due to the Exchange's rollout of symbols on the INET trading system, the vast majority of volume is expected to trade on the current T7 trading system. On the following trading day, *i.e.*, March 27, 2017, the Exchange intends to ramp up its symbol rollout, resulting in a large volume of trading occurring on the INET trading system.<sup>8</sup> The Exchange believes that the proposed approach to calculating tiers will minimize the impact to members that trade on the Exchange during the symbol rollout as members can achieve their tier either based on the full month or on the part of the month where trading primarily occurred on the current T7 trading system.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

the provisions of Section 6 of the Act,<sup>9</sup> in general, and Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable and equitable to eliminate fees and rebates for CPN during the first two days of trading on the Exchange's re-platformed trading system. Eliminating fees and rebates for CPN during those two days will simplify the Exchange's billing and serve as an inducement for members to trade the first symbol migrated to the INET trading system. Because the Exchange is offering free executions in CPN, volume executed in CPN on February 27–28, 2017 will not be counted towards any volume based tiers. The Exchange believes that these two changes will be attractive to members that trade on the new INET trading system. The Exchange also believes that this proposed change is not unfairly discriminatory as it will apply to trades in CPN that are executed by all members. As noted above, CPN was selected for this treatment as it will be the first symbol traded on the INET trading system, and will be the only symbol traded on INET during February.

In addition, the Exchange believes that the proposed changes to the ADV

tier calculation for March 2017 is reasonable and equitable as it will give members the opportunity to trade on the INET trading system while, if more favorable to the member, keeping their ADV tier based on the first portion of the month where most trading occurred on T7. The Exchange believes that this change is appropriate given the pending migration of the Exchange's trading system to INET. Come the first trading day of April, *i.e.*, April 3, 2017, the Exchange intends to roll out the remaining symbols on INET,<sup>11</sup> and ADV tiers will once again be based solely on full month volume. The Exchange also believes that this proposed change is not unfairly discriminatory as the alternative means of calculating ADV tiers will be available to all members that trade on the Exchange, and will only be applied if it is better for the member.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>12</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are intended to ease members' transition to the re-platformed

<sup>3</sup> The term Market Maker refers to "Competitive Market Makers" and "Primary Market Makers" collectively.

<sup>4</sup> A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

<sup>5</sup> The Total Affiliated Member ADV category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.

<sup>6</sup> The Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols.

<sup>7</sup> All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

The highest tier threshold attained above applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

<sup>8</sup> The rollout scheduled for March 27, 2017 contains symbols that account for approximately 35% of the industry volume. Prior to that date, the Exchange expects to be trading symbols that account for between 2% and 3% of industry volume on the INET trading system.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> The Exchange intends to roll out symbols accounting for the remaining 62% to 63% of industry volume on this date.

<sup>12</sup> 15 U.S.C. 78f(b)(8).

INET trading system and is not designed to have any significant competitive impact. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>13</sup> and Rule 19b-4(f)(2)<sup>14</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISEGemini-2017-09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEGemini-2017-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISEGemini-2017-09 and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80190; File No. SR-MIAX-2017-11]

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule Relating to the Professional Rebate Program**

March 9, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4

thereunder,<sup>2</sup> notice is hereby given that on February 28, 2017, Miami International Securities Exchange LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site at <http://www.miaxoptions.com/rule-filings>, at MIAX'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fee Schedule to make adjustments to its Professional Rebate Program (the "Program"). Under the Program, which is set forth in Section (1)(a)(iv) of the Fee Schedule, the Exchange credits each Member<sup>3</sup> a per contract amount resulting from any contracts executed from an order submitted by that Member for the account of a: (i) Public

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

Customer<sup>4</sup> that is not a Priority Customer; <sup>5</sup> (ii) non-MIAX Options Market Maker; <sup>6</sup> (iii) non-Member Broker-Dealer; or (iv) Firm<sup>7</sup> (each, a “Professional”), which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, mini-options, non-Priority Customer-to-non-Priority Customer orders, QCC orders, PRIME orders, PRIME AOC responses, PRIME contra-side orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Options Rule 1400 (collectively, “Excluded Contracts”)), provided the Member achieves certain Professional volume increase percentage thresholds in the month relative to a baseline period.

The percentage thresholds in each tier are based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX Options (not including Excluded Contracts) during a particular month, as a percentage of the total volume reported by OCC in MIAX Options classes during the same month (the “Current Percentage”), less the total volume submitted by that Member and executed for the account(s) of a Professional on MIAX Options (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX Options classes during the fourth quarter of 2015 (the “Baseline Percentage”). For Members who did not execute contracts for the account(s) of a Professional during the fourth quarter of 2015, the Exchange currently assigns such Member a Baseline Percentage of .03%. The Member’s percentage

increase is calculated as the Current Percentage less the Baseline Percentage. Members receive rebates for contracts that they submit on behalf of a Professional(s) that are executed within a particular percentage tier based upon that percentage tier only, and do not receive rebates for such contracts that apply to any other tier.

The purpose of the Program is to encourage Members to direct greater Professional order flow to the Exchange. Increased Professional order flow provides for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract liquidity is, and has been, commonly practiced in the options markets. As such, marketing fee programs,<sup>8</sup> and customer posting incentive programs,<sup>9</sup> are based on attracting public customer order flow.<sup>10</sup>

The Exchange now proposes to adjust the method of calculating the Baseline Percentage, for purposes of determining whether the Member qualifies for rebates under the Program. Pursuant to the new calculation, the Baseline Percentage shall now be the greater of (x) total volume submitted by that Member and executed for the account(s) of a Professional on MIAX Options (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX Options classes during the fourth quarter of 2015, and (y) 0.065%. The Exchange also proposes to change the default Baseline Percentage (for Members who did not execute contracts for the account(s) of a Professional during the fourth quarter of 2015) to 0.065%, so that it is consistent with the new calculation method.

The purpose for making these adjustments is to update the Program to better reflect the Exchange’s current operating environment and business strategy. It is intended to continue to incentivize Members to send a greater amount of Professional order flow to the Exchange so that they can achieve rebates under the Program, as adjusted and in line with current market conditions. The Baseline Percentage and other thresholds amounts contained in the Program were initially established

over a year ago, and thus were based on the then-current business and economic conditions. The Exchange believes that a number of events have occurred and certain business factors have change since the establishment of the Program (including, but not limited to, the launch of complex orders on the Exchange), and thus the Exchange believes it is reasonable and appropriate to update the Program to align it with current economic conditions and business strategy. The Exchange notes that the Baseline Percentage definition is also used as a factor for determining whether a Member qualifies for certain additional credits under the Exchange’s Priority Customer Rebate Program (“PCRP”), which is contained in Section (1)(a)(iii) of the Exchange’s Fee Schedule, and the Exchange incorporated this indirect impact into its determination as well. As overall market conditions continue to evolve, the Exchange will continue to analyze and re-assess the calculation of the Baseline Percentage and other threshold amounts contained in the Program, and if its analysis justifies a further change, the Exchange will submit a proposed rule change reflecting this.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.<sup>11</sup> The proposed rule change is to take effect March 1, 2017.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed changes to the Program are fair, equitable and not unreasonably discriminatory. The Program itself is reasonably designed because it encourages providers of Professional order flow to send that Professional order flow to the Exchange in order to receive credits, in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed changes to the Program are fair and equitable and

<sup>4</sup> The term “Public Customer” means a person that is not a broker or dealer in securities. See Exchange Rule 100.

<sup>5</sup> “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). See Exchange Rule 100, including Interpretations and Policies .01.

<sup>6</sup> The term “Market Makers” refers to Lead Market Makers (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See Exchange Rule 100. A Directed Order Lead Market Maker (“DLMM”) and Directed Primary Lead Market Maker (“DPLMM”) is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. See Fee Schedule note 2.

<sup>7</sup> A “Firm” fee is assessed on a MIAX Electronic Exchange Member “EEM” that enters an order that is executed for an account identified by the EEM for clearing in the Options Clearing Corporation (“OCC”) “Firm” range. See Fee Schedule, Section (1)(a)ii.

<sup>8</sup> See MIAX Fee Schedule, Section 1(b).

<sup>9</sup> See NYSE Arca, Inc. Fees Schedule, page 4 (section titled “Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues”).

<sup>10</sup> For a complete description of the Program, see Securities Exchange Act Release Nos. 77097 (February 9, 2016), 81 FR 7877 (February 16, 2016) (SR-MIAX-2016-05); 77777 (May 6, 2016), 81 FR 29603 (May 12, 2016) (SR-MIAX-2016-09); 79157 (October 26, 2016), 81 FR 75885 (November 1, 2016) (SR-MIAX-2016-38).

<sup>11</sup> Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization during the limited period that the Program will be in effect.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

not unreasonably discriminatory because they apply equally to all Members submitting orders for the account(s) of Professionals. All similarly situated Professional orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the proposed changes to the Program are equitable and not unfairly discriminatory because, while only Professional order flow qualifies for the Program, an increase in Professional order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits to Members for submitting and executing higher percentages of total national customer volume (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage Members to direct increased amounts of Professional contracts to the Exchange.

#### *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. The Exchange believes that the proposed rule change would increase both intermarket and intramarket competition by incenting Members to direct orders for the account(s) of Professionals to the Exchange, which should enhance the quality of the Exchange's markets and increase the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees through rebates in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional

transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume increase based rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2017-11 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-MIAX-2017-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2017-11, and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-05091 Filed 3-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-80186; File No. SR-Bats EDGX-2017-12]**

### **Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Fees for Use on Bats EDGX Exchange, Inc.**

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 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, II and III below, which Items have been prepared by the Exchange. The Exchange has

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at [www.bats.com](http://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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its fee schedule to remove the Single MPID Cross-Asset Tier under footnote 1, Add Volume Tiers. The Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. Currently, the Exchange offers enhanced rebates under ten Add Volume Tiers set forth in footnote 1 of the fee schedule

for orders that yield fee codes B,<sup>6</sup> V,<sup>7</sup> Y,<sup>8</sup> 3,<sup>9</sup> and 4.<sup>10</sup> Under such pricing structure, a Member will receive a rebate between \$0.0025 and \$0.0033 per share executed, depending on the tier for which such Member qualifies. The Exchange now proposes to amend the Add Volume Tiers under footnote 1 to remove the Single MPID Cross-Asset Tier. Under the Single MPID Cross-Asset Tier, a Member receives an enhanced rebate of \$0.0030 per share where their MPID has: (i) On the Exchange's equity options platform ("EDGX Options") an ADAV<sup>11</sup> in Market Maker<sup>12</sup> orders greater than or equal to 0.12% of average OCV;<sup>13</sup> and (ii) an ADAV greater than or equal to 0.12% of average TCV<sup>14</sup>. The Exchange is proposing to eliminate the tier because it has not achieved the desired effect, despite being designed to incentivize Members to add liquidity on both the Exchange's equities platform and EDGX Options.

##### Implementation Date

The Exchange proposes to implement this amendment to its fee schedule on March 1, 2017.

<sup>6</sup> Fee code B is appended to orders which add liquidity to EDGX (Tape B) and receives a rebate of 0.00200 per share. See the Exchange's fee schedule available at [http://www.bats.com/us/equities/membership/fee\\_schedule/edgx/](http://www.bats.com/us/equities/membership/fee_schedule/edgx/).

<sup>7</sup> Fee code V is appended to orders which add to EDGX (Tape A) and receives a rebate of 0.00200 per share. *Id.*

<sup>8</sup> Fee code Y is appended to orders which add liquidity to EDGX (Tape C) and receives a rebate of 0.00200 per share. *Id.*

<sup>9</sup> Fee code 3 is appended to orders which add liquidity to EDGX, pre and post market (Tapes A or C) and receives a rebate of 0.00200 per share. *Id.*

<sup>10</sup> Fee code 4 is appended to orders which add liquidity to EDGX, pre and post market (Tape B) and receives a rebate of 0.00200 per share. *Id.*

<sup>11</sup> "ADAV" means average daily added volume calculated as the number of shares added per day and ADV is calculated on a monthly basis. See the Exchange's fee schedule available at [http://www.bats.com/us/equities/membership/fee\\_schedule/edgx/](http://www.bats.com/us/equities/membership/fee_schedule/edgx/).

<sup>12</sup> "Market Maker" means any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37). *Id.*

<sup>13</sup> "OCC Customer Volume" or "OCV" means, for purposes of equities pricing, the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close, using the definition of Customer as provided under the Exchange's fee schedule for EDGX Options. *Id.*

<sup>14</sup> "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

##### 2. Statutory Basis

The Exchange believes that the proposed removal of the Single MPID Cross-Asset Tier is consistent with the objectives of Section 6 of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>16</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. As described above, the enhanced rebate offered under this tier has not affected Members' behavior in the manner originally conceived by the Exchange—to incentivize Members to add liquidity on both the Exchange's equities platform and EDGX Options. While the Exchange acknowledges the benefit of Members entering orders that add liquidity in two asset classes, the Exchange has generally determined that it is providing an additional rebate for liquidity that would be added on the Exchange regardless of whether the tier existed. As such, the Exchange also believes that the proposed elimination of the Single MPID Cross-Asset Tier would be non-discriminatory in that it currently applies equally to all Members and, upon elimination, would no longer be available to any Members. Further, it's [sic] elimination will allow the Exchange to explore other pricing mechanisms in which it may enhance market quality for all Members.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposal to remove the Single MPID Cross-Asset Tier under footnote 1 would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. But rather, this proposal would enhance the Exchange's ability to compete with other market centers. As described above, the Exchange believes that it is offering enhanced rebates for orders that would be submitted to the Exchange without the enhanced rebate, which prevents the Exchange from being able to offer other rebates or reduced fees that might be able to enhance market quality to the benefit of all Members. As such, removing the Single MPID Cross-Asset Tier will allow the Exchange other opportunities to enhance market quality on the Exchange and ultimately, better compete with other market centers.

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

*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 unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>18</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsEDGX-2017-12 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File No. SR-BatsEDGX-2017-12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BatsEDGX-2017-12, and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-05087 Filed 3-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80185; File No. SR-ISE-2017-17]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Qualified Contingent Cross and Solicitation Rebate Tiers**

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2017, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes a rule change to amend the Schedule of Fees to modify the Qualified Contingent Cross and Solicitation rebate tiers.

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.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

Currently, members using QCC and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, receive rebates for each originating contract side in all symbols traded on the Exchange. Once a member reaches a certain volume threshold in QCC orders and/or solicited crossing orders during a month, the Exchange provides rebates to that Member for all of its QCC and solicited crossing order traded contracts for that month. The applicable rebates are applied on QCC and solicited crossing order traded contracts once the volume threshold is met. Members receive the Non-"Customer to Customer" rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers. QCC and solicited orders between two Priority Customers receive the "Customer to Customer" rebate or "Customer to Customer" Rebate PLUS, respectively.<sup>3</sup> Non-"Customer to Customer" and "Customer to Customer" volume is aggregated in determining the applicable volume tier.

<sup>3</sup> The PLUS rebate is for Members with total monthly unsolicited originating Facilitation contract side volume of 175,000 or more.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

The current volume threshold and corresponding rebates are as follows:

Originating contract sides	Non-“Customer to Customer” rebate	“Customer to Customer” rebate	“Customer to Customer” rebate PLUS
0 to 99,999 .....	\$0.00	\$0.00	\$0.00
100,000 to 199,999 .....	(0.05)	(0.01)	(0.05)
200,000 to 499,999 .....	(0.07)	(0.01)	(0.05)
500,000 to 699,999 .....	(0.08)	(0.03)	(0.05)
700,000 to 999,999 .....	(0.09)	(0.03)	(0.05)
1,000,000+ .....	(0.11)	(0.03)	(0.05)

The Exchange now proposes to make two changes to the QCC and Solicitation rebate. First, the Exchange proposes to aggregate volume from affiliates in determining the Member’s tier for purposes of the QCC and Solicitation rebate. As proposed, all eligible volume from affiliated Members will be aggregated in determining QCC and Solicitation volume totals, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A. The Exchange believes that aggregating volume across Members that share at least 75% common ownership will allow Members to continue to

execute trades on the Exchange through separate broker-dealer entities for different types of volume, while receiving rebates based on the aggregate volume being executed across such entities. The Exchange currently aggregates volume from affiliated Members in determining applicable fees and rebates, including, for example, the Crossing Fee Cap,<sup>4</sup> and believes that it is appropriate to now extend this treatment to the QCC and Solicitation rebate.

In addition, the Exchange proposes to eliminate the current tier 4—*i.e.*, from 500,000 to 699,999 originating contract sides—and merge this tier into current tier 5. With this proposed change,

Members that execute between 500,000 and 999,999 originating contract sides of eligible volume will earn the current tier 5 rebates—*i.e.*, a Non-“Customer to Customer” rebate of \$0.09 per originating contract side, a “Customer-to-Customer” rebate of \$0.03 per originating contract side and a “Customer-to-Customer” rebate PLUS of \$0.05 per originating contract side. The Exchange believes that this change will incentivize members to execute more QCC and/or other solicited crossing orders on the Exchange in order to qualify for enhanced rebates. The new tier schedule and rebates are shown in the following table:

Originating contract sides	Non-“Customer to Customer” rebate	“Customer to Customer” rebate	“Customer to Customer” rebate PLUS
0 to 99,999 .....	\$0.00	\$0.00	\$0.00
100,000 to 199,999 .....	(0.05)	(0.01)	(0.05)
200,000 to 499,999 .....	(0.07)	(0.01)	(0.05)
500,000 to 999,999 .....	(0.09)	(0.03)	(0.05)
1,000,000+ .....	(0.11)	(0.03)	(0.05)

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to aggregate volume amongst corporate affiliates for purposes of the QCC and Solicitation rebate as this change is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single

corporate entity. By way of example, many firms that are Members of the Exchange operate several different business lines within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. The Exchange currently aggregates volume executed by affiliates for other fees and rebates,<sup>7</sup> and now proposes to similarly aggregate volume executed by affiliates for purposes of the QCC and Solicitation rebate. The proposed definition of “affiliate” to be used to aggregate volume for the QCC and Solicitation

rebate is consistent with definitions used by the Exchange in other contexts.<sup>8</sup>

In addition, the Exchange believes that the proposed changes to the QCC and Solicitation rebate tier schedule are reasonable and equitable as the proposed changes simplify the Exchange’s tier structure, and provide more favorable rebates to members due to the reduced volume thresholds for achieving current tier 5 rebates. As explained above, the Exchange is eliminating the current tier 4 and merging it into current tier 5, thereby giving members a higher rebate for the same volume. The Exchange believes that this change will incentivize members to bring additional QCC and/or other solicited crossing order volume to the Exchange in order to benefit from the enhanced rebates. The Exchange also believes that the proposed changes

<sup>4</sup> See Securities Exchange Act Release No. 70873 (November 14, 2013), 78 FR 69714 (November 20, 2013) (SR-ISE-2013-56).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> See *e.g.*, supra note 4.

<sup>8</sup> *Id.*

to the tier schedule are not unfairly discriminatory as all members will be able to attain higher rebates by executing the required volume of QCC and/or other solicited crossing orders on the Exchange.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>9</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change merely allows for the aggregation of volume from affiliates for purposes of the QCC and Solicitation rebate, consistent with treatment of volume for other purposes in the Schedule of Fees, and with volume aggregation on other options markets. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-17 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-ISE-2017-17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-17 and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-05086 Filed 3-14-17; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80193; File No. SR-FINRA-2017-006]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 6191 To Implement an Anonymous, Grouped Masking Methodology for Over-the-Counter Activity in Connection With Web Site Data Publication of Appendix B Data Pursuant to the Regulation NMS Plan To Implement a Tick Size Pilot Program**

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 3, 2017, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend Rule 6191 to implement an anonymous, grouped masking methodology for over-the-counter ("OTC") activity in connection with Web site data publication of Appendix B data pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>12</sup> 17 CFR 200.30-3(a)(12).



## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Rule 6191(b) (Compliance with Data Collection Requirements)<sup>3</sup> implements the data collection and Web site publication requirements of the Plan.<sup>4</sup> Rule 6191(b)(2)(B) provides, among other things, that FINRA will publish data pursuant to Appendix B.I. and B.II. of the Plan on its Web site within 120 calendar days following month end at no charge,<sup>5</sup> and that such publication will not identify the Trading Center that

<sup>3</sup> See, e.g., Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (Notice of Filing of File No. SR-FINRA-2015-048); see also Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2015-048) ("Accelerated Approval Order").

<sup>4</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014. See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 ("SRO Tick Size Plan Proposal"). See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014). See also Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

<sup>5</sup> On November 30, 2016, the SEC granted exemptive relief to the Participants, and FINRA filed proposed rule changes, to, among other things, delay the publication of Web site data pursuant to Appendices B and C to the Plan until February 28, 2017, and to delay the ongoing Web site publication by ninety days such that it would be published within 120 calendar days following the end of the month. See, e.g., Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated November 30, 2016; see also Securities Exchange Act Release No. 79424 (November 29, 2016), 81 FR 87603 (December 5, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-042). FINRA recently filed a proposed rule change to revert to the 30-day delay with regard to Appendix C data Web site publication. See File No. SR-FINRA-2017-005 (Proposed Rule Change to Amend FINRA Rule 6191 to Modify the Date of Appendix B Web site Data Publication Pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program).

generated the data. Rule 6191(b)(3)(C) provides, among other things, that FINRA will publish data pursuant to Appendix B.IV. to the Plan on its Web site within 120 calendar days following month end at no charge, and that such publication will not identify the OTC Trading Center that generated the data.

In consultation with SEC staff, FINRA is proposing new supplementary material to Rule 6191 to implement the aggregation methodology described further below. Specifically, FINRA is proposing to provide for an anonymous, grouped masking methodology for Appendix B.I., B.II. and B.IV. data in furtherance of the Plan's requirement that the data made publicly available will not identify the Trading Center that generated the data.<sup>6</sup> The proposed methodology also is intended to mitigate confidentiality concerns previously raised by commenters<sup>7</sup> regarding the publication of data related to OTC activity. Chicago Stock Exchange, Inc. ("CHX") is the designated examining authority ("DEA") for a relatively small number of OTC Trading Centers; thus, FINRA also will incorporate the firms for which CHX is the DEA into the anonymous, grouped masking methodology and publish OTC-wide statistics for Appendix B.I., B.II. and B.IV. data on the FINRA Web site.<sup>8</sup>

#### Grouping Methodology

For purposes of the data to be made available on the FINRA Web site pursuant to the Plan, FINRA proposes to aggregate individual OTC Trading Center Appendix B data within groupings of Trading Centers by ATS and non-ATS categories, using an undisclosed methodology for assigning each Trading Center to a group. FINRA believes that an anonymous, grouped masking methodology for purposes of publishing the required data related to OTC activity will support the Plan's requirement that the data to be made publicly available will not identify the Trading Center that generated the data.<sup>9</sup> In furtherance of this objective, the details of the methodology used to formulate the anonymous groupings

<sup>6</sup> See Section VII.(A) of the Plan (Collection of Trading Center Pilot Data).

<sup>7</sup> See *infra* note 20.

<sup>8</sup> In connection with the instant filing, FINRA and CHX requested exemptive relief from the Plan to permit the publication on the FINRA Web site of data relating to OTC activity pursuant to Appendix B.I., B.II. and B.IV. on an aggregated basis using an anonymous, grouped masking methodology. See Letter from Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated March 2, 2017.

<sup>9</sup> See Section VII.(A) of the Plan.

will not be disclosed. FINRA believes that the proposed approach strikes an appropriate balance between mitigating confidentiality concerns while supporting the public availability of useful Plan data.

Trading Center group assignments will not be published and generally will remain unchanged for the duration of the data publication period, with the exception of the entrance of a new Trading Center (new FINRA member). The anonymized identifier used for each group will remain unchanged for the duration of the data publication period and the same groups and group identifiers will be used for all Appendix B data sets. The number of Trading Centers assigned to each group will not specifically be disclosed; however, each group will contain between five and 25 market participant identifiers (MPIDs). In addition, for each day's statistics, the number of MPIDs in each group with activity in any Pilot Security for that day will be disclosed. Disclosing the number of active MPIDs each day is intended to inform evaluators of the data of whether the number of Trading Centers reflected in the statistics each day has changed—for example, because a Trading Center in the group didn't register activity on a given day.<sup>10</sup>

#### Appendix B.I. Data Aggregation Methodology

FINRA proposes to aggregate the Appendix B.I. data to be made publicly available on the FINRA Web site by aggregating statistics within each group by Pilot Security for each trading day. The methodology used for computing the statistics at the group level will be the same methodology used to compute these statistics at the Trading Center level in the non-public version of the data (and in the public version of the exchange data).<sup>11</sup> Specifically, FINRA would calculate group-level sums for statistics that are quantity counts<sup>12</sup> and use all underlying data within a group to calculate statistics requiring averages or weighted averages.<sup>13</sup> Data will be aggregated separately for each order

<sup>10</sup> FINRA will disclose the number of MPIDs in each group with activity in any Pilot Security for that day either within each Appendix B data set or in an associated file.

<sup>11</sup> See Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>).

<sup>12</sup> See, e.g., Appendix B.I.a(7) (cumulative number of orders).

<sup>13</sup> See, e.g., Appendix B.I.a(28) (the share weighted average realized spread for executions of orders); and Appendix B.I.a(29) (the received share-weighted average percentage for shares not displayable as of order receipt). FINRA will calculate averages for all price variables and percentages.

type and subcategory, and will not be aggregated across order types or subcategories.

aggregated across order types or subcategories.

TABLE 1—ILLUSTRATIVE SAMPLE B.I. DATA AGGREGATION <sup>14</sup>

Date	Trading center	Ticker symbol	Number of active MPIDs in masked group across all pilot stocks	Order type	Cumulative number of orders	Cumulative number of shares of orders	Cumulative number of shares of orders executed at an away trading center	Share weighted average realized spread for execution of orders on trading center only
<b>Unmasked Data</b>								
20160926 .....	ABCD	ZZZZ	n/a	18	2	100,000	75,000	-0.01
20160926 .....	EFGH	ZZZZ	n/a	18	2	100,000	100,000	0.01
20160926 .....	IJKL	ZZZZ	n/a	18	4	750,000	35,000	0.011
<b>Masked Data</b>								
20160926 .....	G1	ZZZZ	5	18	8	950,000	210,000	0.0090

Appendix B.II. Data Aggregation Methodology

Appendix B.II. data includes order-level statistics; thus, FINRA proposes that all individual orders be displayed

for all Trading Centers within a group, with each order attributed to the group rather than the underlying Trading Center. In addition, Appendix B.II. order information would be displayed in pure chronological order based on

time of order receipt to help minimize confidentiality concerns that may occur if other ordering methods were used, such as showing the original chronological order per Trading Center.

TABLE 2—ILLUSTRATIVE SAMPLE B.II. DATA AGGREGATION <sup>15</sup>

Date	Trading center	Issue	Number of active MPIDs in masked group across all pilot stocks	Order received time	Order type	Order shares quantity	B/S code	Limit price
<b>Unmasked Data</b>								
20160906 .....	ABCD	ZZZZ	n/a	93,605.41	10	500	B	(null)
20160906 .....	ABCD	ZZZZ	n/a	94,114.99	11	100	S	52.45
20160906 .....	ABCD	ZZZZ	n/a	101,140.05	11	900	S	52.31
20160906 .....	EFGH	ZZZZ	n/a	93,605.42	10	600	B	(null)
20160906 .....	EFGH	ZZZZ	n/a	94,114.99	11	100	S	52.45
20160906 .....	EFGH	ZZZZ	n/a	101,140.07	11	700	S	52.37
<b>Masked Data</b>								
20160906 .....	G1	ZZZZ	5	93,605.41	10	500	B	(null)
20160906 .....	G1	ZZZZ	5	93,605.42	10	600	B	(null)
20160906 .....	G1	ZZZZ	5	94,114.99	11	100	S	52.45
20160906 .....	G1	ZZZZ	5	94,114.99	11	100	S	52.45
20160906 .....	G1	ZZZZ	5	101,140.05	11	900	S	52.31
20160906 .....	G1	ZZZZ	5	101,140.07	11	700	S	52.37

Appendix B.IV. Data Aggregation Methodology

FINRA proposes to aggregate Appendix B.IV. data by aggregating

statistics within each group by trading day by summing the statistics of all market maker activity represented within the group. The number of market

makers would be displayed as the unique number of market makers <sup>16</sup> across all Trading Centers within the group.

<sup>14</sup> For purposes of illustration, this table reflects only a sample of the data—specifically, the fields described in Appendix B.I.a.(1), (2), (3), (7), (8), (13) and (28). The published data would reflect all fields described in Appendix B.I. to the Plan and as further specified in FINRA Rule 6191 and related rule filings, the Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>), and in FINRA’s Appendix B and C Requirements and Finra.org File Specifications document (available at <http://www.finra.org/sites/>

[default/files/Appendix-B-and-C-Reporting-Specifications.pdf](http://www.finra.org/sites/default/files/Appendix-B-and-C-Reporting-Specifications.pdf)).

<sup>15</sup> For purposes of illustration, this table reflects only a sample of the data—specifically, the fields required by items a. through h. of Appendix B.II. The published data would reflect all fields described in Appendix B.II. to the Plan and as further specified in FINRA Rule 6191 and related rule filings, the Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>), and in FINRA’s Appendix B and C

Requirements and Finra.org File Specifications document (available at <http://www.finra.org/sites/default/files/Appendix-B-and-C-Reporting-Specifications.pdf>).

<sup>16</sup> As provided in FINRA Rule 6191.11, FINRA will provide a count of the number of Market Makers used in the participation calculations. Thus, if a single unique Market Maker traded on multiple Trading Centers within the same masking group, for the Appendix B.IV. count of unique Market Makers on a given trading day, FINRA will count this activity as attributed to one unique Market Maker.

TABLE 3—ILLUSTRATIVE SAMPLE B.IV. DATA AGGREGATION <sup>17</sup>

Date	Trading center	Number of active MPIDs in masked group across all pilot stocks	Number unique MMs buy side	Number unique MMs sell side	Shares participation (buy)	Shares participation (sell)
<b>Unmasked Data</b>						
20160906 .....	ABCD	n/a	2	1	700,000	225,000
20160906 .....	EFGH	n/a	1	1	200	5,000
20160906 .....	IJKL	n/a	4	1	35,000	500,000
<b>Masked Data</b>						
20160906 .....	G1	5	5	2	735,200	730,000

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be 120 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>18</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,<sup>19</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. FINRA consulted extensively with SEC staff in connection with the instant proposal to design a grouped masking methodology that is consistent with the objectives of Section VII(A) of the Plan to make Appendix B data publicly available while not identifying the Trading Center that generated the data.

<sup>17</sup> For purposes of illustration, this table reflects only a sample of the data—specifically, the fields required by items a. and b. of Appendix B.IV and FINRA Rule 6191.11. The published data would reflect all fields described in Appendix B.IV. to the Plan and as further specified in FINRA Rule 6191 and related rule filings, the Tick Size Appendix B and C Statistics FAQs (available at <http://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf>), and in FINRA’s Appendix B and C Requirements and Finra.org File Specifications document (available at <http://www.finra.org/sites/default/files/Appendix-B-and-C-Reporting-Specifications.pdf>).

<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

<sup>19</sup> 15 U.S.C. 78o-3(b)(9).

*B. Self-Regulatory Organization’s Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA notes that the proposed rule change implements the provisions of the Plan.

*C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Commission previously received comment letters from FIF and Citadel Securities expressing concern over FINRA’s intent to publish Appendix B data on a Trading Center-by-Trading Center basis.<sup>20</sup> FIF stated that publishing Appendix B.I. and B.II. statistics on FINRA’s Web site in a disaggregated format does not satisfy the requirements of the Plan or Rule 6191 that the publicly available data will not identify the trading center that generated the data.<sup>21</sup> Similarly, Citadel Securities stated that market participants would be able to determine the identity of Trading Centers in violation of the Plan if the Appendix B data were to be published in a disaggregated format.<sup>22</sup>

In consultation with SEC staff, FINRA is filing the instant proposed rule change to mitigate the confidentiality concerns raised by commenters by providing for an anonymized, grouped masking methodology for Appendix B

<sup>20</sup> See Letters from William Hebert, Managing Director, Financial Information Forum (“FIF”), to Robert W. Errett, Deputy Secretary, Commission, dated December 21, 2016 (“FIF letter”); and Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 2016 (“Citadel letter”). See also Securities Exchange Act Release No. 79424 (November 29, 2016), 81 FR 87603 (December 5, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-042).

<sup>21</sup> See FIF letter.

<sup>22</sup> See Citadel letter.

data for all OTC activity in furtherance of the objectives of the Plan.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2017-006 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2017-006. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2017-006, and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-05082 Filed 3-14-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80199; File No. SR-NYSE-2016-72]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Amending Initial and Continued Listing Standards for Special Purpose Acquisition Companies

March 10, 2017.

#### I. Introduction

On December 8, 2016, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend initial listing

standards for Special Purpose Acquisition Companies ("SPACs") to provide an option to hold a tender offer in lieu of a shareholder vote on a proposed acquisition; and amend initial and continued listing standards to, among other things, lower quantitative standards. The proposed rule change was published for comment in the **Federal Register** on December 29, 2016.<sup>3</sup> The Commission received no comments on the proposal. On February 10, 2017, the Commission extended the time period for Commission action on the proposal to March 29, 2017.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

##### A. Background

A SPAC is a special purpose company that raises capital in an initial public offering ("IPO") to enter into future undetermined business combinations through mergers, capital stock exchanges, assets acquisitions, stock purchases, reorganizations or similar business combinations with one or more operating businesses or assets. In its filing, the Exchange stated that in the IPO, a SPAC typically sells units consisting of one share of common stock and one or more warrants (or fraction of a warrant) to purchase common stocks. The units are separable at some point after the IPO. The Exchange also noted that management of the SPAC typically receives a percentage of the equity at the outset and may be required to purchase additional shares in a private placement at the time of the IPO. Due to their unique structure, SPACs do not have any prior financial history, at the time of their listing, like operating companies.

NYSE Listed Company Manual ("Manual") Section 102.06 sets forth the listing standards that apply to SPACs.<sup>5</sup> In addition to requiring SPACs to meet certain quantitative standards, Section 102.06 of the Manual provides additional investor protection safeguards for shareholders investing in SPACs. Currently, Section 102.06 of the Manual requires at least 90% of the proceeds raised in a SPAC IPO, and any

<sup>3</sup> See Securities Exchange Act Release No. 79676 (December 22, 2016), 81 FR 96150 (December 29, 2016) ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 80022 (February 10, 2017), 82 FR 10947 (February 16, 2017) ("Extension").

<sup>5</sup> The Commission notes that throughout this order we have used the term "SPAC" or "SPACs", but these terms have the same meaning as "Acquisition Company" or "Acquisition Companies" which are the terms used for listing, and continued listing, in Sections 102.06 and 802.01B of the Manual. See NYSE Listed Company Manual Sections 102.06 and 802.01B.

concurrent sale of equity securities, be placed in a trust account.<sup>6</sup> Further within three years, or such shorter time period as specified by the SPAC, the SPAC must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the trust account.<sup>7</sup> Until the SPAC has completed a business combination, or a series of business combinations, representing at least 80% of the trust account's aggregate fair market value, the SPAC must, among other things, submit the business combination to a shareholder vote.<sup>8</sup> Any public shareholders who vote against the business combination have a right to convert their shares of common stock into a pro rata share of the aggregate amount then in the trust account, if the business combination is approved and consummated.<sup>9</sup> The Manual further states that a business combination cannot be consummated by the SPAC if the public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock exercise their conversion rights.<sup>10</sup>

In addition to these safeguards, a SPAC must also meet minimum quantitative initial and continued listing standards to list, and remain listed on the Exchange, as well as specified continued listing standards to remain listed after consummation of a business combination.<sup>11</sup>

##### B. Option To Hold a Tender Offer in Lieu of a Shareholder Vote

The Exchange proposes to add an option for the SPAC to conduct a tender offer in lieu of a shareholder vote to complete a business combination. First, under the proposal if a shareholder vote is not held on a business combination for which the SPAC must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Exchange Act, the SPAC must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account pursuant to Rule 13e-4 and Regulation 14E under the Exchange Act.<sup>12</sup> The proposal states that a SPAC

<sup>6</sup> See NYSE Listed Company Manual Section 102.06.

<sup>7</sup> *Id.* The 80% fair market value is the net assets held in trust net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See notes 16-18, *infra* and accompanying text.

<sup>12</sup> See Notice, *supra* note 4.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

using the tender offer option to complete a business combination must file tender offer documents with the Commission containing substantially the same financial and other information about the business combination and the redemption rights as would be required under Regulation 14A of the Exchange Act.

Second, the proposal also specifies that shareholder vote provisions requiring the business combination to be approved by a majority of the shares voting at the meeting only apply to shareholder votes where the SPAC must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Exchange Act in advance of the shareholder meeting.<sup>13</sup> This provision would, therefore, require a SPAC, not subject to the Commission's proxy rules, such as a foreign private issuer, to utilize the tender offer option to complete a business combination.

Finally, the Exchange is proposing to eliminate the provision that prevents a business combination if public shareholders owning a threshold amount (not to exceed 40%) of the shares of common stock issued in the IPO exercise their conversion rights in connection with the business combination.

### *C. Initial and Continued Listing Standards for SPACs Prior to and After Consummation of a Business Combination*

The Exchange proposes to amend the quantitative requirements for initial, and continued, SPAC listings. Currently, at the time of its initial listing, a SPAC must demonstrate, among other things, an aggregate market value of \$250 million and a market value of publicly-held shares of \$200 million.<sup>14</sup> The Exchange proposes to lower the initial listing standards for a SPAC to an aggregate market value of \$100 million and market value of publicly-held shares of \$80 million.<sup>15</sup>

Currently, once listed but prior to the consummation of a business combination, a SPAC is subject to suspension and delisting if it does not maintain an average aggregate global market capitalization of at least \$125 million, or an average aggregate global market capitalization attributable to its publicly-held shares of at least \$100 million, in each case over 30

consecutive trading days.<sup>16</sup> The Exchange proposes to lower these pre-business combination continued listing standards to require a minimum of \$50 million average aggregate global market capitalization; and \$40 million aggregate global market capitalization attributable to publicly-held shares, in both cases over 30 consecutive trading days.

Currently, the Exchange will notify a SPAC if its average aggregate global market capitalization falls below \$150 million, or if its average aggregate global market capitalization attributable to its publicly-held shares falls below \$125 million. In conjunction with the proposed changes to the continued listing standards noted above, the Exchange proposes to lower these notification standards to \$75 million average aggregate global market capitalization, and to \$60 million average aggregate global market capitalization attributable to its publicly-held shares.<sup>17</sup>

Currently, under the Manual, the post-business combination company of a SPAC would be subject to the continued listing standards applicable to operating companies that require \$50 million average global market capitalization along with stockholders' equity of at least \$50 million.<sup>18</sup> The Exchange proposes to add additional continued listing standards for the post-business combination company of a SPAC in addition to changing the listing procedures the SPAC must follow to provide for the listing of the post-business combination company. In addition to continuing to require the post-business combination company to meet all the continued listing requirements set forth in Sections 801 and 802.01 of the Manual, including the market capitalization and stockholders' equity requirements described above,<sup>19</sup> under the proposal, immediately after the business combination, the company

must also maintain: (1) A price per share of at least \$4.00; (2) a global market capitalization of at least \$150 million; (3) an aggregate market value of publicly-held shares<sup>20</sup> of at least \$40 million; and (4) the requirements with respect to shareholders and publicly-held-shares set forth in Section 102.01A of the Manual for companies listing in connection with an IPO.<sup>21</sup> Furthermore, the Exchange proposes that in order to list the post-business combination company the SPAC must submit an original listing application, which must be approved by the Exchange prior to consummation of the business combination.

### **III. Discussion and Commission's Findings**

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Exchange Act and the rules and regulations thereunder.<sup>22</sup> Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(5) of the Exchange Act,<sup>23</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly

<sup>20</sup> See note 19, *supra*.

<sup>21</sup> Currently, a company listing in connection with an IPO must have a minimum of 400 holders of 100 or more shares and 1,100,000 publicly-held shares. See NYSE Listed Company Manual Section 102.01A.

<sup>22</sup> 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> A SPAC also may be delisted if: (1) Its total stockholders falls to less than 400; or (2) the total stockholders is less than 1,200 and average trading volume is less than 100,000 shares for the most recent twelve months; or (3) the number of publicly-held shares is less than 600,000. See NYSE Listed Company Manual Section 802.01B.

<sup>17</sup> The Exchange proposes that "publicly-held shares" would exclude shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more. See Notice, *supra* note 3. Further, for a post-business combination the Exchange proposes the same publicly-held shares definition.

<sup>18</sup> See NYSE Listed Company Manual Section 802.01B. Under this provision, to be below compliance, a listed company would have to be below both the \$50 million average global market capitalization and \$50 million shareholders' equity requirements consecutively for 30 trading days. This continued listing standard was formally referred to as the "Earnings Test."

<sup>19</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> A SPAC must also comply with the requirements of Section 102.01A of the Manual and have a closing price or, if listing in connection with an IPO, an IPO price per share of at least \$4.00 at the time of initial listing. See NYSE Listed Company Manual Section 102.06.

<sup>15</sup> See Notice, *supra* note 4.

markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that security to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

As noted above, SPACs are companies that raise capital in IPOs, with the purpose of purchasing existing operating companies or assets within a certain time frame. Because of the unique structure of SPACs, investors do not know the ultimate business of the company before a business combination, similar to a blank check company. Therefore, the Commission approved the Exchange's listing standards for SPACs containing certain provisions that were similar in some respects to the investor protection measures contained in Rule 419 under the Securities Act of 1933 ("Securities Act").<sup>24</sup> One of the important investor protection safeguards incorporated into the Exchange's listing rules for SPACs is the ability of public shareholders to convert their shares for a pro rata share of the cash held in the trust account if they vote against a business combination. In approving this provision, the Commission noted that the conversion rights will help to ensure that public shareholders who disagree with management's decision with respect to a business combination have adequate remedies.<sup>25</sup>

The proposal would provide an option for the SPAC to hold a tender offer in lieu of a shareholder vote on a proposed business combination. The Exchange noted that certain hedge funds

and other activist investors have sometimes employed a strategy of acquiring an interest in a SPAC and then using their ability to vote against a proposed business combination to obtain additional consideration not available to other shareholders in a practice known as "greenmail."<sup>26</sup>

The Commission notes that shareholders will receive redemption rights and comparable financial and other information about the business combination irrespective of whether the SPAC's business combination is consummated through a tender offer or a shareholder vote. The Commission believes that shareholders who are not in favor of a business combination should continue to have an adequate remedy under the Exchange's proposal if they disagree with management's decision with respect to a business combination, and that the Exchange's SPAC rules will continue to have safeguards to address investor protection, while at the same time allowing the greenmail abuses noted by the Exchange to be addressed. Based on the above, the Commission finds that this proposal is consistent with the requirements of the Act and in particular the investor protection standards under Section 6(b)(5) of the Exchange Act.

The Exchange is also proposing to add language to Section 102.06 of the Manual which concerns the shareholder voting requirements applicable to business combinations of SPACs. Under this change if a SPAC holds a shareholder vote to approve a business combination, the provisions only apply when the SPAC must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Exchange Act in advance of the shareholder meeting. This change, viewed together with the changes discussed above, allowing a SPAC to consummate a business combination through a tender offer rather than a shareholder vote, mean that certain SPACs that are not required under the Federal securities laws to comply with the Commission's proxy solicitation rules when soliciting proxies, will have to follow the tender offer provisions under the Exchange's rules.<sup>27</sup> Under this provision, the tender offer documents are specifically required to contain substantially the same financial and other information about the business combination and redemption rights, as would be required under the proxy rules

in Regulation 14A of the Exchange Act. The Commission notes that this proposal would clarify the manner in which a shareholder vote is held and the information that would be required by the SPAC to send to shareholders. Further, it ensures that all investors will be receiving the same information about a proposed business combination whether it is holding a vote and required by law to follow the proxy rules or conducting a tender offer under the conditions set forth in the Exchange's rules. This provision also does not preclude a SPAC that does not have to comply with the Federal proxy rules when soliciting proxies from having a shareholder vote, but merely ensures, through the tender offer process, that the SPAC will be required to provide comparable information. Based on the above, the Commission finds that this portion of the proposal is consistent with the requirements of the Exchange Act, and in particular, the investor protections requirements under Section 6(b)(5) of the Act.<sup>28</sup>

Further, the Exchange has also proposed to eliminate the provision that a business combination cannot be consummated by the SPAC if the public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock exercise their conversion rights. The Commission notes that we have approved SPAC listing rules on other markets that do not contain a similar requirement. If a SPAC wants to adopt such a provision, however, it will still be permitted to do so. Based on the above, it is reasonable to allow the Exchange to not mandate such a requirement. The Commission, therefore, finds this change is consistent with the requirements of Section 6(b)(5) of the Exchange Act.<sup>29</sup>

The proposal would also lower the initial listing standards applicable to SPACs from an aggregate market value of least \$250 million to \$100 million and market value of publicly-held shares of at least \$200 million to \$80 million. Under the proposal, a SPAC would be promptly suspended from trading and delisted if, over any 30 day consecutive trading period, its average aggregate global capitalization falls below \$50 million or its average

<sup>24</sup> See 17 CFR 230.419. Rule 419 of the Securities Act applies to blank check companies issuing penny stock as defined under Rule 3a51-1(a)(2) of the Exchange Act. See 17 CFR 240.3a51-1(a)(2). See also, Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 at 27599 (May 13, 2008) ("NYSE Order").

<sup>25</sup> The Commission also noted, among other things, that the Exchange would, immediately prior to consummation of a business combination, consider whether the listing of the post-business combination company would be in the best interest of the Exchange and the public interest and would have authority to suspend and delist the SPAC under this standard. This provision will continue to apply to all business combinations, whether approved through a shareholder vote or conducted through a tender offer, under the proposed rule change. See NYSE Order, 73 FR at 27600. See also, NYSE Listed Company Manual Section 802.01B. In addition, the Exchange will also continue to consider whether the business combination gives rise to a "back-door listing" as set forth in Section 703.08(e) of the Manual, irrespective of the method used to complete the business combination. See NYSE Listed Company Manual Section 802.01B.

<sup>26</sup> See Notice, note 4, *supra*.

<sup>27</sup> For example, registered securities of foreign private issuers are exempt from the proxy rules. See Section 3(a)(12)-3 of the Exchange Act.

<sup>28</sup> The Commission notes that it has previously approved a substantially similar rule concerning this portion of the Exchange's proposal for other national securities exchanges. See Securities Exchange Act Release No. 63366 (November 23, 2010), 75 FR 74119 (November 30, 2010) (NYSEAmex-2010-103) and Securities Exchange Act Release No. 63607 (December 23, 2010), 75 FR 82420 (December 30, 2010) (Nasdaq-2010-137).

<sup>29</sup> *Id.*

aggregate global market capitalization of publicly-held shares falls below \$40 million.<sup>30</sup> As noted above, current rules set these dollar limits at \$125 million and \$100 million, respectively. The proposal would further lower the threshold for Exchange notification of the SPAC if aggregate global market capitalization falls below \$75 million, as opposed to \$150 million under the current rule, and aggregate global market capitalization attributable to publicly-held shares falls below \$60 million, as opposed to \$125 million under the current rule. The Commission notes that, despite the fact that the proposed reduction to SPAC listing and continued listing standards are significant on a percentage basis, the proposed requirements remain higher than comparable listing standards on other markets that list and trade SPACs and should be sufficient to promote fair and orderly markets.<sup>31</sup>

Lastly, the Exchange proposes to add additional continued listing standards after the consummation of a business combination in connection with the lowering of the initial listing standards for a SPAC. These new standards, as noted above, will be in addition to the existing continued listing standards that currently apply to the post-business combination company.<sup>32</sup> The Commission notes that the additional requirements should strengthen the continued listing standards applicable to the post-business combination company by requiring, in order to remain listed on the Exchange, such company to meet at least a price per share of \$4 and the initial listing distribution standards set forth in Section 102.01A of the Manual<sup>33</sup> as

<sup>30</sup> The Commission notes that the current distribution standards and other continued listing standards applicable to pre-business combination SPAC will remain unchanged. See NYSE Listed Company Manual Section 801 and 802.

<sup>31</sup> For example, initial listing standards on Nasdaq's Global Market and NYSE MKT require, among other things, a market value of listed securities of \$75 million and a market value of publicly-held shares of at least \$20 million. See Nasdaq Rule 5405 and Section 101(d) of NYSE MKT Company Guide. The continued listing standards for Nasdaq Global Market and NYSE MKT require, among other things, at least \$50 million in market value and \$15 million market value in publicly-held shares. See Nasdaq Rule 5450 and Section 1003(a) of NYSE MKT Company Guide. The Exchange's other quantitative standards for SPACs to list, and continue to be listed, such as, for example, the holder requirements, will also continue to be comparable to Nasdaq Global Market standards with the changes being approved in this order.

<sup>32</sup> See note 20, *supra* and accompanying text.

<sup>33</sup> The distribution standards of Section 102.01A of the Manual set forth minimum standards for the number of round lot shareholders and number of publicly-held shares required for initial listing. See NYSE Listed Company Manual Section 102.01A.

well as have sufficient market capitalization and market value of publicly-held shares to ensure adequate depth and liquidity.<sup>34</sup> The proposed standards would also require a SPAC that is planning to consummate a business combination to submit an original listing application that must be approved by the Exchange prior to the listing of the post-business combination company. The Commission believes the additional requirement for the SPAC to submit, and receive Exchange approval of its, listing application to continue to list on the Exchange as a post-business combination company should allow the Exchange to reevaluate whether the newly formed operating company is suitable for continued listing and will have sufficient market depth and liquidity for continued trading.<sup>35</sup> The new requirements also make the continued listing process for a post-business combination company more similar to the process for any new listing applicant, which is consistent with the unique characteristics of a SPAC that lists with the intention to find a business combination with an operating company.

Based on the foregoing, the Commission finds that the proposed changes to listing standards are consistent with the requirements of the Exchange Act.

#### IV. Conclusion

*It is therefore ordered that* pursuant to Section 19(b)(2) of the Exchange Act<sup>36</sup> that the proposed rule change (SR–NYSE–2016–72) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–05137 Filed 3–14–17; 8:45 am]

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<sup>34</sup> The Exchange proposes to require at a minimum \$150 million of global market capitalization and \$40 million of aggregate market value of publicly-held shares. See proposed NYSE Listed Company Manual Section 802.01B.

<sup>35</sup> The continued application of the back-door listing provisions should also help ensure that a company not otherwise qualified for original listing could get listed on the Exchange through a business combination with a SPAC. See NYSE Listed Company Manual Section 802.01B of the Manual. See also note 27, *supra* and accompanying text.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80194; File No. SR–ISE–2017–20]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct a Typographical Error in Section 413 of the Exchange's Rules

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2017, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 413 of the Exchange's Rules, as described in further detail below.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.ise.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 the proposed rule change is to correct a typographical error. Rule 413(a) of the Rules of the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

Exchange (the “Rules”), which provides for exemptions from position limits, presently states that “hedge transactions and positions established pursuant to paragraphs eight (8) and nine (9)” thereunder are “subject to a position limit equal to five (5) times the standard limit established under Rule 412(d).” The reference in this text to paragraphs (8) and (9) is incorrect. The Rule text should properly reference paragraphs (6) and (8).

Paragraph (6) of Rule 413(a) provides for a position limit exemption for a long call position accompanied by a short put position with the same strike price and a short call position accompanied by a long put position with a different strike price (a “box spread”). Paragraph (8) provides for a position limit exemption for a listed option position hedged on a one-for-one basis with an over-the-counter (“OTC”) option position on the same underlying security. Meanwhile, paragraph (9) merely states that for strategies described under paragraphs (2)–(5) of subsection (a) of the Rule, one component of the option strategy can be an OTC option contract guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account.

The Exchange notes that the position limit exemptions set forth in the rules of other options exchanges, including ISE’s sister exchange, Phlx, as well as CBOE, provide for position limit exemptions for OTC and box spread hedges of up to five times the standard limits.<sup>3</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange asserts that the proposed correction will serve

<sup>3</sup> See PHLX Rule 1001(l) (providing that “[h]edge transactions and positions established pursuant to paragraphs (6) [OTC options hedges] and (7) [box spread hedges] below are subject to a position limit equal to five (5) times the standard limit . . .”); CBOE Rule 4.11, Interpretation .04(a) (providing that “[h]edge transactions and positions established pursuant to paragraphs six (6) [box spread hedges] and seven (7) [OTC options hedges] are subject to a position limit equal to five (5) times the standard limit . . .”).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

the Act’s goals by ensuring that the Exchange’s Rules are accurate.

### 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 as it is designed to correct a typographical error.

### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>7</sup>

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act<sup>8</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)<sup>9</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to correct a typographical error immediately and therefore reduce confusion in the application of the Exchange’s rules. Accordingly, the Commission hereby waives the

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 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.

<sup>8</sup> 17 CFR 240.19b–4(f)(6).

<sup>9</sup> 17 CFR 240.19b–4(f)(6)(iii).

operative delay and designates the proposal operative upon filing.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–ISE–2017–20 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–ISE–2017–20. 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

<sup>10</sup> 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).



10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-20 and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-05083 Filed 3-14-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80188; File No. SR-ISE-2017-16]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

March 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 24, 2017, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s Schedule of Fees, as described in further detail below.

The text of the proposed rule change is available on the Exchange’s Web site at [www.ise.com](http://www.ise.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 the proposed rule change is to amend the Exchange’s Schedule of Fees to make changes to (1) the Market Maker Plus<sup>3</sup> program, (2) Priority Customer<sup>4</sup> regular order taker fees in Select Symbols,<sup>5</sup> (3) Priority Customer complex order rebates in Select Symbols and Non-Select Symbols,<sup>6</sup> and (4) the threshold of net zero complex contracts. Each of these changes is described below.

###### Market Maker Plus

In order to promote and encourage liquidity in Select Symbols, the Exchange offers Market Makers<sup>7</sup> that meet the quoting requirements for Market Maker Plus enhanced rebates for

<sup>3</sup> A “Market Maker Plus” is a Market Maker who is on the National Best Bid or National Best Offer a specified percentage of the time for series trading between \$0.03 and \$3.00 (for options whose underlying stock’s previous trading day’s last sale price was less than or equal to \$100) and between \$0.10 and \$3.00 (for options whose underlying stock’s previous trading day’s last sale price was greater than \$100) in premium in each of the front two expiration months. The specified percentage is at least 80% but lower than 85% of the time for Tier 1, at least 85% but lower than 95% of the time for Tier 2, and at least 95% of the time for Tier 3. A Market Maker’s single best and single worst quoting days each month based on the front two expiration months, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

<sup>4</sup> A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).

<sup>5</sup> “Select Symbols” are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

<sup>6</sup> “Non-Select Symbols” are options overlying all symbols, excluding Select Symbols.

<sup>7</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

adding liquidity in those symbols. These Market Maker Plus rebates are provided on a per symbol basis in three tiers based on the time the Market Maker is quoting at the national best bid or offer (“NBBO”).<sup>8</sup> Currently, the rebate is \$0.10 per contract for Tier 1, \$0.18 per contract for Tier 2, and \$0.22 per contract for Tier 3.<sup>9</sup> The Exchange now proposes to increase the rebate for Tier 1 to \$0.15 per contract. The rebates for Tier 2 and Tier 3, including the special rebates for Market Makers that achieve Market Maker Plus in SPY or QQQ, will remain at the same amounts as described herein.

###### Priority Customer Taker Fees

The Exchange charges a taker fee for regular orders in Select Symbols. This fee is \$0.44 per contract for Market Maker orders, and \$0.45 per contract for Non-ISE Market Maker,<sup>10</sup> Firm Proprietary<sup>11</sup>/Broker-Dealer,<sup>12</sup> and Professional Customer<sup>13</sup> orders. For Priority Customer orders this fee is \$0.31 per contract, or \$0.26 per contract for members with a total affiliated Priority Customer average daily volume (“ADV”) that equals or exceeds 200,000 contracts.<sup>14</sup> The Exchange now

<sup>8</sup> For all Market Maker Plus tiers, a \$0.30 per contract fee applies when trading against Priority Customer complex orders that leg into the regular order book. No fee is charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book).

<sup>9</sup> In addition, the Exchange also offers lower rebates for Market Makers that achieve Market Maker Plus in SPY or QQQ. Specifically, Market Makers that achieve Tier 2 or Tier 3 of Market Maker Plus in either SPY or QQQ will receive the SPY or QQQ rebate based on the highest Market Maker tier achieved in either product. For example, a Market Maker that achieves Tier 1 Market Maker Plus in QQQ but Tier 3 Market Maker Plus in SPY will receive a Tier 3 rebate in both SPY and QQQ. Instead of the Tier 2 and Tier 3 rebates described above, however, Market Maker Plus orders in SPY or QQQ are entitled to a rebate of \$0.16 per contract for Tier 2, and \$0.20 per contract for Tier 3.

<sup>10</sup> A “Non-ISE Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>11</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

<sup>12</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>13</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>14</sup> Priority Customer ADV includes all volume in all symbols and order types. All eligible volume from affiliated members will be aggregated in determining total affiliated Priority Customer ADV, provided there is at least 75% common ownership between the members as reflected on each member’s Form BD, Schedule A. For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

proposes to increase the taker fee for Priority Customer orders in Select Symbols to \$0.40 per contract for all such orders regardless of volume. As such, the Exchange also proposes to delete the volume-based incentive for Priority Customer orders in Select Symbols, specifically the taker fee of \$0.26 per contract for members that achieve the higher Priority Customer ADV tier.

#### Priority Customer Complex Order Rebates

Currently, the Exchange provides rebates to Priority Customer complex orders that trade with non-Priority Customer complex orders in the complex order book or trade with quotes and orders on the regular order book. Rebates are tiered based on a member's ADV executed during a given month as follows: 0 to 29,999 contracts ("Tier 1"), 30,000 to 59,999 contracts ("Tier 2"), 60,000 to 99,999 contracts ("Tier 3"), 100,000 to 149,999 ("Tier 4"), 150,000 to 199,999 contracts ("Tier 5"), and 200,000 or more contracts ("Tier 6"). In Select Symbols the rebate is \$0.30 per contract for Tier 1, \$0.35 per contract for Tier 2, \$0.41 per contract for Tier 3, \$0.44 per contract for Tier 4, \$0.46 per contract for Tier 5, and \$0.47 per contract for Tier 6. In Non-Select Symbols the rebate is \$0.63 per contract for Tier 1, \$0.71 per contract for Tier 2, \$0.79 per contract for Tier 3, \$0.81 per contract for Tier 4, \$0.83 per contract for Tier 5, and \$0.84 per contract for Tier 6.<sup>15</sup>

The Exchange now proposes to (i) introduce two additional volume-based tiers of Priority Customer complex order rebates and (ii) in the existing tiers, amend the volume requirements necessary for achieving higher Priority Customer complex order rebates. As proposed, the ADV thresholds will be as follows: 0 to 14,999 contracts ("Tier 1"), 15,000 to 44,999 contracts ("Tier 2"), 45,000 to 59,999 contracts ("Tier 3"), 60,000 to 74,999 contracts ("Tier 4"), 75,000 to 99,999 contracts ("Tier 5"), 100,000 to 124,999 contracts ("Tier 6"), 125,000 to 224,999 contracts ("Tier 7"), and 225,000 or more contracts ("Tier 8").

Under the proposal, the rebate amounts provided for Priority Customer complex orders in both Select Symbols

the Exchange will only remove the day for members that would have a lower ADV with the day included.

<sup>15</sup> For both Select Symbols and Non-Select Symbols, these rebates are provided per contract per leg if the order trades with non-Priority Customer orders in the complex order book, or trades with quotes and orders on the regular order book.

and Non-Select Symbols will be amended to reflect the tier changes described above. In Select Symbols, the proposed rebate will be \$0.26 per contract for Tier 1, \$0.30 per contract for Tier 2, \$0.36 per contract for Tier 3, \$0.41 per contract for Tier 4, \$0.42 per contract for Tier 5, \$0.44 per contract for Tier 6, \$0.46 per contract for Tier 7, and \$0.49 per contract for Tier 8. In Non-Select Symbols, the proposed rebate will be \$0.40 per contract for Tier 1, \$0.60 per contract for Tier 2, \$0.70 per contract for Tier 3, \$0.75 per contract for Tier 4, \$0.75 per contract for Tier 5, \$0.80 per contract for Tier 6, \$0.81 per contract for Tier 7, and \$0.85 per contract for Tier 8. Other rebate amounts—specifically, the Price Improvement Mechanism ("PIM") Break-up Rebates for both Select and Non-Select Symbols and the Facilitation and Solicitation Break-up Rebate for Select Symbols—will remain unchanged from their current levels, including the rebate amounts for the two proposed additional tiers.

#### Net Zero Complex Orders

Today, the Exchange does not provide rebates for Priority Customer complex orders that trade at a net price at or near \$0.00 (*i.e.*, net zero complex orders) that are entered on behalf of originating market participants that execute an ADV of at least 10,000 net zero complex orders in a given month. For purposes of determining which complex orders qualify as "net zero," the Exchange counts all complex orders that leg in to the regular order book and are executed at a net price that is within a range of \$0.01 credit and \$0.01 debit.<sup>16</sup> While these complex orders would generally not find a counterparty in the complex order book, they may leg in to the regular market where they are executed by Market Makers or other market participants on the individual legs who pay a fee to trade with this order flow. The fee Market Makers pay when a complex order legs into their quote is substantially higher than their fee or rebate for non-complex orders that trade against their quotes. The 10,000 contract threshold exists to differentiate market participants that are entering legitimate complex orders from those that are entering net zero complex orders solely to earn a rebate.

The Exchange now proposes to lower the threshold of net zero complex contracts from 10,000 to 2,000 contracts.

<sup>16</sup> For example, a market participant could enter a net zero complex order that buys 500 contracts of the \$193 March 6, 2016 SPY Put at a price of \$0.03 and sells 500 contracts of the \$193.50 March 6, 2016 SPY Put at a price of \$0.03 for a net price of \$0.00.

As such, net zero priced complex orders that leg into the regular order book and are entered by firms with an ADV in this type of activity of 2,000 contracts or more in a given month will not earn the Priority Customer complex order rebate.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>18</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### Market Maker Plus Program

The Exchange believes that it is reasonable and equitable to increase the Tier 1 Market Maker Plus rebate because it will encourage Market Makers to post tighter markets in Select Symbols and thereby maintain liquidity and attract additional order flow to the ISE, which will ultimately benefit all market participants that trade on the Exchange. The Tier 1 Market Maker Plus rebate has proven to be an effective incentive for Market Makers to provide liquidity in Select Symbols. The Exchange believes that the proposed Tier 1 Market Maker Plus rebate is reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The Exchange also believes that the proposed Tier 1 Market Maker Plus rebate is not unfairly discriminatory because all Market Makers can achieve the higher rebate by satisfying the applicable Market Maker Plus requirements.

#### Priority Customer Taker Fees

The Exchange believes that the proposed changes to increase the Priority Customer taker fee and eliminate the Priority Customer taker fee discount program for members with a total affiliated Priority Customer ADV of more than 200,000 contracts are reasonable and equitable because the proposed fees remain lower than the fees charged to other market participants that remove liquidity on the Exchange. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to provide lower fees for Priority Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(4) and (5).

390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders than Priority Customers.

#### Priority Customer Complex Order Rebates

The Exchange believes that it is reasonable and equitable to make the proposed changes, both to the volume requirements necessary to achieve the Priority Customer complex order rebates and to the rebate amounts, as the proposals are designed to attract additional Priority Customer complex order volume to the Exchange. Although the Exchange is lowering the rebates for Priority Customer complex orders, it is also generally lowering the associated volume thresholds to make it easier for members to achieve the higher tiers. While the proposed rebate amounts are lower in some categories, the Exchange believes that the proposed changes are reasonable and equitable when looking at the overall program for both Non-Select Symbol and Select Symbol rebates. For example, a member who received a \$0.71 Non-Select Symbol rebate for executing an ADV of 45,000 Non-Select Symbol contracts in a given month under the existing program would receive a \$0.70 Non-Select Symbol rebate under the proposed program. However, a member who would have received a \$0.35 Select Symbol rebate under the existing program for executing the same ADV for Select Symbol contracts in a given month would receive a \$0.36 Select Symbol rebate under the proposed program. Therefore, the Exchange believes that the overall amendments to its rebate program for Priority Customer complex orders is reasonable and equitable as proposed. In addition, the Exchange believes that introducing an additional volume-based tier with higher rebate amounts will incentivize members to send additional order flow to the Exchange in order to achieve these rebates for their Priority Customer complex order volume, creating additional liquidity to the benefit of all members that trade complex orders on the Exchange.

The Exchange further believes that it is equitable and not unfairly discriminatory to continue to provide a rebate only for Priority Customer complex orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on

average during a calendar month for its own beneficial account(s). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

#### Net Zero Complex Orders

The Exchange believes that the proposed change to lower the threshold of net zero complex contracts is reasonable, equitable, and not unfairly discriminatory as it is designed to remove financial incentives for market participants to engage in rebate arbitrage by entering valueless complex orders on the Exchange that do not have any economic purpose. The Exchange has determined that the current threshold is still too high to effectively discourage market participants from engaging in rebate arbitrage, and believes that the lower threshold proposed in this filing more accurately reflects the Exchange's original intent. No market participants meet the current ADV threshold, as firms have modified their activity to ensure that their complex ADV in the net zero range is lower than the 10,000 ADV threshold set in the original net zero filing. In January 2017, for example, the market participant with the largest ADV in net zero contracts executed an ADV of 1,250 net zero contracts. By comparison the average net zero ADV of market participants that traded complex orders in January 2017 was only 12 contracts, with the vast majority of these market participants executing no net zero contracts. The continued submission of a high volume of net zero complex orders that leg into the regular order book by these firms has generated complaints from the Market Makers that trade against these orders in the regular order book, as firms recognize these net zero complex orders as essentially non-economic.

The Exchange believes that lowering the threshold will make it more difficult for firms to continue to enter net zero complex orders purely to earn a rebate. In particular, the Exchange notes that any firm that engages in this activity will be prevented from doing so with an ADV of more than 2,000 net zero complex orders. This will reduce the cost of these trades to the Exchange and its members as firms are limited in the amount of this net zero complex order activity that they can conduct on the Exchange. While the proposed threshold is still higher than current activity seen in January 2017, the Exchange believes that it is important to lower the ADV threshold to ensure that market

participants do not further increase this activity. The Exchange believes that market participants will stop entering net zero complex orders when they reach the proposed ADV threshold as these firms are entering these orders solely for the purpose of earning a rebate. Indeed, this is consistent with the Exchange's experience with this rule to date, as firms that were previously entering a high volume of net zero complex orders have reduced their volume in activity covered by this rule.

To the extent that market participants enter legitimate complex orders, however, they will continue to receive the same rebates that they do today. In addition, market participants that enter an insubstantial volume of net zero complex orders will also continue to receive rebates. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to continue to provide rebates where appropriate based on the market participant executing only a low ADV of net zero complex orders. While the Exchange could prohibit rebates for any net zero complex orders without an ADV threshold, doing so would disadvantage innocent market participants that are not engaged in rebate arbitrage. The Exchange believes that the decision to allow rebates for firms with a limited ADV in net zero complex orders properly balances the need to encourage market participants to send order flow to the Exchange, and the need to prevent activity that is harmful to the market. Moreover, all market participants will be treated the same based on their net zero ADV.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>19</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed fees and rebates remain competitive with those on other options markets, and will continue to attract order flow to the Exchange. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee

<sup>19</sup> 15 U.S.C. 78f(b)(8).

changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>20</sup> and Rule 19b-4(f)(2)<sup>21</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-16 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-ISE-2017-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-16 and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-05089 Filed 3-14-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SOCIAL SECURITY ADMINISTRATION**

**[Docket No. SSA-2017-0012]**

**Agency Information Collection Activities: Proposed Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

**(OMB)**

Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202-395-6974, *Email address:* [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov)

**(SSA)**

Social Security Administration, OLCA, *Attn:* Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410-966-2830, *Email address:* [OR.Reports.Clearance@ssa.gov](mailto:OR.Reports.Clearance@ssa.gov)

Or you may submit your comments online through [www.regulations.gov](http://www.regulations.gov), referencing Docket ID Number [SSA-2017-0012].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 15, 2017. Individuals can obtain copies of the collection instruments by writing to the above email address.

*Authorization for the Social Security Administration To Obtain Wage and Employment Information From Payroll Data Providers—0960-NEW.* Section 824 of the Bipartisan Budget Act (BBA) of 2015, Public Law 114-74, authorizes the Social Security Administration (SSA) to enter into information exchanges with payroll data providers for the purposes of improving program administration and preventing improper payments in the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs. SSA will use Form SSA-8240, "Authorization for the Social Security Administration to Obtain Wage and Employment Information from Payroll Data Providers," to secure the authorization needed from the relevant members of the public to obtain their wage and employment information from payroll data providers. Ultimately, SSA will use this wage and employment information to help determine program eligibility and payment amounts.

The public will be able to complete form SSA-8240 using the following modalities: a paper form; the Internet; and an in-office or telephone interview, during which an SSA employee will document the wage and employment information authorization information on one of SSA's internal systems ((the Modernized Claims System (MCS); the Modernized Supplemental Security Income Claims System (MSSICS); eWork; or iMain)). The individual's authorization will remain effective until one of the following four events occurs:

- SSA makes a final adverse decision on the application for benefits, and the

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

applicant has filed no other claims or appeals under the Title for which SSA obtained the authorization;

- the individual's eligibility for payments ends, and the individual has not filed other claims or appeals under the Title for which SSA obtained the authorization;

- the individual revokes the authorization verbally or in writing; or
- the deeming relationship ends (for SSI purposes only).

SSA will request authorization on an as-needed basis as part of the following processes: (a) SSDI and SSI initial claims; (b) SSI redeterminations; and (c) SSDI Work Continuing Disability

Reviews. The respondents are individuals who file for or are currently receiving SSDI or SSI payments, and any person whose income and resources SSA counts when determining an individual's SSI eligibility or payment amount.

*Type of Request:* Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-8240 (paper) .....	136,150	1	6	13,615
Title II & Title XVI Electronic (MCS, MSSICS, and eWork) .....	2,769,800	1	2	92,327
Internet .....	927,504	1	2	30,917
Revoking Authorization .....	191,673	1	10	31,946
Totals .....	4,025,127	.....	.....	168,805

Dated: March 10, 2017.

**Naomi R. Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2017-05112 Filed 3-14-17; 8:45 am]

BILLING CODE 4191-02-P

**SOCIAL SECURITY ADMINISTRATION**

[Docket No. SSA-2007-0082]

**Rescission of Social Security Ruling 93-2p; Policy Interpretation Ruling; Titles II and XVI: Evaluation of Human Immunodeficiency Virus Infection**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of rescission of Social Security Ruling, 93-2p.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(1), the Acting Commissioner of Social Security gives notice of the rescission of Social Security Ruling (SSR) 93-2p.

**DATES:** *Effective Date:* This rescission is effective March 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Cheryl A. Williams, Office of Disability Policy, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-4163. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213, or TTY 1-800-325-0778, or visit our Internet site, Social Security online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of

administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of General Counsel, or other interpretations of the law and regulations.

SSR 93-2p provides guidance about evaluating duration in cases meeting or equaling the human immunodeficiency virus (HIV) infection listings. It instructs that with acceptable documentation of HIV infection as described in the introductory text to the listings in the Immune body system, an individual who has an impairment that meets or equals one of the criteria in the listings for HIV infection has an impairment that is considered permanent or expected to result in death. In these cases, a separate durational finding is not required, and evidence showing that the impairment has lasted or expected to last for a continuous period of at least 12 months is unnecessary.

On December 2, 2016, we published a final rule, Revised Medical Criteria for Evaluating Human Immunodeficiency Virus (HIV) Infection and for Evaluating Functional Limitations in Immune System Disorders, in the **Federal Register** at 81 FR 86915. The final rule revises the listing criteria under which we evaluate impairments related to HIV infection (14.11 for adults and 114.11 for children, formerly 14.08 and 114.08, respectively). These updates reflect the advances in medical treatment of and expected outcomes for people with HIV infection since we last revised our listings for HIV infection. At the time we originally published SSR 93-2p, medical outcomes for individuals infected with HIV were sufficiently unfavorable that we could reasonably assume that all impairments meeting or equaling the HIV listings either were permanent or would result in death.

However, due to medical advances and the resulting updates to the criteria in the listings, this is no longer a proper assumption for us to make. The final rule became effective January 17, 2017. *Id.*, at 86915. Consequently, we are rescinding SSR 93-2p as obsolete.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

**Nancy A. Berryhill,**

*Acting Commissioner of Social Security.*

[FR Doc. 2017-05111 Filed 3-14-17; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF STATE**

[Public Notice 9906]

**Cultural Property Advisory Committee; Notice of Meeting**

**AGENCY:** Department of State.

**ACTION:** Notice of meeting and request for comment from outside parties.

**SUMMARY:** The Department of State is issuing this notice to announce the location, date, time and agenda for the next meeting of the Cultural Property Advisory Committee.

**DATES:**

- *Written Comments:* Must be received no later than March 20, 2017, at 11:59 p.m. (ET).
- *Open Session:* March 21, 2017, 9:00 a.m. (EDT).
- *Closed Session:* March 21–March 24, 2017.

**ADDRESSES:** The open meeting will be held at the U.S. Department of State, SA-5 (American Pharmacists

Association building), 2200 C St. NW., Washington, DC.

Methods of written comment submission are as follows:

- **Web:** Persons with access to the Internet may comment by going to <http://www.regulations.gov>, entering the docket DOS-2017-0011, and following the prompts to submit comments.

- **Regular Mail:** Only send written comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA-5 Floor 5, 2200 C St. NW., Washington, DC 20522-0505.

**FOR FURTHER INFORMATION CONTACT:** To pre-register for the open session or for general questions concerning the meeting, contact the Bureau of Educational and Cultural Affairs—Cultural Heritage Center by phone: 202-632-6301, or email: [CulProp@state.gov](mailto:CulProp@state.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 306(e)(2) of the Convention on Cultural Property Implementation Act (5 U.S.C. 2601 *et seq.*) (“the Act”), the Acting Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (“the Committee”). The Committee’s responsibilities are carried out in accordance with provisions of the Act. The Acting Assistant Secretary has closed a portion of this meeting to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605.

**Meeting Agenda:** During the closed portion of the meeting, the Committee will review the proposal to extend the *Memorandum of Understanding Between the Government of United States of America and the Government of Belize Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Cultural Heritage of Belize from the Pre-Ceramic (Approximately 9000 B.C.), Pre-Classic, Classic, and Post-Classic Periods of the Pre-Columbian Era through the Early and Late Colonial Periods*. Also, during the closed portion of the meeting, the Committee will review the proposed extension of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Conquest and Colonial Periods of Guatemala*. Also, during the closed portion of the meeting, the Committee

will review the proposed extension of the *Agreement Between the Government of United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century*.

**Open Session Attendance:** An open portion of the meeting to receive oral public comments on the proposals to extend the Belize MOU, Guatemala MOU, and Mali Agreement will be held Tuesday, March 21, 2017, beginning at 9:00 a.m. (EDT). The text of the Act and the MOUs and Agreement, as well as related information, may be found at <http://culturalheritage.state.gov>.

If you wish to attend the open portion of the meeting of the Committee on March 21, 2017, registration is required. Please notify the Cultural Heritage Center of the U.S. Department of State at (202) 632-6301 no later than 5:00 p.m. (EDT) March 20, 2017, to arrange for admission. Seating is limited. When calling, please request reasonable accommodation if needed. The open portion will be held at the U.S. Department of State, SA-5 (American Pharmacists Association building), 2200 C St. NW., Washington, DC 20037. Please enter using the C Street entrance, and plan to present a valid photo ID and arrive 30 minutes before the beginning of the open session.

Personal information regarding attendees is requested pursuant to the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (Pub. L. 99-399), the USA PATRIOT Act (Pub. L. 107-56), and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS-D) database. Please see the Security Records System of Records Notice (State-36) at [https://foia.state.gov/\\_docs/SORN/State-36.pdf](https://foia.state.gov/_docs/SORN/State-36.pdf) for additional information.

If you wish to make an oral presentation at the open portion of the meeting, you must request to be scheduled by the above-mentioned date and time, and you must submit a written summary of your oral presentation, ensuring that it is received no later than March 20, 2017, at 11:59 p.m. (ET), via the **Federal Register** Web site listed in the **ADDRESSES** section above to allow time for distribution to members of the Committee prior to the meeting. Oral comments will be limited to five (5) minutes to allow time for questions from members of the Committee. All oral comments must

relate specifically to matters referred to in 19 U.S.C. 2602(a)(1), with respect to which the Committee makes its findings and recommendations.

**Written Comments:** If you do not wish to make oral comments but still wish to make your views known, you may submit written comments for the Committee to consider. Written comments from outside parties regarding the proposed extensions of the Belize MOU, Guatemala MOU, and/or Mali Agreement must be received no later than March 20, 2017, at 11:59 p.m. (ET). Your written comments should relate specifically to the matters referred to in 19 U.S.C. 2602(a)(1).

This announcement will appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in that delegations from Belize and the Republic of Guatemala are scheduled to make presentations to the Committee concerning their respective agreements during the closed session; therefore, this meeting must convene beginning on March 21 for the open session.

**Mark Taplin,**

*Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 2017-05147 Filed 3-14-17; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF STATE

[Public Notice 9896]

### 60-Day Notice of Proposed Information Collection: Statement of Non-Receipt of a U.S. Passport

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to May 15, 2017.

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

- **Web:** Persons with access to the Internet may comment on this notice by going to [www.Regulations.gov](http://www.Regulations.gov). You can search for the document by entering

“Docket Number: DOS–2017–0010” in the Search field. Then click the “Comment Now” button and complete the comment form.

- *Email: PPTFormsOfficer@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to PPT Forms Officer, U.S. Department of State, CA/PPT/S/L 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166–1227, or *PPTFormsOfficer@state.gov*.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Statement of Non-Receipt of a U.S. Passport.
- *OMB Control Number:* 1405–0146.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L/LA).
- *Form Number:* DS–86.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 15,330.
- *Estimated Number of Responses:* 15,330.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 3,833 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required To Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The Statement of Non-Receipt of a U.S. Passport, Form DS–86 is used by the U.S. Department of State to collect information for the purpose of issuing a replacement passport to customers who have not received the passport for which they originally applied.

**Methodology**

Passport applicants who do not receive their passport documents are required to complete a Statement of Non-Receipt of a U.S. Passport form DS–86, which can be downloaded from *travel.state.gov* or a hard copy obtained from an Acceptance Facility/Passport Agency. The form must be completed, signed, and then submitted to the Acceptance Facility/Passport Agency for passport re-issuance.

**Brenda S. Sprague,**

*Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2017–05062 Filed 3–14–17; 8:45 am]

**BILLING CODE 4710–06–P**

**DEPARTMENT OF STATE**

**[Public Notice 9917]**

**Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “Presenting the New Japan: Arts of the Meiji Era, 1868–1912” Exhibition**

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “Presenting the New Japan: Arts of the Meiji Era, 1868–1912,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Boston, Massachusetts, from on or about May 13, 2017, until on or about May 31, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of

these Determinations be published in the **Federal Register**.

For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**Mark Taplin,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017–05155 Filed 3–14–17; 8:45 am]

**BILLING CODE 4710–05–P**

**DEPARTMENT OF STATE**

**[Public Notice 9918]**

**Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “Photography in Argentina, 1850–2010: Contradiction and Continuity” Exhibition**

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition “Photography in Argentina, 1850–2010: Contradiction and Continuity,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, from on or about September 16, 2017, until on or about January 28, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S.

Department of State (telephone: 202–632–6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/DP, SA–5, Suite 5H03, Washington, DC 20522–0505.

**Mark Taplin,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017–05165 Filed 3–14–17; 8:45 am]

**BILLING CODE 4710–05–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Alternative Pilot Physical Examination and Education Requirements**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to establish a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 27, 2016. The information collected is used to verify that pilots in command meet the requirements of the Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 (FESSA). The new information collection is in response to implementation of the medical certification of certain small aircraft pilots section of FESSA. This section of FESSA established a new voluntary program of physical examination and education requirements for certain pilots in command in lieu of those pilots holding a medical certificate.

**DATES:** Written comments should be submitted by April 14, 2017.

**ADDRESSES:** 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/FAA, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_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.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:**

Ronda Thompson by email at: [Ronda.Thompson@faa.gov](mailto:Ronda.Thompson@faa.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–XXXX.

*Title:* Alternative Physical Examination and Education Requirements.

*Form Numbers:* FAA form 8700–2 & 8700–3.

*Type of Review:* New information collection.

*Background:* The Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 (Pub. L. 114–190) (FESSA) was enacted on July 15, 2016. Section 2307 of FESSA, medical certification of certain small aircraft pilots, directed the FAA to “issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft” if the pilot and aircraft meet certain prescribed conditions as outlined in FESSA. Those provisions include requirements for the person to:

- Possess a valid driver's license;
- Have held a medical certificate at any time after July 15, 2006;
- Have not had the most recently held medical certificate revoked, suspended, or withdrawn;
- Have not had the most recent application for airman medical certification completed and denied;
- Have taken a medical education course within the past 24 calendar months;
- Have completed a comprehensive medical examination within the past 48 months;
- Be under the care of a physician for certain medical conditions;
- Have been found eligible for special issuance of a medical certificate for certain specified mental health, neurological, or cardiovascular conditions;
- Consent to a National Driver Register check;

- Fly only certain small aircraft, at a limited altitude and speed, and only within the United States;

- Not fly for compensation or hire.

The FAA notes that the use of section 2307 by any eligible pilot is voluntary. Persons may elect to use these alternative pilot physical examination and education requirements or may continue to operate using any FAA medical certificate.

On January 11, 2017, the FAA published a final rule, Alternative Pilot Physical Examination and Education Requirements, to implement the provisions of section 2307 (RIN 2120–AK96). 82 FR 3149. The FAA recognizes that many persons will choose to use the provisions of section 2307 in lieu of holding a FAA-issued medical certificate. Accordingly, the FAA is providing notice of its intent to establish a new collection of information, Alternative Pilot Physical Examination and Education Requirements (OMB control number 2120–XXXX), to reflect the burden associated with the requirements of section 2307.

In a separate notice, the FAA is providing notice of its intent to reduce the burden associated with the existing information collection, Medical Standards and Certification (OMB control number 2120–0034) by the population anticipated to use the provisions of section 2307.

*Respondents:* Approximately 453,993 individuals.

*Frequency:* On occasion.

*Estimated Average Burden per*

*Response:* 21 minutes.

*Estimated Total Annual Burden:* 159,000 hours.

Issued in Washington, DC, on March 9, 2017.

**Ronda L. Thompson,**

*FAA Information Collection Clearance Officer, Performance, Policy & Records Management Branch, ASP–110.*

[FR Doc. 2017–05175 Filed 3–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Medical Standards and Certification**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA



invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew and revise a previously approved information collection. The information collected is used to determine if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought. The FAA is announcing its intent to reduce the burden associated with this information collection in response to its implementation of section 2307 of Public Law 114–190. Section 2307 of Public Law 114–190 established a new voluntary program of physical examination and education requirements for certain pilots in command in lieu of those pilots holding a medical certificate.

**DATES:** Written comments should be submitted by April 14, 2017.

**ADDRESSES:** 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/FAA, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_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:** Ronda Thompson by email at: [Ronda.Thompson@faa.gov](mailto:Ronda.Thompson@faa.gov).

**SUPPLEMENTARY INFORMATION:** You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120–0034.

*Title:* Medical Standards and Certification.

*Form Numbers:* FAA Forms 8500–7, 8500–8, 8500–14, 8500–20.

*Type of Review:* Revision of an information collection.

*Background:* The Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 (Pub. L. 114–190) (FESSA) was enacted on July 15, 2016. Section 2307 of FESSA, medical

certification of certain small aircraft pilots, directed the FAA to “issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft” if the pilot and aircraft meet certain prescribed conditions as outlined in FESSA. The FAA notes that the use of section 2307 by any eligible pilot is voluntary. Persons may elect to use these alternative pilot physical examination and education requirements or may continue to operate using any FAA medical certificate.

The FAA is publishing a final rule, Alternative Pilot Physical Examination and Education Requirements, to implement the provisions of section 2307 (RIN 2120–AK96).

*Respondents:* Approximately 198,847 (8500–8) form applicants.

*Frequency:* On occasion.

*Estimated Average Burden per Response:* 3 minutes.

*Estimated Total Annual Burden:* 9,900 hours.

Issued in Washington, DC, on March 9, 2017.

**Ronda L. Thompson,**

*FAA Information Collection Clearance Officer, Performance, Policy & Records Management Branch, ASP-110.*

[FR Doc. 2017–05174 Filed 3–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Request To Release Airport Property at the South Texas Regional Airport at Hondo in Hondo, Texas

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of request to release airport property.

**SUMMARY:** The FAA proposes to rule and invite public comment on the release of land at the Sweetwater Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

**DATES:** Comments must be received on or before April 14, 2017.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Ben Guttery, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports District Office, ASW–650, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kirk Harris, City Services Director, at the following address: 200 East 4th Street, P.O. Box 450, Sweetwater, Texas 79556.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Mekhail, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 10101 Hillwood Parkway, Fort Worth, TX 76177, Telephone: (817) 222–5663, email: [Anthony.Mekhail@faa.gov](mailto:Anthony.Mekhail@faa.gov).

The request to release property may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release property at the South Texas Regional Airport at Hondo under the provisions of the AIR 21.

The following is a brief overview of the request:

City of Sweetwater requests the release of 11.083 acres of non-aeronautical airport property. The property is located along the entrance/access road to the airport. This is a retroactive land release that occurred in 1999. The Texas State Technical College (TSTC) has provided over \$140,000 of drainage improvements, widened and provided a new roadway surface, and added curb and gutter improvements along the roadway.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Sweetwater Municipal Airport, telephone number (325) 236–6313.

Issued in Fort Worth, Texas, on January 12, 2017.

**Ignacio Flores**

*Director, Airports Division.*

[FR Doc. 2017–05018 Filed 3–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No: FAA–2011–0786]

#### Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Primary, Cargo, and Non-Primary Entitlement Funds Available to Date for Fiscal Year 2017

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces May 1, 2017, as the deadline for each airport sponsor to notify the FAA whether or not it will use its fiscal year 2017 entitlement funds available under Section 47114 of Title 49, United States Code, to accomplish Airport Improvement Program (AIP) eligible projects that the airport sponsor previously identified through the Airports Capital Improvement Plan (ACIP) process during the preceding year.

The airport sponsor's notification must address all entitlement funds available to date for fiscal year 2017, as well as any entitlement funds not obligated from prior years. After Friday, July 7, 2017, the FAA will carry-over the remainder of currently available entitlement funds, and these funds will not be available again until at least the beginning of fiscal year 2018. Currently, the AIP has approximately 56 percent of the entitlements available through April 28, 2017. If congressional action is taken which provides for additional entitlements, the FAA will then work with airport sponsors to adjust accordingly. This notification requirement does not apply to non-primary airports covered by the block-grant program.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank J. San Martin, Manager, Airports Financial Assistance Division, APP-500, on (202) 267-3831.

**SUPPLEMENTARY INFORMATION:** Title 49 of the United States Code, section 47105(f), provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the airport sponsor's intent to apply for its apportioned funds, also called entitlement funds. Therefore, the FAA is hereby notifying such airport sponsors of the steps required to ensure that the FAA has sufficient time to carry-over and convert remaining entitlement funds, due to processes required under federal laws. This notice applies only to those airports that have had entitlement funds apportioned to them, except those nonprimary airports located in designated block-grant States. Airport sponsors intending to apply for any of their available entitlement funds, including those unused from prior years, shall make their intent known by 12:00 p.m. prevailing local time on Monday, May 1, 2017, consistent with prior practice. A written indication must be provided to the designated Airports District Office (or Regional Office in regions without Airports District Offices) stating their intent to

submit a grant application no later than close of business Friday, June 2, 2017 and to use their fiscal year 2017 entitlement funds available under Title 49 of the United States Code, section 47114. This notice must address all entitlement funds available to date for fiscal year 2017 including those entitlement funds not obligated from prior years. By Friday, June 2, 2017, airport sponsors that have not yet submitted a final application to the FAA, must notify the FAA of any issues meeting the final application deadline of Friday, June 30, 2017. Absent notification from the airport sponsor by the May 1 deadline and/or subsequent notification by the June 2 deadline of any issues meeting the application deadline, the FAA will proceed after Friday, June 30, 2017 to take action to carry-over the remainder of available entitlement funds without further notice. These funds will not be available again until at least the beginning of fiscal year 2018. These dates are subject to possible adjustment based on future extensions to the FAA's current appropriation which currently expires April 28, 2017.

This notice is promulgated to expedite and facilitate the grant-making process.

The AIP grant program is operating under the requirements of Public Law 114-190, the "FAA Extension, Safety, and Security Act of 2016," enacted on July 15, 2016, which authorizes the FAA through September 30, 2017 and the "Furthering Continuing and Security Assistance Appropriations Act, 2017" which appropriates FY 2017 funds for the AIP through April 28, 2017.

Issued in Washington, DC, on February 27, 2017.

**Elliott Black,**

*Director, Office of Airport Planning and Programming.*

[FR Doc. 2017-05176 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice To Rescind a Notice of Intent for an Environmental Impact Statement: Dane and Columbia Counties, Wisconsin

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice to rescind a Notice of Intent for a Tier 1 Environmental Impact Statement.

**SUMMARY:** A Notice of Intent (NOI) to prepare a Tier 1 Environmental Impact

Statement (EIS) was published in the **Federal Register** Vol. 80 No. 184, Sept. 23, 2015 for a proposed freeway corridor improvement project on Interstate (I)-39/90/94 from the United States Highway (US) 12/18 interchange to the I-39/Wisconsin State Highway (WIS) 78 interchange in Dane and Columbia counties in south-central Wisconsin. The FHWA is issuing this notice to advise the public that FHWA and the Wisconsin Department of Transportation (WisDOT) will no longer prepare a Tier 1 EIS in this corridor due to recent and on-going reprioritization of major transportation projects.

**FOR FURTHER INFORMATION CONTACT:** Michael Davies, Division Administrator, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, Wisconsin, 53717-2157, Telephone: (608) 829-7500. You may also contact Steve Krebs, Director, Bureau of Technical Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin 53707-7965, Telephone: (608) 246-7930.

**SUPPLEMENTARY INFORMATION:** The FHWA originally issued an NOI to prepare an EIS in the **Federal Register** Vol. 79 No. 224, Nov. 20, 2014 for an approximately 35-mile freeway corridor improvement project on I-39/90/94 from the United States Highway (US) 12/18 interchange to the I-39/Wisconsin State Highway (WIS) 78 interchange in Dane and Columbia counties in south Central Wisconsin. A revised NOI was published in the **Federal Register** Vol 80 No. 184, Sept. 23, 2015 to advise the public that FHWA and WisDOT would be preparing a Tier 1 EIS for proposed transportation improvements along the I-39/90/94 corridor, from the US 12/18 Interchange to the I-39/WIS 78 interchange in Dane and Columbia Counties in south-central Wisconsin. As part of the Tier 1 EIS, more detailed analysis for a 6.6 mile portion of the corridor from Columbia County Highway CS to the I-39/WIS 78 interchange (south of Portage) had been planned. The FHWA is issuing this notice to advise the public that FHWA and WisDOT will no longer prepare a Tier 1 EIS for the I-39/90/94 corridor in Dane and Columbia Counties, Wisconsin generally along the I-39/90/94 corridor, from the US 12/18 interchange to the I-39/WIS 78 interchange. The project is being canceled due to recent and on-going reprioritization of major transportation projects. As such the preparation of the Tier 1 EIS for proposed transportation improvements along the I-39/90/94 corridor, from the US 12/18 Interchange to the I-39/WIS 78 interchange in Dane

and Columbia Counties in south-central Wisconsin will not be completed. Any future transportation improvements along the corridor, will progress under a separate environmental review process in accordance with all applicable laws and regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 6, 2017.

**Michael Davies,**

*Division Administrator, FHWA Wisconsin Division, Madison, Wisconsin.*

[FR Doc. 2017-05139 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of Section 1308 of the Moving Ahead for Progress in the 21st Century Act. The actions relate to a proposed highway project, State Route 79, from South of Domenigoni Parkway to Gilman Springs Road (post mile R15.78 to post mile R33.80, in the Cities of Hemet and San Jacinto and unincorporated Riverside County, in the County of Riverside, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 14, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: Aaron Burton, Senior Environmental Planner, California Department of Transportation, Division of Environmental Planning, 464 West Fourth Street, 6th Floor, MS 829, San Bernardino, California 92401; or call (909) 383-2841, email [aaron.burton@dot.ca.gov](mailto:aaron.burton@dot.ca.gov);

[dot.ca.gov](mailto:dot.ca.gov); Patti Castillo, Riverside County Transportation Commission, 4080 Lemon Street, Riverside, CA 92502, by phone at (951) 787-7141, email [pcastillo@rctc.org](mailto:pcastillo@rctc.org). Normal business hours are from 8:00 a.m. to 4:00 p.m.

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans, has taken final agency actions subject to 23 U.S.C. 139(J)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: State Route 79 realignment project is proposed from Domenigoni Parkway to Gilman Springs Road, a distance of approximately 18 miles, in the Cities of Hemet and San Jacinto, as well as unincorporated Riverside County. The realigned highway would be a limited access, four-lane expressway, with two travel lanes in each direction separated by a median. It is noted that the current NEPA Assignment to Caltrans is in suspension awaiting. However, Caltrans' actions were completed prior to this suspension. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on October 27, 2016, in the FHWA Record of Decision (ROD) issued on December 16, 2016, and in other documents in the FHWA project records. The FEIS, ROD, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEIS and ROD can be viewed and downloaded from the project Web site at [www.sr79project.info](http://www.sr79project.info), or viewed at Hemet Public Library, 300 E. Latham Avenue, Hemet, CA 92543 or at the San Jacinto Public Library, 500 Idyllwild Drive, San Jacinto, CA 92583, in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4351 *et seq.*)
2. Council on Environmental Quality Regulations
3. Federal-Aid Highway Act of 1970, 23 U.S.C. 109
4. MAP-21, the Moving Ahead for Progress in the 21st Century Act

5. Clean Air Act (42 U.S.C. 7401-7671(q))
6. Migratory Bird Treaty Act (16 U.S.C. 703-712)
7. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470(f) *et seq.*)
8. Clean Water Act (Section 401) (33 U.S.C. 1251-1377) of 1977 and 1987 (Federal Water Pollution Control Act of 1972)
9. Federal Endangered Species Act of 1973 (16 U.S.C. 1531-1543)
10. Fish and Wildlife Coordination Act of 1934, as amended
11. Noise Control Act of 1972
12. Safe Drinking Water Act of 1944, as amended
13. Executive Order 11990—Protection of Wetlands
14. Executive Order 11990—Floodplains Management
15. Executive Order 11990—Invasive Species
16. Executive Order 11990—Federal Actions to Address Environmental Justice and Low Income Populations
17. Title VI of the Civil Rights Act of 1964, as amended
18. Department of Transportation Act of 1966, Section 4(f) (49 U.S.C. 303)

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(J)(1).

**Matthew Schmitz,**

*Director, Project Delivery, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2017-05153 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-RY-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Washoe County, Nevada

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for transportation improvements in the Interstate 80 (I-80), Interstate 580 (I-580), United States Highway 395 (US 395) Interchange, and connecting roads in the City of Reno and City of Sparks, Washoe County, Nevada. The I-80/I-

580/US 395 Interchange is known locally as the Spaghetti Bowl.

**FOR FURTHER INFORMATION CONTACT:** Mr. Abdelmoez Abdalla, Environmental Program Manager, Federal Highway Administration, 705 N. Plaza, Suite 220, Carson City, NV 89701; Telephone: (775) 687-1231, email: [abdelmoez.abdalla@dot.gov](mailto:abdelmoez.abdalla@dot.gov), and Steve Cooke, Environmental Services Chief, Nevada Department of Transportation, 1263 S. Stewart Street, Carson City, NV 89712; Telephone (775) 888-7686, email: [scooke@dot.nv.gov](mailto:scooke@dot.nv.gov).

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Nevada Department of Transportation (NDOT), will prepare an environmental impact statement (EIS) on a proposal to reconstruct the Spaghetti Bowl in the cities of Reno and Sparks in Washoe County, Nevada. The proposed project will study improvements to the Spaghetti Bowl and major street connections on I-580/US 395 from Meadowood Mall Way Drive on the south to Parr Avenue/Dandini Boulevard on the north and I-80 from Keystone Avenue on the west to Pyramid Way on the east. The study includes approximately 7.3 miles of I-580/US 395 and 4.3 miles of I-80.

The project will study the operations, capacity, and safety of the interchange while addressing all modes of travel as appropriate. Regionally, I-80 connects San Francisco, Sacramento, Reno and Salt Lake City. I-580 links Carson City with Reno, and US 395 serves as an important regional route.

The Spaghetti Bowl was originally constructed between 1969 and 1971 for a metropolitan population of about 130,000 people. The current population of Reno and Sparks has increased to approximately 327,000 people and Washoe County's population is approximately 435,000. The projected population growth, associated commercial development, increased inflows and outflows of freight serving local manufacturing and distribution centers, and increasing tourism and gaming will place significant demand on the study area. The project will focus on short- and long-term transportation needs of the region, specifically to provide transportation improvements in response to regional growth to decrease congestion, enhance mobility, and provide access to the downtown area.

The EIS will consider the effects of the proposed project, the No Action alternative, and other alternatives to the proposed project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local

agencies; Native American Tribes; private organizations; and citizens who have previously expressed or are known to have interest in this project. An agency scoping meeting will be held in Sparks, Nevada on April 12, 2017, at 1 p.m. at the Sparks Public Library. Public information meetings will also be held on April 12, 2017, at the Sparks Public Library and on April 13, 2017, at Wooster High School, Reno, with the appropriate agencies and the general public. The public information meetings will be open house format from 4-7 p.m. with a presentation at 5:30 p.m. In addition, public information meetings will be held throughout the duration of the project and a public hearing will be held for the draft EIS. Public notices will be given announcing the time and place of the public meetings and the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or NDOT at the addresses and emails provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: March 8, 2017.

**Susan E. Klekar,**

*Division Administrator, Carson City, Nevada.*

[FR Doc. 2017-05164 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Supplemental Environmental Impact Statement: Lafourche Parish, LA

**AGENCY:** Federal Highway Administration, Department of Transportation.

**ACTION:** Notice of intent.

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this notice to advise the public that a Supplemental Environmental Impact Statement (SEIS) will be prepared for a proposed transportation project in Lafourche Parish, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** FHWA Joshua Cunningham, Project Delivery Team Leader, FHWA, 5304

Flanders Drive, Suite A, Baton Rouge, Louisiana 70808. Project information can be found at the LaDOTD Web site: [www.dotd.state.la.us](http://www.dotd.state.la.us).

The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LaDOTD), will prepare a Supplemental Environmental Impact Statement (SEIS) to the 2002 LA 1 Final EIS (FEIS) and 2003 Record of Decision (ROD), and the subsequent ROD revisions issued in 2004, 2009, and 2011 due to various design refinements. FHWA is preparing an SEIS because changes to the FEIS Selected Alternative's design, including construction of an at-grade toll facility and roadway approaches beyond the FEIS project limits, will result in local access modifications and right-of-way impacts.

Funding limitations require phased construction of the Selected Alternative, which generally runs parallel and to the west of existing LA 1. Phase 1, fully constructed in 2011, included a two-lane bridge from Port Fouchon (south limit) to Leeville (north limit), a distance of approximately 11 miles.

Phase 2, which has not been constructed, includes the continuation of the 2-lane bridge for 8.3 miles, connecting Leeville (south limit) to Golden Meadow (north limit). This SEIS will evaluate refinements to the design of the FEIS Selected Alternative at its north limit, as the elevated portion of LA 1 is extended and ties into existing, at-grade LA 3235 in Golden Meadow. This extension allows for the construction of an at-grade, southbound toll facility at the LA 3235 tie-in. The study area for the SEIS will be limited to the extended section of the FEIS Selected Alternative, a distance slightly less than 1 mile, and will not include any other portions of LA 1 previously approved as part of the FEIS.

Existing LA 3235 is a four-lane roadway, with two lanes in each direction. The LA 1 bridge from Leeville to Golden Meadow will be constructed as a two-lane structure, with one lane in each direction, except for within the SEIS study area. Within this study area, the two southbound lanes of LA 3235 will merge into one southbound lane on the LA 1 bridge. A toll gantry will be located approximately half a mile from the LA 1 bridge. It will include one electronic toll lane and one cash lane. On the northbound side, one northbound bridge lane will join one northbound lane connecting existing LA 1 to LA 3235. These two lanes will come together to tie into the existing two northbound lanes of LA 3235. Tolls will be collected in the southbound direction of travel only.

Letters describing the proposed project and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and the public who have previously expressed or are known to have interest in this project. Several public meetings will be held throughout the term of the project. The first of these meetings, a public scoping meeting, will be conducted to provide the public information about the project and an opportunity to assist in formulating and revising the scope of the study. The public scoping meetings will be scheduled in the future and will be posted to the LaDOTD Web site: [www.dotd.state.la.us](http://www.dotd.state.la.us). A public hearing will also be held. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 23, 2017.

**Charles “Wes” Bollinger,**

*Division Administrator, FHWA, Louisiana.*

[FR Doc. 2017-05140 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Madison County, Illinois

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice to rescind a notice of intent to prepare an environmental impact statement.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed transportation project in Alton and Godfrey, Illinois in an area bounded roughly by IL Route 3 on the south; Seminary Road on the east; Seiler Road on the north and US 67 on the west.

**FOR FURTHER INFORMATION CONTACT:** Catherine A. Batey, Division Administrator, Federal Highway

Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492-4600. Jeffrey L. Keirn, Deputy Director of Highways, Region 5 Engineer, Illinois Department of Transportation, 1102 Eastport Plaza Drive, Collinsville, Illinois 62234, Phone: (618) 346-3110.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Illinois Department of Transportation, issued a notice of intent to prepare an environmental impact statement (EIS) in 2012 (77 FR 25782, May 1, 2012). The project proposal was to improve transportation flow, safety and connectivity in Alton and Godfrey, Illinois.

Due to concerns raised by project stakeholders and partners, including project costs, displacements of homes, and a lack of public support, FHWA is rescinding the Notice of Intent to prepare an EIS.

Comments or questions concerning this notice should be directed to FHWA or the Illinois Department of Transportation at the addresses provided above.

**Authority:** 23 U.S.C. 315; 23 CFR 771.123; 49 CFR 1.48.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 27, 2017.

**Catherine A. Batey,**

*Division Administrator, Springfield, Illinois.*

[FR Doc. 2017-05135 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice To Rescind a Notice of Intent for an Environmental Impact Statement: Columbia, Sauk, and Juneau Counties, Wisconsin

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice to Rescind a Notice of Intent for a Tier 1 Environmental Impact Statement.

**SUMMARY:** A Notice of Intent (NOI) to prepare a Tier 1 Environmental Impact Statement (EIS) was published in the **Federal Register** for proposed transportation improvements along the Interstate (I)-90/94 corridor, from the United States Highway (US) 12/ Wisconsin State Highway (WIS) 16 interchange to the I-39/WIS 78

interchange in Columbia, Sauk, and Juneau Counties in Wisconsin. The FHWA is issuing this notice to advise the public that FHWA and the Wisconsin Department of Transportation (WisDOT) will no longer prepare a Tier 1 EIS in this corridor due to recent and on-going reprioritization of major transportation projects.

#### **FOR FURTHER INFORMATION CONTACT:**

Michael Davies, Division Administrator, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, Wisconsin 53717-2157, Telephone: (608) 829-7500. You may also contact Steve Krebs, Director, Bureau of Technical Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin 53707-7965, Telephone: (608) 246-7930.

**SUPPLEMENTARY INFORMATION:** The FHWA originally issued an NOI to prepare an EIS in the **Federal Register** Vol. 79 No. 221, Nov. 17, 2014 for proposed transportation improvements along the approximately 25-mile I-90/94 corridor, from the US 12/WIS 16 interchange to the I-39/WIS 78 interchange in Juneau, Sauk, and Columbia Counties in Wisconsin. A revised NOI was published in the **Federal Register** Vol. 80 No. 229, Nov. 30, 2015 to advise the public that FHWA and WisDOT would be preparing a Tier 1 EIS for proposed transportation improvements along the I-90/94 corridor, from US 12/WIS 16 Interchange to the I-39/WIS 78 interchange in Juneau, Sauk, and Columbia Counties in Wisconsin. The project is being canceled due to recent and on-going reprioritization of major transportation projects. As such the preparation of the Tier 1 EIS for proposed transportation improvements along the I-90/94 corridor, from the WIS 16 Interchange to the I-39/WIS 78 interchange in Columbia, Sauk, and Juneau Counties will not be completed. Any future transportation improvements along the corridor will progress under a separate environmental review process in accordance with all applicable laws and regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 6, 2017.

**Michael Davies,**

*Division Administrator, FHWA Wisconsin Division, Madison, Wisconsin.*

[FR Doc. 2017-05138 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-22-P**

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****[FTA Docket No. 2017-0004]****Notice of Request for Revisions of an Information Collection****AGENCY:** Federal Transit Administration, DOT.**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the revisions of the following information collection: Nondiscrimination as it Applies to FTA Grant Programs.

**DATES:** Comments must be submitted before May 15, 2017.

**ADDRESSES:** To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at [www.regulations.gov](http://www.regulations.gov). Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202-366-7951.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

*Instructions:* You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to [www.regulations.gov](http://www.regulations.gov). You may review DOT's complete Privacy Act Statement in the **Federal**

**Register** published April 11, 2000, (65 FR 19477), or you may visit [www.regulations.gov](http://www.regulations.gov).

*Docket:* For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Alana Kuhn, Office of Civil Rights, (202) 366-1412, or email at [AlanaKuhn@dot.gov](mailto:AlanaKuhn@dot.gov).

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

**Title: Nondiscrimination as It Applies to FTA Grant Programs (OMB Number: 2132-0542)**

*Background:* The Federal Transit Laws, 49 U.S.C. 5332(b), provide that "no person in the United States shall on the grounds of race, color, religion, national origin, sex, or age be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any project, program or activity funded in whole or in part through financial assistance under this Act." This applies to employment and business opportunities and is considered to be in addition to the provisions of Title VI of the Civil Rights Act of 1964. Any FTA applicant, recipient, sub-recipient, and contractor who employ 100 or more transit-related employees and requests or receives capital or operating assistance in excess of \$1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of \$250,000 in the previous Federal fiscal year must implement all of the EEO Program elements. Agencies that have between 50-99 transit-related employees are required to prepare and

maintain an EEO Program that includes the statement of policy, dissemination plan, designation of personnel, assessment of employment practices, and a monitoring and reporting system.

*Respondents:* Transit agencies, States and Metropolitan Planning Organizations.

*Estimated Annual Burden on Respondents:* 25 hours for each of the 97 EEO submissions.

*Estimated Total Annual Burden:* 2,425 hours.

*Frequency:* Annual.

**William Hyre,**

*Deputy Associate Administrator for Administration.*

[FR Doc. 2017-05061 Filed 3-14-17; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration**

**Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement for the Gateway Corridor Project From Saint Paul to Woodbury in Ramsey and Washington Counties, Minnesota**

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Rescind Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The FTA, in cooperation with the Washington County Regional Railroad Authority (WCRRA) and the Metropolitan Council, is issuing this notice to advise the public that the NOI to prepare an EIS for the proposed Gateway Corridor project from Saint Paul to Woodbury in Ramsey and Washington Counties, Minnesota, is being rescinded.

**FOR FURTHER INFORMATION CONTACT:** Mr. Reggie Arkell, Community Planner, Federal Transit Administration, Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606, phone 312-886-3704, email [reginald.arkell@dot.gov](mailto:reginald.arkell@dot.gov).

**SUPPLEMENTARY INFORMATION:** The FTA, as the lead federal agency, in cooperation with WCRRA and the Metropolitan Council, published a NOI in the **Federal Register** on February 12, 2014 (79 FR 8530-8532) to prepare an EIS for the proposed Gateway Corridor project. The Gateway Corridor project is a planned transitway approximately nine miles in length located in Ramsey and Washington Counties in the eastern part of the Twin Cities Metropolitan Area, Minnesota. The project is located in a corridor generally parallel to

Interstate 94 (I-94). The purpose is to provide improved public transportation between downtown Saint Paul with its east side neighborhoods and the suburban cities of Maplewood, Landfall, Oakdale, and Woodbury. Since the NOI was published, through the environmental review and locally preferred alternative decision-making process, the potential project length has been reduced by approximately three miles and the transit technologies under evaluation have been reduced from light rail transit, bus rapid transit (BRT), and managed lanes to only BRT. Both these changes have minimized the potential impact of the proposed action. FTA, WCRRA, and the Metropolitan Council anticipate that an environmental assessment (EA), leading to a Finding of No Significant Impact (FONSI), would be the appropriate class of action under the National Environmental Policy Act (NEPA) for this project. Therefore, the FTA has decided to rescind the NOI for the EIS.

Comments and questions concerning the proposed actions should be directed to FTA at the address provided above.

**Marisol R. Simón,**

*Regional Administrator.*

[FR Doc. 2017-05065 Filed 3-14-17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Global Positioning System Adjacent Band Compatibility Assessment Workshop VI

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST-R), Department of Transportation.

**ACTION:** Notice of meeting.

**SUMMARY:** The purpose of this notice is to inform the public that the U.S. Department of Transportation will host its sixth workshop on the Global Positioning System (GPS) Adjacent Band Compatibility Assessment effort. The purpose of this workshop is to discuss the results from testing of various categories of GPS/Global Navigation Satellite System (GNSS) receivers to include aviation (non-certified), cellular, general location/navigation, high precision and networks, timing, and space-based receivers, as well as use-case scenarios for these categories.

This workshop is open to the general public by registration only. For those who would like to attend the workshop, we request that you register no later than March 27, 2017. Please use the following link to register: <https://volpe.centerevents.webex.com/volpecenter>

[events/onstage/g.php?MTID=e8b1c57d84d8ccaeda24a00e286e4ac48](https://www.volpe.dot.gov/interstate-94-workshop).

You must include:

- Name
- Organization
- Telephone number
- Mailing and email addresses
- Attendance method (WebEx or on site)
- Country of citizenship

The U.S. Department of Transportation is committed to providing equal access to this workshop for all participants. If you need alternative formats or services because of a disability, please contact Stephen Mackey (contact information listed below) with your request by close of business March 24, 2017.

**DATES:** *Date/Time:* March 30, 2017 10:00AM–4:00PM (Eastern Daylight Time).

**LOCATION:** RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

Several days leading up to the workshop, an email containing the agenda, dial-in, and WebEx information will be provided.

**SUPPLEMENTARY INFORMATION:** The goal of the GPS Adjacent Band Compatibility Assessment Study is to evaluate the adjacent radio frequency band power levels that can be tolerated by GPS/GNSS receivers, and advance the Department's understanding of the extent to which such power levels impact devices used for transportation safety purposes, among other GPS/GNSS applications. The Department obtained input from broad public outreach in development of its GPS Adjacent Band Compatibility Assessment Test Plan that included four public meetings with stakeholders on September 18 and December 4, 2014, and March 12 and October 2, 2015, public issuance of a draft test plan on September 9, 2015 (see 80 FR 54368), and comments received regarding the test plan. The final test plan was published March 9, 2016 (see 81 FR 12564) and requested voluntary participation in this Study by any interested GPS/GNSS device manufacturers or other parties whose products incorporate GPS/GNSS devices. In April 2016, radiated testing of GNSS devices took place in an anechoic chamber at the U.S. Army Research Laboratory at the White Sands Missile Range (WSMR) facility in New Mexico. Additional lab testing was conducted in July 2016 at Zeta Associates in Fairfax, Virginia and MITRE Corporation in Bedford, Massachusetts (see 81 FR 44408). Initial test results were presented at a fifth public workshop on October 14, 2016 (see 81 FR 68105).

### FOR FURTHER INFORMATION CONTACT:

Stephen M. Mackey, U.S. Department of Transportation, John A. Volpe National Transportation Systems Center, V-345, 55 Broadway, Cambridge, MA 02142, [Stephen.Mackey@dot.gov](mailto:Stephen.Mackey@dot.gov), 617-494-2753.

Issued in Washington, DC, on March 9, 2017.

**Audrey Farley,**

*Executive Director, Office of the Assistant Secretary for Research and Technology.*

[FR Doc. 2017-05121 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2017-0027]

### Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection(s): Procedures for Transportation Workplace Drug and Alcohol Testing Programs

**AGENCY:** Office of the Secretary (OST), DOT.

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

**SUMMARY:** The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves Transportation Drug and Alcohol Testing. The information to be collected will be used to document tests conducted and actions taken to ensure safety in the workplace and/or is necessary because under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation-related industries. DOT is required to publish this notice in the **Federal Register** in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments to this notice must be received by May 15, 2017.

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

- *Web Site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey

Avenue SE., West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Instructions:** You must include the agency name and docket number [DOT-OST-2017-0027] of this notice at the beginning of your comment. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided. Please see the Privacy Act section of this document.

**Docket:** You may view the public docket through the Internet at <http://www.regulations.gov> or in person at the Docket Management System office at the above address.

**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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W62-317, Washington, DC 20590; 202-366-3784 (voice), 202-366-3897 (fax), or [bohdan.baczara@dot.gov](mailto:bohdan.baczara@dot.gov) (email).

**SUPPLEMENTARY INFORMATION:**

**OMB Control Number:** 2105-0529.

**Title:** Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

**Form Numbers:** DOT F 1385; DOT F 1380.

**Type of Review:** Clearance of a renewal of an information collection.

**Background:** Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation-related industries. This specific requirement is elaborated in 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. This request for a renewal of the information collection for the program includes 43 burden items including the U.S. Department of Transportation Alcohol Testing Form (ATF) [DOT F 1380] and the DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form [DOT F 1385].

The ATF includes the employee's name, the type of test taken, the date of the test, and the name of the employer.

Data on each test conducted, including test results, is necessary to document that the tests were conducted and is used to take action, when required, to ensure safety in the workplace. The MIS form includes employer specific drug and alcohol testing information such as the reason for the test and the cumulative number of test results for the negative, positive, and refusal tests. No employee specific data is collected. The MIS data is used by each of the affected DOT Agencies (*i.e.*, Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and the Pipeline and Hazardous Materials Safety Administration) and the United States Coast Guard when calculating their industry's annual random drug and/or alcohol testing rate.

**Respondents:** The information will be used by transportation employers, Department representatives, and a variety of service agents. Estimated total number of respondents is 3,034,690.

**Frequency:** The information will be collected annually.

**Estimated Total Number Burden Hours:** 748,196.

**Public Comments Invited:** You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for DOT's performance; (b) The accuracy of the estimated burden; (c) Ways for the DOT to enhance the quality, utility and clarity of the information collection; and (d) Ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on February 24, 2017.

Authority and Issuance

Dated: February 24, 2017.

**Patrice M. Kelly,**

*Acting Director, DOT, Office of Drug and Alcohol Policy and Compliance, Acting Director.*

[FR Doc. 2017-05114 Filed 3-14-17; 8:45 am]

**BILLING CODE 4910-9X-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Recruitment Notice for the Taxpayer Advocacy Panel**

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

**ACTION:** Notice.

**SUMMARY:** Notice of Open Season for Recruitment of IRS Taxpayer Advocacy Panel (TAP) Members

**DATES:** March 8, 2017 through April 24, 2017.

**FOR FURTHER INFORMATION CONTACT:** Fred N. Smith, Jr. 202-317-3087 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Department of the Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation's tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP). The mission of the TAP is to listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the National Taxpayer Advocate. TAP members will participate in subcommittees that channel their feedback to the IRS through the Panel's parent committee.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 200 to 300 hours a year, and a desire to help improve IRS customer service. As a federal advisory committee, TAP is required to have membership be fairly balanced in terms of the points of view represented. Thus, TAP membership represents a cross-section of the taxpaying public with at least one member from each state, the District of Columbia and Puerto Rico, in addition to one member representing international taxpayers. For application purposes, "international taxpayers" are defined broadly to include U.S. citizens working, living, or doing business abroad or in a U.S. territory. Potential candidates must be U.S. citizens and must pass a federal tax compliance check and a Federal Bureau of Investigation criminal background investigation. Applicants who practice before the IRS must be in good standing with the IRS. Federally-registered lobbyists cannot be members of the TAP. Current employees of any Bureau of the Treasury Department or have worked for any Bureau of the Treasury Department within three years of



December 1 of the current year are not eligible. The IRS is seeking members or alternates in the following locations:

Locations that need Members:

Alaska, Arizona, California, Delaware, District of Columbia, Georgia, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Maryland, New Jersey, Nevada, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Virginia, Vermont, and Washington. The TAP is also seeking to include at least one (1) additional member to represent international taxpayers. For these purposes, "international taxpayers" are broadly defined to include U.S. citizens working, living, or doing business abroad or in a U.S. territory.

Locations that need Alternates:

All 50 states, District of Columbia and Puerto Rico, but specifically Colorado, Iowa, Indiana, Michigan, Missouri, Mississippi and Nebraska.

TAP members are a diverse group of citizens who represent the interests of

taxpayers from their respective geographic locations by providing feedback from a taxpayer's perspective on ways to improve IRS customer service and administration of the federal tax system, and by identifying grassroots taxpayer issues. Members should have good communication skills and be able to speak to taxpayers about TAP and its activities, while clearly distinguishing between TAP positions and their personal viewpoints.

Interested applicants should visit the TAP Web site at [www.improveirs.org](http://www.improveirs.org) for more information about TAP. Applications must be submitted electronically at [www.usajobs.gov](http://www.usajobs.gov). For questions about TAP membership, call the TAP toll-free number, 1-888-912-1227. Callers who are outside of the U.S. and U.S. territories should call 202-317-3087 (not a toll-free call).

The opening date for submitting applications is March 8, 2017, and the deadline for submitting applications is

April 24, 2017. Interviews may be held. The Department of the Treasury will review the recommended candidates and make final selections. New TAP members will serve a three-year term starting in December 2017. (Note: highly-ranked applicants not selected as members may be placed on a roster of alternates who will be eligible to fill future vacancies that may occur on the Panel.)

Questions regarding the selection of TAP members may be directed to Fred N. Smith, Jr., Taxpayer Advocacy Panel, Internal Revenue Service, 1111 Constitution Avenue NW., TA:TAP Room 1509, Washington, DC 20224, or 202-317-3087 (not a toll-free call).

Dated: March 8, 2017.

**Antoinette Ross,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2017-05067 Filed 3-14-17; 8:45 am]

**BILLING CODE 4830-01-P**



# FEDERAL REGISTER

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Part II

## Securities and Exchange Commission

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17 CFR Part 240

Proposed Amendments to Municipal Securities Disclosure; Proposed Rule

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 34–80130; File No. S7–01–17]

RIN 3235–AL97

### Proposed Amendments to Municipal Securities Disclosure

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule amendments.

**SUMMARY:** The Securities and Exchange Commission (“Commission” or “SEC”) is publishing for comment proposed amendments to the Municipal Securities Disclosure Rule (Rule 15c2–12) under the Securities Exchange Act of 1934 (“Exchange Act”) that would amend the list of event notices that a broker, dealer, or municipal securities dealer (collectively, “dealers”) acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the municipal securities, to provide to the Municipal Securities Rulemaking Board (“MSRB”).

**DATES:** Comments should be received on or before May 15, 2017.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. S7–01–17 on the subject line; or
- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### 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 No. S7–01–17. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days

between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion—in the comment file of any such materials will be made available on the Commission’s Web site. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

#### FOR FURTHER INFORMATION CONTACT:

Jessica Kane, Director; Rebecca Olsen, Deputy Director; Edward Fierro, Senior Counsel to the Director; Mary Simpkins, Senior Special Counsel; Hillary Phelps, Senior Counsel; or William Miller, Attorney-Adviser; Office of Municipal Securities, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–6628 or at (202) 551–5680.

**SUPPLEMENTARY INFORMATION:** The Commission is requesting public comment on the proposed amendments to Rule 15c2–12<sup>1</sup> under the Securities Exchange Act of 1934.<sup>2</sup>

- I. Introduction
- II. Background
  - A. History
  - B. Rule 15c2–12
  - C. Commission’s Report on the Municipal Securities Market
  - D. Market Developments and the Need for Further Amendments to Rule 15c2–12
- III. Description of the Proposed Amendments to Rule 15c2–12
  - A. Overview of Proposed Amendments
    1. Incurrence of a Financial Obligation of the Obligated Person, If Material, or Agreement to Covenants, Events of Default, Remedies, Priority Rights, or Other Similar Terms of a Financial Obligation of the Obligated Person, Any of Which Affect Security Holders, If Material
    - i. Definition of a Financial Obligation
    2. Default, Event of Acceleration, Termination Event, Modification of Terms, or Other Similar Events Under the Terms of a Financial Obligation of the Obligated Person, Any of Which Reflect Financial Difficulties
    - B. Technical Amendment
    - C. Compliance Date and Transition
    - D. Request for Comment
- IV. Paperwork Reduction Act
  - A. Summary of Collection of Information
  - B. Proposed Use of Information
  - C. Respondents

<sup>1</sup> 17 CFR 240.15c2–12.

<sup>2</sup> The Commission is not proposing any other changes to Rule 15c2–12, nor is the Commission otherwise reopening Rule 15c2–12 for comment.

- D. Total Annual Reporting and Recordkeeping Burden
  1. Dealers
    - i. Proposed Amendments to Events To Be Disclosed Under a Continuing Disclosure Agreement
    - ii. One-Time Paperwork Burden
    - iii. Total Annual Burden for Dealers
  2. Issuers
    - i. Proposed Amendments to Event Notice Provisions of the Rule
    - ii. Total Burden on Issuers for Proposed Amendments to Event Notices
    - iii. Total Burden for Issuers
3. MSRB
4. Annual Aggregate Burden for Proposed Amendments
- E. Total Annual Cost
  1. Dealers and the MSRB
  2. Issuers
  - F. Retention Period of Recordkeeping Requirements
  - G. Collection of Information Is Mandatory
  - H. Responses to Collection of Information Will Not Be Confidential
  - I. Requests for Comment
- V. Economic Analysis
  - A. Introduction
  - B. Economic Baseline
    1. The Current Municipal Securities Market
    2. Rule 15c2–12
    3. MSRB Rules
    4. Existing State of Efficiency, Competition, and Capital Formation
  - C. Benefits, Costs and Effects on Efficiency, Competition, and Capital Formation
    1. Anticipated Benefits of the Proposed Rule 15c2–12 Amendments
      - i. Benefits to Investors
      - ii. Benefits to Issuers and Obligated Persons
      - iii. Benefits to Rating Agencies and Municipal Analysts
    2. Anticipated Costs of the Proposed Rule 15c2–12 Amendments
      - i. Costs to Issuers and Obligated Persons
      - ii. Costs to Dealers
      - iii. Costs to Lenders
      - iv. Costs to Municipal Securities Rulemaking Board
    3. Effects on Efficiency, Competition, and Capital Formation
    - D. Alternative Approaches
    - E. Request for Comment
  - VI. Small Business Regulatory Enforcement Fairness Act
  - VII. Regulatory Flexibility Certification
  - VIII. Statutory Authority and Text of Proposed Rule Amendments

#### I. Introduction

The Commission is publishing for comment proposed amendments to Exchange Act Rule 15c2–12 (“Rule” or “Rule 15c2–12”).<sup>3</sup> The proposed amendments would amend the list of events for which notice is to be provided to the MSRB to include (i) incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or

<sup>3</sup> See 17 CFR 240.15c2–12(a), (b)(5)(i), (b)(5)(i)(C).

other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and (ii) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties (collectively, the “proposed events”). The Commission believes the proposed amendments would facilitate investors’ and other market participants’ access to important information in a timely manner and help to enhance transparency in the municipal securities market and improve investor protection.

Under Rule 15c2–12, a dealer that acts as an underwriter (a “Participating Underwriter” when used in connection with an Offering) in a primary offering of municipal securities with an aggregate principal amount of \$1,000,000 or more (an “Offering”) is prohibited from purchasing or selling municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined, among other things, that an issuer of municipal securities, or an obligated person<sup>4</sup> for whom financial or operating data is presented in the final official statement<sup>5</sup> has undertaken in a written agreement or contract for the benefit of holders of such securities to provide to the MSRB in a timely manner not in excess of ten business days after the occurrence of the event, notice of certain events listed in Rule 15c2–12. Participating Underwriters comply with

<sup>4</sup> The term “obligated person” means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities). See 17 CFR 240.15c2–12(f)(10).

<sup>5</sup> An “official statement” is a document or set of documents prepared by an issuer of municipal securities or an obligated person, or its representatives, in connection with a primary offering of municipal securities that discloses material information about the offering of such securities. Official statements include information concerning the terms of the proposed securities, financial information or operating data concerning such issuers of municipal securities and those entities, funds, accounts, and other persons material to an evaluation of the Offering, a description of the undertakings to be provided pursuant to the Rule, and if applicable, any instances in the previous five years of any failures to comply, in all material respects, with any previous undertakings. A version of the official statement referred to as the “preliminary official statement” is prepared by or for an issuer of municipal securities or obligated person for dissemination to potential customers prior to the availability of the “final official statement”. Rule 15c2–12 specifically defines the terms “preliminary official statement” and “final official statement” for purposes of Rule 15c2–12. See 17 CFR 240.15c2–12(f)(3) and (6).

this provision of Rule 15c2–12 by requiring that an issuer of municipal securities or an obligated person undertakes in a written agreement or contract (“continuing disclosure agreement”) to provide event notices to the MSRB in a manner that is consistent with the requirements of Rule 15c2–12.

Additionally, under Rule 15c2–12,<sup>6</sup> it is unlawful for any dealer to recommend the purchase or sale of a municipal security unless such dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of event notices. Dealers typically comply with this provision by ensuring that they have procedures in place that, among other things, require their registered representatives who recommend municipal securities transactions to customers in the secondary market to have access to the MSRB’s Electronic Municipal Market Access (“EMMA”) system, the single centralized repository for the electronic collection and availability of continuing disclosure information about municipal securities.<sup>7</sup>

Beginning in 2009, issuers and obligated persons have increasingly used direct purchases of municipal securities<sup>8</sup> and direct loans<sup>9</sup> (collectively, “direct placements”)<sup>10</sup> as alternatives to publicly offered municipal securities.<sup>11</sup>

<sup>6</sup> See 17 CFR 240.15c2–12(c).

<sup>7</sup> See Exchange Act Release No. 34–59062 (Dec. 5, 2008), 73 FR 76104 (Dec. 15, 2008) (“2008 Amendments Adopting Release”); see also Exchange Act Release No. 34–58255 (July 30, 2008), 73 FR 46138 (Aug. 7, 2008); see also Section II.B. herein for additional discussion about the requirements of Rule 15c2–12.

<sup>8</sup> For example, an investor purchasing a municipal security directly from an issuer or obligated person.

<sup>9</sup> For example, a lender entering into a bank loan, loan agreement, or other type of financing agreement with an issuer or obligated person.

<sup>10</sup> Standard and Poor’s Ratings Services (“S&P”) has estimated that as much as \$50 to \$60 billion in direct placement transactions may occur annually. See Mike Cherney, *S&P Calls for More Disclosure of Municipal Bank Loans*, Wall St. J. (Feb. 18, 2014), available at <http://www.wsj.com/articles/SB10001424052702304675504579391431039227484>.

<sup>11</sup> See e.g., Municipal Market Bank Loan Disclosure Task Force, Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans (“Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans”) (May 1, 2013), available at [http://www.nfma.org/assets/documents/position.stmt/wp.direct.bank\\_loan.5.13.pdf](http://www.nfma.org/assets/documents/position.stmt/wp.direct.bank_loan.5.13.pdf). The Task Force was comprised of representatives from the American Bankers Association, Bond Dealers of America, Government Finance Officers Association (“GFOA”), Investment Company Institute (“ICI”), National Association of Bond Lawyers, National Association of Health and Educational Facilities Finance Authorities, National Association of Independent Public Finance Advisors, National Federation of Municipal Analysts (“NFMA”), and Securities Industry and Financial Markets Association (“SIFMA”).

The Commission understands that existing security holders and potential investors (collectively, “investors”) and other market participants may not have any access or timely access to disclosure about the incurrence of certain debt obligations, such as direct placements, and other financial obligations<sup>12</sup> by issuers of municipal securities and obligated persons. For example, investors and other market participants may not learn that the issuer or obligated person has incurred a financial obligation if the issuer or obligated person does not provide annual financial information or audited financial statements to EMMA,<sup>13</sup> or does not subsequently issue debt in a primary offering subject to Rule 15c2–12 that results in the provision of a final official statement to EMMA. Even if investors and other market participants have access to disclosure about an issuer’s or obligated person’s incurrence of a financial obligation, such access may not be timely if, for example, the issuer or obligated person has not submitted annual financial information or audited financial statements to EMMA in a timely manner or does not frequently issue debt that results in a final official statement being provided to EMMA. Typically, investors and other market participants do not have access to an issuer’s or obligated person’s annual financial information or audited financial statements until several months<sup>14</sup> or up to a year after the end

<sup>12</sup> For the purposes of this proposing release, “financial obligation” means a debt obligation, lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding. See Section III.A.1.i. herein for further discussion of the term “financial obligation.”

<sup>13</sup> See e.g., Community Unit School District Number 18 (Blue Ridge), Securities Act of 1933 (“Securities Act”) Release No. 10155 (Aug. 24, 2016), available at <https://www.sec.gov/litigation/admin/2016/33-10155.pdf> (settled action) (finding that the school district made a materially false statement in the final official statement for a 2012 offering that it had not failed to comply in all material respects in the previous five years with any undertaking entered into pursuant to Rule 15c2–12, when in fact the school district had failed to file its audited financial statements for fiscal years 2008 through 2011 by the time of the 2012 offering and filed its 2007 audited financial statements late by 811 days).

<sup>14</sup> See MSRB, Timing of Annual Financial Disclosures by Issuers of Municipal Securities (Feb. 2017), available at <http://www.msrb.org/msrb1/pdfs/MSRB-CD-Timing-of-Annual-Financial-Disclosures-2016.pdf> (stating that, excluding disclosures received by the MSRB more than one year after the end of the fiscal year, the timing of audited financial statements submissions in 2016 averaged 199 calendar days after the end of the applicable fiscal year and the timing of annual financial information submissions in 2016 averaged 189 calendar days after the end of the applicable fiscal year). See also Richard A. Ciccarone, *Change Doesn’t Come Easy for Municipal Bond Audit*

of the issuer's or obligated person's applicable fiscal year,<sup>15</sup> and a significant amount of time could pass before the issuer's or obligated person's next primary offering subject to Rule 15c2-12. In many cases, this lack of access or delay in access to disclosure means that investors could be making investment decisions, and other market participants could be undertaking credit analyses, without important information.

Additionally, the Commission understands that to the extent information about financial obligations is disclosed and accessible to investors and other market participants, such information currently may not include certain details about the financial obligations. For example, disclosure about a financial obligation in an issuer's or obligated person's audited financial statements or in an official statement may be limited to the amount of the financial obligation and may not provide certain details, such as whether the financial obligation contains

*Timing*, Merritt Research Services (Oct. 25, 2015), available at <http://muninetguide.com/change-doesnt-come-easy-for-municipal-bond-audit-timing/> (stating that, in a study examining a total of 73,586 municipal issuer audited financial statements submissions from 2008 to 2014, audits typically take close to six months to complete, while revenue bond borrowers generally take closer to four months to complete their audits).

<sup>15</sup> In March 2014, the Division of Enforcement announced the Municipalities Continuing Disclosure Cooperative Agreement ("MCDC Initiative"), a voluntary program to encourage underwriters and issuers and obligated persons to self-report federal securities law violations involving inaccurate certifications in primary offerings where issuers and obligated persons represented in their final official statements that they had complied with previous continuing disclosure agreements when they had not. The Commission brought settled actions against 71 issuers and obligated persons under the MCDC Initiative. See SEC Charges 71 Municipal Issuers in Muni Bond Disclosure Initiative (Aug. 24, 2016), available at <https://www.sec.gov/news/pressrelease/2016-166.html>. See e.g., Boulder County, Colorado, Securities Act Release No. 10135 (Aug. 24, 2016), available at <https://www.sec.gov/litigation/admin/2016/33-10135.pdf> (settled action) (Respondent stated it was in compliance with earlier continuing disclosure agreements, but had in fact filed its annual financial information and audited financial reports to the MSRB between 140 and 230 days late for fiscal years 2007 through 2009); Wyoming Community Development Authority, Securities Act Release No. 10196 (Aug. 24, 2016), available at <https://www.sec.gov/litigation/admin/2016/33-10196.pdf> (settled action) (Respondent stated it was in compliance with earlier continuing disclosure agreements, but had in fact provided its fiscal years 2006, 2008, and 2009 audited financial statements to the MSRB approximately 50, 26, and 13 months late, respectively); and City of Devils Lake, North Dakota, Securities Act Release No. 10144 (Aug. 24, 2016), available at <https://www.sec.gov/litigation/admin/2016/33-10144.pdf> (settled action) (Respondent stated it was in compliance with earlier continuing disclosure agreements, but had in fact provided its fiscal years 2007, 2008, 2009, and 2010 audited financial statements to the MSRB 228, 153, 149, and 64 days late, respectively).

covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, if material.<sup>16</sup> In these cases, investors could be making investment decisions, and other market participants could be undertaking credit analyses, without important information, including the debt payment priority structure.

Furthermore, the Commission understands that investors and other market participants may not have any access or timely access to disclosure regarding the occurrence of events reflecting financial difficulties, including a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation.<sup>17</sup> For example, if an issuer or obligated person defaults under the terms of a financial obligation, investors either may not ever have access or may not have timely access to information about the event. This lack of access or delay in access to disclosure means investors could be making investment decisions, and other market participants could be undertaking credit analyses, without important information.

The MSRB<sup>18</sup> and certain market participants<sup>19</sup> have raised concerns

<sup>16</sup> See MSRB Notice 2012-18, *infra* note 20 (stating that information about certain financings undertaken by issuers is not readily available to holders of an issuer's outstanding debt until the release of an issuer's audit, and such information is typically quite limited). See also 2012 Municipal Report, *infra* note 58, at 65-66 (stating that commenters have expressed concern about the lack of detailed information in official statements about municipal issuers' outstanding debt, including liens, security, collateral pledges, etc., and stating that market participants also have raised concerns that municipal entities may not properly disclose the existence or the terms and conditions of bank loans, particularly when the terms of the bank loans may affect the payment priority from revenues in a way that adversely affects bondholders).

<sup>17</sup> See Section II.D. herein for additional discussion.

<sup>18</sup> See Letter from Kym Arnone, Chair, MSRB, to Pamela Dyson, Chief Information Officer, Securities and Exchange Commission (Jan. 20, 2015) ("MSRB Letter to SEC CIO"), available at <http://www.msrb.org/msrb1/pdfs/MSRB-Comment-Letter-on-SEC-Rule-15c2-12-January-2015.pdf>. The MSRB noted that bank loans and direct-purchase debt are not subject to Rule 15c2-12 and, therefore, are not required to be reported through filings on EMMA. The MSRB also noted its concern that bank loans or other debt-like obligations such as swap transactions, guarantees, and lease financing arrangements, that create significant financial obligations and which do not get currently reported, could impair the rights of existing bondholders, including the seniority status of such bondholders, or impact the credit or liquidity profile of an issuer.

<sup>19</sup> See e.g., Letter from Lisa Washburn, Chair, NFMA to Mary Jo White, Chair, Securities and Exchange Commission (Aug. 10, 2016) ("NFMA Letter to SEC Chair"), available at [http://www.nfma.org/assets/documents/position.stmt/ps-stateofdisclosure\\_aug2016white.pdf](http://www.nfma.org/assets/documents/position.stmt/ps-stateofdisclosure_aug2016white.pdf). NFMA noted that certain events and/or circumstances that are

about the lack of secondary market disclosure about certain financial obligations. While some market participants have encouraged issuers and obligated persons to voluntarily disclose information about certain financial obligations,<sup>20</sup> the MSRB has stated that the number of actual disclosures made is limited.<sup>21</sup> To address concerns that investors and other market participants may not have any access or timely access to information about the incurrence of a financial obligation by an issuer or obligated person, the Commission proposes amendments to Rule 15c2-12. The proposed amendments would require a Participating Underwriter in an Offering to reasonably determine that an issuer or obligated person has undertaken in a written agreement or contract to provide to the MSRB, within ten business days after the occurrence of the events, notice of the proposed events.

## II. Background

### A. History

The Securities Act and the Exchange Act exempt municipal securities from certain registration and reporting requirements,<sup>22</sup> but not the antifraud provisions of Securities Act Section 17(a),<sup>23</sup> or Exchange Act Section 10(b)<sup>24</sup> and Rule 10b-5<sup>25</sup> promulgated thereunder. Congress, as part of the Securities Acts Amendments of 1975 ("1975 Amendments"),<sup>26</sup> created a limited regulatory scheme for the municipal securities market at the

material are omitted from reporting under continuing disclosure agreements, such as the incurrence of additional long and short-term debt, early swap terminations, swap collateral postings, and defaults under other contractual agreements. NFMA also expressed the view that the lack of such disclosure—or the delay in providing such information—impairs secondary market pricing and liquidity and can affect bond ratings.

<sup>20</sup> See e.g., MSRB, Notice Concerning Voluntary Disclosure of Bank Loans to EMMA, MSRB Notice 2012-18 (Apr. 3, 2012) ("MSRB Notice 2012-18"), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-18.aspx>. See also GFOA, GFOA Alert: Bank Loan Disclosure (May 12, 2016) (recommending that municipal issuers should voluntarily disclose information about bank loans), available at <http://www.gfoa.org/gfoa-alert-bank-loan-disclosure>.

<sup>21</sup> See MSRB Request For Comment, *infra* note 76 at 3. Issuer representatives have indicated that challenges associated with posting and locating information about financial obligations on EMMA have led to the appearance of under-disclosure by issuers. See *infra* note 83.

<sup>22</sup> 15 U.S.C. 77c(a)(2); 15 U.S.C. 78c(a)(12), (29).

<sup>23</sup> 15 U.S.C. 77q(a).

<sup>24</sup> 15 U.S.C. 78j(b).

<sup>25</sup> 17 CFR 240.10b-5.

<sup>26</sup> The Securities Acts Amendments of 1975, Public Law 94-29, 89 Stat. 97 (1975).

federal level<sup>27</sup> in response to the growth of the market, market abuses, and the increasing participation of retail investors.<sup>28</sup> The 1975 Amendments required firms transacting business in municipal securities to register with the Commission as broker-dealers, required banks dealing in municipal securities to register with the Commission as municipal securities dealers,<sup>29</sup> and gave the Commission broad rulemaking and enforcement authority<sup>30</sup> over such broker-dealers and municipal securities dealers. The 1975 Amendments did not establish a regulatory scheme for, or impose any new requirements on, issuers of municipal securities.<sup>31</sup> In addition, the 1975 Amendments authorized the creation of the MSRB and granted it authority to promulgate rules concerning transactions in municipal securities by dealers.

The 1975 Amendments provided a system of regulation for both municipal securities professionals and the municipal securities market, but limited the Commission's and the MSRB's authority to require issuers, either directly or indirectly, to file any application, report, or document with the Commission or the MSRB prior to any sale of municipal securities by an issuer.<sup>32</sup> Exchange Act Section

15B(d)(2),<sup>33</sup> however, states that “[n]othing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title.”<sup>34</sup> Further, in Exchange Act Section 15(c)(2), Congress expanded the Commission's authority by providing it with broad rulemaking and enforcement authority over dealers. Thus, while Congress limited the Commission's ability to require issuers to file reports or documents prior to issuing municipal securities in Exchange Act Section 15B(d)(1),<sup>35</sup> Congress preserved and expanded the Commission's mandate to adopt rules reasonably designed to prevent fraud in Exchange Act Sections 15B(d)(2) and 15(c)(2).

#### B. Rule 15c2-12

In 1988, to address concerns about the quality of disclosure in certain municipal offerings and timely dissemination of disclosure documents,<sup>36</sup> the Commission proposed a limited rule designed to prevent fraud in the municipal securities market by enhancing the timely access of official

securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities. (2) The Board is not authorized under this title to require any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: Provided, however, That the Board may require municipal securities brokers and municipal securities dealers or municipal advisors to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title.”

<sup>33</sup> 15 U.S.C. 78o-4(d)(2).

<sup>34</sup> 15 U.S.C. 78o-4(d)(2).

<sup>35</sup> 15 U.S.C. 78o-4(d)(1).

<sup>36</sup> The Commission also stated that the practices revealed in the 1988 Commission Staff Report on the Investigation in the Matter of Transactions in Washington Power Supply System Securities underscored the need to explore the benefits that would result from a specific regulatory requirement for underwriters to be uniformly subject to a requirement to obtain and review a nearly final disclosure document and make disclosure documents available to investors in both negotiated and competitive offerings. See Exchange Act Release No. 34-26100 (Sept. 22, 1988), 53 FR 37778, 37781 (Sept. 28, 1988) (“1988 Proposing Release”). The Commission also highlighted the changes that had occurred in the municipal securities market since securities laws were first enacted, including the nationwide scope of the municipal securities market, size of the municipal securities market, broader range of types of investors in municipal securities (including a significant number of household investors), and increasing complexity of municipal financing structures. *Id.* at 37779.

statements to underwriters, investors, and other interested persons.<sup>37</sup> In 1989, the Commission adopted Rule 15c2-12 as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the municipal securities market.<sup>38</sup> A dealer that acts as a Participating Underwriter in an Offering is required, subject to certain exemptions: (i) To obtain and review an official statement that an issuer of the securities “deems final”, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (ii) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (iii) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (iv) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB.<sup>39</sup>

In November 1994, the Commission adopted amendments to Rule 15c2-12 (“1994 Amendments”) to deter fraud and manipulation in the municipal securities market by prohibiting the underwriting and subsequent recommendation of securities for which adequate information is not available.<sup>40</sup> Specifically, Rule 15c2-12, as amended by the 1994 Amendments, prohibits Participating Underwriters from purchasing or selling municipal securities in connection with an Offering unless the Participating Underwriter has “reasonably determined” that an issuer or an obligated person has undertaken in a written agreement or contract for the benefit of holders of such securities<sup>41</sup> to provide continuing disclosure information regarding the security and the issuer or obligated person for the life of the municipal security.<sup>42</sup> The

<sup>37</sup> *Id.* at 37782.

<sup>38</sup> See Exchange Act Release No. 34-26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) (“1989 Adopting Release”).

<sup>39</sup> See 17 CFR 240.15c2-12(b).

<sup>40</sup> See Exchange Act Release No. 34-33742 (Mar. 9, 1994), 59 FR 12759 (Mar. 17, 1994) (“1994 Amendments Proposing Release”); Exchange Act Release No. 34-34961 (Nov. 10, 1994), 59 FR 59590, 59591 (Nov. 17, 1994) (“1994 Amendments Adopting Release”).

<sup>41</sup> In some instances, continuing disclosure undertakings may be set forth in other deal documents (e.g., the bond resolution or trust indenture).

<sup>42</sup> See 17 CFR 240.15c2-12(b)(5)(i). This provision now requires submission of annual information and event notices to a single repository

<sup>27</sup> See, e.g., Exchange Act Sections 15(c)(1), 15(c)(2), 15B(c)(1), 15B(c)(2), 17(a), 17(b), and 21(a)(1) (15 U.S.C. 78o(c)(1), 78o(c)(2), 78o-4(c)(1), 78o-4(c)(2), 78q(a), 78q(b), and 78u(a)(1)).

<sup>28</sup> S. Rep. No. 94-75, at 3-4, 37-43 (1975) (Conf. Rep.).

<sup>29</sup> The Exchange Act defines a “municipal securities dealer” as any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, as a part of regular business, through a broker or otherwise. See 15 U.S.C. 78c(a)(30).

<sup>30</sup> See, e.g., Exchange Act Sections 15(c)(1), 15(c)(2), 15B(c)(1), 15B(c)(2), 17(a), 17(b), and 21(a)(1) (15 U.S.C. 78o(c)(1), 78o(c)(2), 78o-4(c)(1), 78o-4(c)(2), 78q(a), 78q(b), and 78u(a)(1)). Enforcement activities regarding municipal securities dealers must be coordinated by the Commission, the Financial Industry Regulatory Authority, and the appropriate bank regulatory agency. See Exchange Act Sections 15B(c)(6)(A), 15B(c)(6)(B), and 17(c) (15 U.S.C. 78o-4(c)(6)(A), 78o-4(c)(6)(B), 78q(c)). The term “appropriate regulatory agency,” when used with respect to a municipal securities dealer, is defined in Section 3(a)(34)(A) of the Exchange Act. See 15 U.S.C. 78c(a)(34)(A). The Commission also has the authority to examine all registered municipal securities dealers. See 15 U.S.C. 78q(b)(1).

<sup>31</sup> The 1975 Amendments amended the definition of “person” under Exchange Act Section 3(a)(9) to include issuers of municipal securities, thus clarifying that state and local government issuers were not exempt from the antifraud provisions of the federal securities laws.

<sup>32</sup> Exchange Act Section 15B(d), commonly referred to as the “Tower Amendment,” states: “(1) Neither the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of

continuing disclosure information consists of: (i) Certain annual financial and operating information and audited financial statements, if available (“annual filings”);<sup>43</sup> (ii) notices of the occurrence of certain events (“event notices”);<sup>44</sup> and (iii) notices of the failure of an issuer or obligated person to provide required annual financial information, on or before the date specified in the continuing disclosure agreement (“failure to file notices”).<sup>45</sup> The 1994 Amendments also prohibit a dealer from recommending the purchase or sale of a municipal security unless it has procedures in place that provide reasonable assurance that such dealer will promptly receive any event notices and failure to file notices with respect to that security.<sup>46</sup> The Commission stated that as a result of the 1994 Amendments dealers would be better able to satisfy both their obligation under the federal securities laws to have a reasonable basis on which to recommend municipal securities in the secondary market and their obligations under MSRB rules.<sup>47</sup> The Commission further stated that the availability of

maintained by the MSRB. See 2008 Amendments Adopting Release, *supra* note 7.

<sup>43</sup> See 17 CFR 240.15c2-12(b)(5)(i)(A) and (B).

<sup>44</sup> See 17 CFR 240.15c2-12(b)(5)(i)(C). Currently, the following events require notice in a timely manner not in excess of ten business days after the occurrence of the event: (1) Principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security; (7) modifications to rights of security holders, if material; (8) bond calls, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the obligated person; (13) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (14) appointment of a successor or additional trustee or the change of name of a trustee, if material. In addition, Rule 15c2-12(d) provides full and limited exemptions from the requirements of Rule 15c2-12. See 17 CFR 240.15c2-12(d).

<sup>45</sup> See 17 CFR 240.15c2-12(b)(5)(i)(D). Annual filings, event notices, and failure to file notices are referred to collectively herein as “continuing disclosure documents.”

<sup>46</sup> See 1994 Amendments Adopting Release, *supra* note 40, at 59602; 17 CFR 240.15c2-12(c).

<sup>47</sup> See 1994 Amendments Adopting Release, *supra* note 40, at 59591.

secondary market disclosure to all market participants would enable investors to better protect themselves from misrepresentations or other fraudulent activities by dealers.<sup>48</sup> The Commission emphasized that a lack of consistent secondary market disclosure impairs investors’ ability to acquire information necessary to make informed investment decisions, and thus, protect themselves from fraud.<sup>49</sup>

In December 2008, in connection with its longstanding interest in reducing the potential for fraud and manipulation in the municipal securities market by facilitating greater availability of information about municipal securities, the Commission adopted amendments to Rule 15c2-12 (“2008 Amendments”) to provide for the EMMA system.<sup>50</sup> EMMA is established and maintained by the MSRB and provides free public access to disclosure documents. The 2008 Amendments require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide continuing disclosure documents: (i) Solely to the MSRB; and (ii) in an electronic format and accompanied by identifying information, as prescribed by the MSRB.<sup>51</sup> In adopting the 2008 Amendments, the Commission stated that it was furthering its efforts to deter fraud and manipulation in the municipal securities market.<sup>52</sup> The Commission further stated that public access to all continuing disclosure documents on the Internet, as required by the 2008 Amendments, would promote market efficiency and deter fraud by improving the availability of information to investors, market professionals, and the public generally.<sup>53</sup>

In May 2010, the Commission adopted further amendments to Rule 15c2-12 (“2010 Amendments”).<sup>54</sup> The 2010 Amendments (a) require Participating Underwriters to reasonably determine that an issuer or obligated person has agreed to provide event

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See 2008 Amendments Adopting Release, *supra* note 7.

<sup>51</sup> See *id.* See also Exchange Act Release No. 34-59061 (Dec. 5, 2008), 73 FR 75778 (Dec. 12, 2008) (order approving the MSRB’s proposed rule change to establish as a component of its central municipal securities document repository, the EMMA system, the collection and availability of continuing disclosure documents over the Internet free of charge).

<sup>52</sup> See 2008 Amendments Adopting Release, *supra* note 7, at 76105.

<sup>53</sup> *Id.* at 76110.

<sup>54</sup> See Exchange Act Release No. 34-62184A (May 26, 2010), 75 FR 33100 (June 10, 2010) (“2010 Amendments Adopting Release”).

notices in a timely manner not in excess of ten business days after the event’s occurrence; (b) include new events<sup>55</sup> for which a notice is to be provided; (c) modify the events that are subject to a materiality determination before triggering a requirement to provide notice to the MSRB;<sup>56</sup> and (d) revise an exemption for certain offerings of municipal securities with put features.<sup>57</sup>

### C. Commission’s Report on the Municipal Securities Market

In July 2012, the Commission issued its Report on the Municipal Securities Market following a broad review of the municipal securities market that included a series of public field hearings and numerous meetings with market participants.<sup>58</sup> The 2012 Municipal Report provides an overview of the municipal securities market and addresses two key areas of concern: disclosure and market structure.<sup>59</sup> The 2012 Municipal Report includes a series of recommendations for potential further consideration, including legislative changes, Commission rulemaking, MSRB rulemaking, and enhancement of industry best practices.<sup>60</sup> These recommendations were designed to address concerns raised by market participants and others and provide avenues to improve the municipal securities market, including transparency for municipal securities investors.<sup>61</sup>

The 2012 Municipal Report states, among other things, that the

<sup>55</sup> The amendments added the following events to paragraph (b)(5)(i)(C) of Rule 15c2-12: (a) Tender offers; (b) bankruptcy, insolvency, receivership or similar event of the issuer or obligated person; (c) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (d) appointment of a successor or additional trustee, or the change of name of a trustee, if material. *Id.* at 33102.

<sup>56</sup> The amendments removed the materiality determination for the following events: (a) Principal and interest payment delinquencies with respect to the subject securities; (b) unscheduled draws on debt service reserves or on credit enhancements for the subject securities reflecting financial difficulties; (c) substitution of credit or liquidity providers, or their failure to perform; (d) defeasances; (e) rating changes; (f) tender offers; and (g) bankruptcy events. The amendments clarified the materiality determination for the event notice related to the tax status of the subject securities. *Id.* at 33111-12, 33118-19.

<sup>57</sup> *Id.* at 33100.

<sup>58</sup> Securities and Exchange Commission, Report on the Municipal Securities Market (July 31, 2012) (“2012 Municipal Report”).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 133-50.

<sup>61</sup> *Id.* at 4.

Commission could consider further amendments to Rule 15c2–12 to mandate more specific types of secondary market event disclosures, including disclosure relating to new indebtedness (whether or not such debt is subject to Rule 15c2–12 and whether or not arising as a result of a municipal securities issuance).<sup>62</sup> The Commission further noted that market participants raised concerns that issuers and obligated persons may not properly disclose the existence or the terms of bank loans, particularly when the terms of the bank loans may affect the payment priority from revenues in a way that adversely affects bondholders.<sup>63</sup>

#### *D. Market Developments and the Need for Further Amendments to Rule 15c2–12*

The municipal securities market is a significant part of the United States credit markets, with over \$3.83 trillion in principal amount outstanding.<sup>64</sup> At the end of the third quarter 2016, individuals or retail investors held, either directly or indirectly through mutual funds, money market mutual funds, closed-end funds, and exchange-traded funds, approximately \$2.545 trillion of outstanding municipal securities.<sup>65</sup> According to the MSRB, approximately \$2.42 trillion of municipal securities were traded in 2015 in approximately 9.26 million trades.<sup>66</sup> There are approximately 44,000<sup>67</sup> state and local issuers of municipal securities, ranging from villages, towns, townships, cities, counties, territories, and states, as well as special districts, such as school districts and water and sewer authorities.<sup>68</sup> Historically, municipal securities have had significantly lower rates of default than corporate and foreign government bonds.<sup>69</sup>

Nevertheless, issuers and obligated persons have defaulted on their municipal bonds, and these defaults may negatively impact investors in ways other than non-payment, including delayed payments and pricing disruptions in the secondary market.<sup>70</sup> Since 2011, the municipal securities market has experienced four of the five largest municipal bankruptcy filings in U.S. history,<sup>71</sup> and some issuers and obligated persons continue to experience declining fiscal situations and steadily increasing debt burdens.<sup>72</sup>

Beginning in 2009, issuers and obligated persons have increasingly used direct placements as alternatives to public offerings of municipal securities.<sup>73</sup> According to the MSRB, direct placements, when used as an alternative to public offerings, could provide potential advantages for issuers, such as, among other things, lower interest and transaction costs, reduced exposure to bank regulatory capital requirements, simpler execution process, greater structuring flexibility, no requirement for a rating or offering document, and direct interaction with the lender instead of multiple bondholders.<sup>74</sup> However, the MSRB and

(“Moody’s”), *The U.S. Municipal Bond Rating Scale: Mapping to the Global Rating Scale and Assigning Global Scale Ratings to Municipal Obligations* (Mar. 2007), available at [https://www.moody.com/sites/products/DefaultResearch/102249\\_RM.pdf](https://www.moody.com/sites/products/DefaultResearch/102249_RM.pdf); and *Report to Accompany H.R. 6308*, H.R. Rep. No. 110–835, at § 205 (Feb. 14, 2008), available at <https://www.gpo.gov/fdsys/pkg/CRPT-110hrpt835/html/CRPT-110hrpt835.htm>.

<sup>70</sup> See 2012 Municipal Report, *supra* note 58, at 23.

<sup>71</sup> The five largest municipal bankruptcies, to date, ranked by amount of debt, are Detroit, Michigan, in 2013 (\$18 billion in debt); Jefferson County, Alabama, in 2011 (\$4.2 billion in debt); Orange County, California, in 1994 (\$2.0 billion in debt); Stockton, California, in 2012 (\$1.0 billion in debt); and San Bernardino, California, in 2012 (\$492 million in debt). See *Detroit’s Bankruptcy Is the Nation’s Largest*, N.Y. Times (July 18, 2013), available at <http://www.nytimes.com/interactive/2013/07/18/us/detroit-bankruptcy-is-the-largest-in-nation.html>.

<sup>72</sup> For example, the government of Puerto Rico failed to pay more than half of more than \$1 billion in general obligation bond payments due on July 1, 2016, marking the first time that a state or territory has failed to pay general obligation bonds since the early 1930s. See *The Commonwealth of Puerto Rico Amended Event Notice* (July 12, 2016), available at <http://emma.msrb.org/ER980533-ER766970-ER168826.pdf> (providing notice of Puerto Rico’s first default of its general obligation bond payments). See also Heather Gillers & Nick Timiraos, *Puerto Rico Defaults on Constitutionally Guaranteed Debt*, Wall St. J. (July 1, 2016), available at <http://www.wsj.com/articles/puerto-rico-to-default-on-constitutionally-guaranteed-debt-1467378242>.

<sup>73</sup> See Section I and Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, *supra* note 11. See also MSRB Bank Loan Notice, *infra* note 76, at 2. See also Section V.A. herein.

<sup>74</sup> See MSRB Bank Loan Notice, *infra* note 76, at 1 n.2.

certain market participants have raised concerns about lack of secondary market disclosure regarding financial obligations that are direct placements, as well as other financial obligations.<sup>75</sup> Numerous market participants, including the MSRB,<sup>76</sup> the Financial

<sup>75</sup> See *supra* notes 18 and 19. In addition, the ICI recommended, in its comment letter addressing the 2010 amendments to Rule 15c2–12, that the Commission implement a disclosure requirement regarding the creation of any material financial obligation (including contingent obligations) whether in the form of direct debt, hedge, swap or other derivative instrument, capital lease, operating lease or otherwise, because of the implications these obligations may have on the credit risk and value of associated bonds. See Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth Murphy, Secretary, Securities and Exchange Commission (Sept. 8, 2009), available at <https://www.sec.gov/comments/s7-15-09/s71509-23.pdf>.

<sup>76</sup> In April 2012, the MSRB published a regulatory notice encouraging issuers to voluntarily post information about bank loan financings to the MSRB’s EMMA Web site. See MSRB Notice 2012–18, *supra* note 20. In January 2015, the MSRB published a regulatory notice regarding the importance of voluntary disclosure of bank loans, defining bank loans as a direct purchase of a bond directly from the issuer or a direct loan or other type of financing agreement with the issuer. The MSRB also noted that many of the principles described in its notice would be equally applicable to other types of indebtedness, including direct loans from other investors. The MSRB noted that the availability of timely disclosure of additional debt in any form, including debt-like obligations, is beneficial to foster market transparency and to ensure a fair and efficient market. See MSRB, Bank Loan Disclosure Market Advisory, MSRB Notice 2015–03 (Jan. 29, 2015) (“MSRB Bank Loan Notice”), available at <http://www.msrb.org/~media/Files/Regulatory-Notices/Announcements/2015-03.ashx>. Also in January 2015, the MSRB submitted a comment letter in response to the Commission’s request, pursuant to the Paperwork Reduction Act of 1995, for comment on the existing collection of information provided for in Rule 15c2–12. In this letter, the MSRB stated its concern about the lack of disclosure of bank loans and other debt and debt-like obligations (e.g., swap transactions, guarantees and lease financing arrangements that create significant financial obligations). The MSRB stated that bank loans or other debt-like obligations could impair the rights of existing bondholders or impact the credit or liquidity profile of an issuer. See MSRB Letter to SEC CIO, *supra* note 18. In October 2015, in response to a request from the Commission’s Office of the Investor Advocate to identify products and practices within the municipal securities market that may have an adverse impact on retail investors, the MSRB submitted a letter that identified the lack of bank loan disclosures as an area of particular concern. See Letter from Lynnette Kelly, Executive Director, MSRB, to Rick Fleming, Investor Advocate, Securities and Exchange Commission (Oct. 30, 2015) (“MSRB 2015 Letter to SEC’s Investor Advocate”), available at <http://www.msrb.org/msrb1/pdfs/MSRB-Letter-to-Investor-Avocate-October-2015.pdf>. In March 2016, the MSRB published a request for comment seeking public input on whether and how the MSRB could improve disclosure of direct purchases and bank loans entered into by issuers of municipal securities. The comment period closed on May 27, 2016, and the MSRB received 30 letters in response to the request for comment. See MSRB, Request for Comment on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans,

Continued

<sup>62</sup> *Id.* at 139–40.

<sup>63</sup> *Id.* at 66.

<sup>64</sup> See Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, at 121 Table L.212 (Third Quarter 2016) (Dec. 8, 2016) (“Flow of Funds”), available at <https://www.federalreserve.gov/releases/z1/current/z1.pdf>.

<sup>65</sup> *Id.* As of the third quarter 2016, the amount of municipal securities held directly by the household sector was \$1.591 trillion and mutual funds, money market mutual funds, closed-end funds, and exchange-traded funds collectively held \$954.5 billion.

<sup>66</sup> See MSRB, 2015 Fact Book, at 7–8 (Mar. 3, 2016), available at <http://www.msrb.org/msrb1/pdfs/msrb-fact-book-2015.pdf>.

<sup>67</sup> See 2012 Municipal Report, *supra* note 58, at 1.

<sup>68</sup> See Registration of Municipal Advisors, Exchange Act Release No. 34–70462 (Sept. 20, 2013), 78 FR 67468, 67472 (Nov. 12, 2013).

<sup>69</sup> See 2012 Municipal Report, *supra* note 58, at 22–23 & n.113 (citing Moody’s Investors Service



Industry Regulatory Authority (“FINRA”),<sup>77</sup> and industry groups<sup>78</sup> have encouraged issuers and obligated persons to voluntarily disclose information about certain financial obligations that are not currently included in the list of events for which a Participating Underwriter must reasonably determine that an issuer or

MSRB Notice 2016–11 (Mar. 28, 2016) (“MSRB Request For Comment”), available at <http://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2016-11.ashx?n=1>. Many commenters on the MSRB’s proposal to require municipal advisors to disclose their municipal issuer clients’ direct placements noted that the best way to ensure disclosure of direct placements is to amend Rule 15c2–12. See MSRB, Comment Letters in Response to MSRB Request for Comment (2016) (“Comment Letters in Response to MSRB Request for Comment (2016)”), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2016/2016-11.aspx?c=1>. See also Jack Casey, *Why MSRB Is Giving a \$5.5M Rebate to Dealers*, The Bond Buyer (Aug. 1, 2016), available at <http://www.bondbuyer.com/news/washington-securities-law/why-msrb-is-giving-a-55m-rebate-to-dealers-1109888-1.html>. In August 2016, the MSRB announced that, in light of comments received in response to the MSRB Request for Comment, it would not pursue a rulemaking at this time. The MSRB, however, noted their continuing belief that disclosure of alternative financings is important for assessing a municipal entity’s creditworthiness and evaluating the impact of these financings on existing and potential investors. The MSRB further stated that they would continue to raise awareness about the issue among regulators and market participants, and encourage industry-led initiatives that support voluntary disclosure best practices. MSRB, MSRB Holds Quarterly Meeting (Aug. 1, 2016), available at <http://www.msrb.org/News-and-Events/Press-Releases/2016/MSRB-Holds-Quarterly-Board-Meeting-July-2016.aspx>. In November 2016, in response to a request from the Commission’s Office of the Investor Advocate to identify products and practices within the municipal securities market that may have an adverse impact on retail investors, the MSRB submitted a letter that reemphasized the lack of bank loan disclosures as a continuing area of concern. See Letter from Lynnette Kelly, Executive Director, MSRB, to Rick Fleming, Investor Advocate, Securities and Exchange Commission (Nov. 3, 2016) (“MSRB 2016 Letter to SEC’s Investor Advocate”), available at <http://www.msrb.org/msrb1/pdfs/MSRB-Response-to%20Investor-Avocate-November-2016.pdf>.

<sup>77</sup> In April 2016, the MSRB and FINRA published a joint regulatory notice reminding firms of their obligations in connection with privately placing municipal securities with a single purchaser and the use of bank loans in the municipal securities market. The regulatory notice encouraged the voluntary disclosure of bank loans in a timely manner. See FINRA, *Direct Purchases and Bank Loans as Alternatives to Public Financing in the Municipal Securities Market*, FINRA Regulatory Notice 16–10 (Apr. 2016), available at [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory-Notice-16-10.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-10.pdf).

<sup>78</sup> See e.g., GFOA, *Best Practice: Understanding Bank Loans* (Sept. 2013) (“Understanding Bank Loans”), available at <http://www.gfoa.org/understanding-bank-loans>; NFMA, *Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements* (June 2015) (“NFMA 2015 Recommended Best Practices”), available at [http://www.nfma.org/assets/documents/RBP/rbp\\_bankloans\\_615.pdf](http://www.nfma.org/assets/documents/RBP/rbp_bankloans_615.pdf); Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, *supra* note 11.

obligated person has undertaken in a written agreement or contract to provide notice under Rule 15c2–12. The MSRB has suggested that voluntary disclosure submissions include the loan or financing agreement or a summary of some or all of the features of the debt obligation, including, for example, principal amount, maturity and amortization dates, prepayment provisions, security for repayment, source of repayment, and events of default and remedies.<sup>79</sup> GFOA, representing more than 18,000 federal, state, and local finance officials, has recommended that if municipal entities choose to disclose information regarding certain financial obligations, those entities should disclose information that may be relevant to current or prospective bondholders either by submitting the entire financing agreement to EMMA or preparing a summary of material terms, including, for example, the loan amount; debt service schedule; legal security and/or source of payment; covenants; events of defaults and remedies; term-out provisions, acceleration provisions or other non-standard payment considerations; and any other information the issuer believes to be important.<sup>80</sup> Moreover, at least one rating agency currently requires, and other rating agencies strongly encourage, issuers and obligated persons to notify the rating agency of the incurrence of certain financial obligations, including direct placements, and to provide all relevant documentation related to such indebtedness.<sup>81</sup> Despite continued efforts by market participants to encourage disclosure of certain financial obligations, the MSRB has stated that

<sup>79</sup> See MSRB Notice 2012–18, *supra* note 20.

<sup>80</sup> See Understanding Bank Loans, *supra* note 78. See also Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, *supra* note 11.

<sup>81</sup> In 2014, S&P sent letters to approximately 24,000 issuers of municipal securities that it rated, citing concerns over hidden debt exposure in the municipal securities market and related credit implications. S&P informed issuers that to maintain its ratings and possibly assign future ratings the rating agency now required notification and documentation related to any direct placements, including bank loan financings. S&P further stated that it may suspend or withdraw its ratings if issuers or obligated persons do not provide such notification in a timely manner. See Letter from S&P to Clients (May 6, 2014), available at <http://cdn.bondbuyer.com/pdfs/SMLetters5-15-14.pdf>. Other ratings agencies have articulated the importance of the disclosure of direct placements to their ability to maintain ratings on an issuer’s public debt. See e.g., Fitch Ratings, *Special Report: Direct Bank Placements Credit Implications* (Oct. 25, 2011); Moody’s, *Growth of Bank Loans and Private Placements Increases Risk and Reduces Transparency in the Municipal Market* (Oct. 16, 2014).

the number of actual disclosures made is limited.<sup>82</sup> In response, issuer representatives have indicated that challenges associated with posting and locating information about financial obligations on EMMA have led to the appearance of under-disclosure by issuers.<sup>83</sup> While the MSRB’s estimate of the number of voluntary disclosure submissions may understate the actual number of voluntary disclosure submissions, the Commission preliminarily believes that a rule requiring a Participating Underwriter in an Offering to reasonably determine that an issuer or an obligated person has undertaken, in a continuing disclosure agreement, to provide to the MSRB within 10 business days the event notices specified in the proposed rule amendments is nevertheless necessary for the reasons discussed throughout this proposing release.

Rule 15c2–12 is designed to address fraud and manipulation in the municipal securities market by prohibiting the underwriting of municipal securities and subsequent recommendation of those municipal securities by dealers for which adequate information is not available. The Commission has long emphasized that, under the antifraud provisions of the federal securities laws, a dealer recommending securities to investors implies by its recommendation that it has an adequate basis for making the recommendation.<sup>84</sup> The Commission

<sup>82</sup> See MSRB Request for Comment, *supra* note 76, at 3. In footnote 8 of that document, the MSRB describes the search methodology it used to identify bank loan disclosures on EMMA. The MSRB noted that as of March 28, 2016, a search of EMMA for the term “bank loan” produced 143 results. Of these results, 79 included the words “bank loan” in the issue description and were filed under the subcategory suggested by the MSRB. Another 23 submissions included the words “bank loan” in the issue description, but the document reported under a subcategory other than that suggested by the MSRB may not be related to a bank loan. The remaining 41 results, while including the words “bank loan” in the document, did not include any document under the subcategory suggested by the MSRB.

<sup>83</sup> See Jack Casey, *Why the Issuer Bank Loan Disclosure System Needs an Overhaul*, The Bond Buyer (May 22, 2016), available at <http://www.bondbuyer.com/news/washington-securities-law/why-the-issuer-bank-loan-disclosure-system-needs-an-overhaul-1104388-1.html>. At a May 2016 GFOA debt committee meeting, an issuer representative noted that many issuers do not know where to post, and market participants do not know where to find, bank loan disclosure information on EMMA. In response to feedback from issuer representatives, the MSRB enhanced the bank loan disclosure submission process and the display of these documents on EMMA. See MSRB, MSRB Improves Bank Loan Disclosure on EMMA Web site (Sept. 26, 2016), available at <http://msrb.org/News-and-Events/Press-Releases/2016/MSRB-Improves-Bank-Loan-Disclosure-on-EMMA-Web-site>.

<sup>84</sup> See 1988 Proposing Release, *supra* note 36, at 37787.

has stated that if, based on publicly available information, a dealer discovers any factors that indicate the disclosure is inaccurate or incomplete or signal the need for further inquiry, a dealer may need to obtain additional information or seek to verify existing information.<sup>85</sup> Accordingly, the Commission has stated that when dealers make recommendations in the secondary market, they must be based on information that is up-to-date and accessible.<sup>86</sup>

In addition, the MSRB has emphasized that secondary market disclosure information publicized by the issuer must be taken into account by dealers to meet the investor protection standards imposed by the MSRB's investor protection rules (e.g., MSRB Rule G-17 requiring dealers to deal fairly with all persons and to not engage in any deceptive, dishonest, or unfair practice; MSRB Rule G-19 requiring dealers to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for a customer; MSRB Rule G-30 requiring dealers to ensure that prices for customer transactions are fair and reasonable; and MSRB Rule G-47 requiring dealers to provide all material information known about a transaction, including material information that is reasonably accessible to the market).<sup>87</sup>

Under Rule 15c2-12(c), a dealer recommending the purchase or sale of a municipal security is required to have procedures in place that provide reasonable assurance that it will receive prompt notice of event notices. The availability of this information to investors would enable them to make more informed investment decisions and should reduce the likelihood that investors would be subject to fraud facilitated by inadequate disclosure. Furthermore, this information would assist dealers in satisfying their obligation to have a reasonable basis to recommend municipal securities to investors.

In keeping with the objectives set forth in the Exchange Act, including

Section 15(c)(2),<sup>88</sup> and the antifraud provisions of the federal securities laws, the Commission preliminarily believes the proposed amendments are reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the municipal securities market. Accordingly, the Commission proposes to amend Rule 15c2-12. The Commission believes the proposed amendments to Rule 15c2-12 are consistent with the limitations set forth in Exchange Act Section 15B(d)(1) because the proposed amendments do not require an issuer of municipal securities to make any filing with the Commission or MSRB prior to the sale of municipal securities.

### III. Description of the Proposed Amendments to Rule 15c2-12

#### A. Overview of Proposed Amendments

The Commission proposes to amend paragraph (b)(5)(i)(C) to add notices for the proposed events that a Participating Underwriter must reasonably determine that the issuer or obligated person has agreed to provide in its continuing disclosure agreement. Similar to the other events listed in Rule 15c2-12, the proposed events reflect on the creditworthiness of the issuer or obligated person and the terms of the securities that they issue.<sup>89</sup> In addition, the Commission proposes an amendment to Rule 15c2-12(f) to add a definition for "financial obligation" and a technical amendment to subparagraph (b)(5)(i)(C)(14).

#### 1. Incurrence of a Financial Obligation of the Obligated Person, If Material, or Agreement to Covenants, Events of Default, Remedies, Priority Rights, or Other Similar Terms of a Financial Obligation of the Obligated Person, Any of Which Affect Security Holders, If Material

The Commission proposes to add an event notice for incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material, to the list of events in paragraph (b)(5)(i)(C) of the Rule for which notice is to be provided. The actual incurrence of the financial obligation, or agreement to covenants, events of default, remedies, priority

rights, or other similar terms would trigger the obligation to provide the event notice. The event notice would be due in a timely manner not in excess of ten business days.<sup>90</sup>

The Commission preliminarily believes that including a materiality determination would strike an appropriate balance. As proposed, the materiality determination applies to the incurrence of a financial obligation and each of the agreed upon terms listed (i.e., covenants, events of default, remedies, priority rights, or other similar terms). For example, an issuer or obligated person may incur a financial obligation for an amount that, absent other circumstances, would not raise the concerns the proposed amendments are intended to address. On the other hand, if an issuer or obligated person agrees to provide a counterparty to a financial obligation with a senior position in the debt payment priority structure, and that agreement affects existing security holders, the event likely does rise to the level of importance that it should be disclosed to investors and other market participants.

As described above, investors and other market participants may not have access to disclosure that an issuer or obligated person has incurred a material financial obligation, or agreed to certain terms that affect security holders, unless or until disclosure is made in the issuer's or obligated person's annual financial information or audited financial statements or in an official statement in connection with the issuer's or obligated person's next primary offering subject to Rule 15c2-12 that results in the provision of a final official statement to EMMA.

Timely access to disclosure about the incurrence of a material financial obligation by an issuer or obligated person would provide potentially important information about the current financial condition of the issuer or obligated person, including potential impacts to the issuer's or obligated person's liquidity and overall creditworthiness. A material financial obligation that results in an increase or change in the issuer's or obligated person's outstanding debt can weaken the measures (e.g., debt service as a percentage of expenditures or debt service coverage ratio) used to assess an issuer's or obligated person's liquidity and creditworthiness and may result in a reevaluation of the issuer's or obligated person's overall credit

<sup>85</sup> See Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Securities Act Release No. 33-7049, Exchange Act Release No. 34-33741 (Mar. 9, 1994), 59 FR 12748, 12758 (Mar. 17, 1994) ("1994 Interpretive Release").

<sup>86</sup> See 1994 Amendments Proposing Release, *supra* note 40, at 12760.

<sup>87</sup> See 1994 Amendments Adopting Release, *supra* note 40, at 59602. See also MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations when Selling Municipal Securities in the Secondary Market, MSRB Notice 2010-37 (Sept. 20, 2010), available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-37.aspx>.

<sup>88</sup> 17 CFR 240.15c2-12 was adopted under a number of Exchange Act provisions, including Section 15(c); 15 U.S.C. 78o(c).

<sup>89</sup> See e.g., 1994 Interpretive Release, *supra* note 85; 1994 Amendments Adopting Release, *supra* note 40; 2010 Amendments Adopting Release, *supra* note 54.

<sup>90</sup> See 17 CFR 240.15c2-12(b)(5)(i)(C).

quality.<sup>91</sup> For example, an increase in outstanding debt could affect an issuer's or obligated person's level of debt service as a percent of expenditures, which industry commenters view as an important indicator of credit quality for general obligation bonds, or such an increase in debt could affect the amount of revenues available to pay debt service for revenue bonds, which is considered in connection with rate covenants or additional bonds tests.<sup>92</sup> If an issuer's or obligated person's liquidity and creditworthiness is impacted, the credit quality of the issuer's or obligated person's outstanding municipal securities could be adversely affected which could impact an investor's investment decision or other market participant's credit analysis.<sup>93</sup>

Timely access to disclosure about a material agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, could potentially provide important information about the creation of contingent liquidity risk, credit risk, and refinancing risk that could impact the issuer's or obligated person's liquidity and overall creditworthiness, and affect security holders' rights to assets or revenues. If an issuer's or obligated person's liquidity and creditworthiness is impacted and/or the rights of security holders are affected, the credit quality and price of the issuer's or obligated person's outstanding municipal securities could be affected.<sup>94</sup>

We propose to include in the rule a list of events—specifically, covenants, events of default, remedies, priority rights, or other similar terms—which are typically agreed to in connection with the incurrence of a financial obligation and analyzed by market participants.<sup>95</sup> These terms of a financial obligation could result in, among other things, contingent liquidity and credit risks, refinancing risk, and reduced security for existing security holders.<sup>96</sup> For example, the issuer or obligated person

may agree to covenants that are more restrictive than those applicable to the issuer's or obligated person's outstanding municipal securities such as a requirement to maintain a higher debt service coverage ratio.<sup>97</sup> The more restrictive covenant would potentially trigger an event of default more easily and as a result the counterparty to the financial obligation would be able to assert remedies prior to existing security holders. For further example, the issuer or obligated person may agree to events of default that differ from those that are applicable to an issuer's or obligated person's outstanding municipal securities such as a failure to observe any term of the financial obligation (as opposed to specifically identified terms) that would enable the counterparty to the financial obligation to assert remedies prior to existing security holders. In addition, the issuer or obligated person may agree to different remedies than the issuer or obligated person has provided to existing security holders. For example, an acceleration provision could provide that any unpaid principal becomes immediately due to the counterparty upon the occurrence of a specified event of default without any grace period, which would effectively prioritize the payment of the financial obligation to the counterparty if the security holders do not have the benefit of the same provision. By agreeing to such a term, the counterparty to the financial obligation could benefit by being repaid prior to existing security holders. By agreeing to a material covenant, event of default or remedy under the terms of a financial obligation, such as the examples provided above, security holders could be affected, and the issuer or obligated person may create contingent liquidity and credit risks that could potentially impact the issuer's or obligated person's liquidity and overall creditworthiness.<sup>98</sup>

In addition, issuers and obligated persons may agree to material priority rights which provide the counterparty with better terms than existing security holders and, as a result, adversely affect the rights of security holders. For example, an issuer or obligated person may agree to provide superior rights to the counterparty in assets or revenues that were previously pledged to existing

security holders and, as a result, reduce security for existing security holders. Lastly, there are other material terms similar to covenants, events of default, remedies, and priority rights that an issuer or obligated person may agree to that could, among other things, create liquidity, credit, or refinancing risks that could affect the liquidity and creditworthiness of an issuer or obligated person or the terms of the securities they issue. For example, an investor may make an investment decision without knowing the issuer or obligated person has entered into a financial obligation structured with a balloon payment at maturity creating refinancing risk that could compromise the issuer or obligated person's liquidity and creditworthiness and their ability to repay their outstanding municipal securities.<sup>99</sup> The provision requiring the balloon payment may not be typically identified as a covenant, event of default, remedy, or priority right, however, such a term could potentially impact the issuer's or obligated person's liquidity and overall creditworthiness and adversely affect security holders.

Lack of access or delay in access to continuing disclosure information about material financial obligations means that there are more opportunities for investors to make investment decisions, and other market participants to undertake credit analyses, without access to this important information. Timely access to information about the incurrence of a material financial obligation of the issuer or obligated person would allow investors and other market participants to learn important information about the current financial condition of the issuer or obligated person, including potential impacts to the issuer's or obligated person's liquidity and overall creditworthiness. Timely access to information about the agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material, would allow investors and other market participants to learn important information about the creation of contingent liquidity risk, credit risk, and refinancing risk, including these risks' potential impact to the issuer's or obligated person's liquidity and overall creditworthiness, and whether security holders have been affected. Timely access to this information would help reduce the likelihood that market participants would have insufficient information to make informed investment decisions

<sup>91</sup> See NFMA 2015 Recommended Best Practices, *supra* note 78, at 6–7; See also Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, *supra* note 11.

<sup>92</sup> See NFMA 2015 Recommended Best Practices, *supra* note 78, at 6–7.

<sup>93</sup> See MSRB Bank Loan Notice, *supra* note 76, at 4 (stating that the inability to timely assess a bank loan's impact on an issuer's credit profile could inadvertently distort valuation related to the buying or selling of an issuer's bonds in both the primary and secondary markets). See also Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, *supra* note 11.

<sup>94</sup> *Id.*

<sup>95</sup> See *e.g.*, NFMA 2015 Recommended Best Practices, *supra* note 78.

<sup>96</sup> *Id.*

<sup>97</sup> See MSRB, Glossary of Municipal Securities Terms: Coverage, available at <http://www.msrb.org/Glossary/Definition/COVERAGE.aspx> (defining "coverage" as the "ratio of available revenues available annually to pay debt service over the annual debt service requirement. This ratio is one indication of the availability of revenues for payment of debt service.").

<sup>98</sup> See *e.g.*, NFMA 2015 Recommended Best Practices, *supra* note 78.

<sup>99</sup> *Id.*

and to undertake informed credit analyses and would enhance investor protection.

The MSRB and certain market participants have been focused on the potential negative impacts associated with the lack of secondary market disclosure regarding debt obligations that are direct placements, as well as other financial obligations,<sup>100</sup> and certain of the examples discussed above are focused on the potential adverse effects to an issuer's or obligated person's liquidity and creditworthiness and valuation of their municipal securities. However, the Commission recognizes that the information disclosed about financial obligations may have a positive impact on an issuer's or obligated person's liquidity and creditworthiness, and the credit quality of the issuer's or obligated person's outstanding municipal securities could be positively affected.

The Commission believes the proposed amendments would facilitate investor access to important information in a timely manner and help to enhance transparency. If an issuer or obligated person provides an event notice to the MSRB, it would be displayed on the MSRB's EMMA Web site. EMMA provides free public access to continuing disclosure documents, including event notices. In addition, EMMA includes a feature that allows market participants to sign up to receive automatic alerts from EMMA when information becomes available with respect to individual or groups of municipal securities, including notice of the submission of an event notice with respect to such individual or groups of municipal securities. The Commission further preliminarily believes that the event notice generally should include a description of the material terms of the financial obligation. Examples of some material terms may be the date of incurrence, principal amount, maturity and amortization, interest rate, if fixed, or method of computation, if variable (and any default rates); other terms may be appropriate as well, depending on the circumstances. A description of the material terms would help further the availability of information in a timely manner to assist investors in making more informed investment decisions.

The Commission requests comment regarding all aspects of the proposed addition of subparagraph (b)(5)(i)(C)(15) concerning the event notice for the incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority

rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material. When responding to the requests for comment, please explain your reasoning.

- The Commission requests comment relating to the frequency of such event and the utility of this information by investors and other market participants in the secondary market.

- Is the triggering of the obligation to provide the event notice clear?

- Should the rule or guidance explicitly address where an issuer or obligated person incurs a series of related financial obligations, where a single incurrence may not be material but in the aggregate the incurrences would be material? In such a scenario, when should the trigger of the obligation to provide the event notice occur?

- Are there other events that should be included in subparagraph (b)(5)(i)(C)(15) of the Rule? Should any of the events proposed to be included be eliminated or modified?

- The Commission further requests comment as to whether the materiality conditions are appropriate conditions for subparagraph (b)(5)(i)(C)(15) of the Rule. Should any or all of the items included in the proposed rule text not be subject to the proposed materiality condition?

- Are there any events that should be added to subparagraph (b)(5)(i)(C)(15) of the Rule, but should not be subject to a materiality condition?

- The Commission further requests comment as to whether "any of which affect security holders" is an appropriate condition to include with respect to "agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person" in subparagraph (b)(5)(i)(C)(15) of the Rule. Should any of the items included in the proposed rule text not be subject to the "any of which affect security holders" condition? Should the proposed condition be modified to only capture events which adversely affect security holders?

- Should the Commission provide additional guidance on the types of information issuers and obligated persons should consider in drafting event notices?

- The Commission also requests comment regarding the benefits and costs of adding this proposed event.

#### i. Definition of a Financial Obligation

The Commission proposes to amend Rule 15c2-12(f) to add a definition for

"financial obligation." Under the proposed definition, the term financial obligation means a debt obligation, lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.

As discussed above, some market participants are concerned not only about the lack of access or delay in access to disclosure regarding financial obligations that are direct placements, but also about the lack of access or delay in access to disclosure of the existence of other financial obligations. Similar to the concerns that market participants raised about financial obligations that are direct placements, an issuer's or obligated person's incurrence of other financial obligations could impair the rights of existing security holders, including the seniority status of such security holders, or impact the creditworthiness of an issuer or obligated person.<sup>101</sup> For example, the MSRB is concerned about other financial obligations that are lease financing arrangements, guarantees, and swap transactions.<sup>102</sup> Additionally, the Commission understands that there are instances where monetary obligations resulting from judicial, administrative, or arbitration proceedings created significant financial obligations for issuers and obligated persons.<sup>103</sup> The proposed definition of financial obligation includes an issuer's or obligated person's debt obligations, leases, guarantees, derivative instruments, and monetary obligations resulting from judicial, administrative, or arbitration proceedings.

As proposed, the term debt obligation is intended to capture short-term and long-term debt obligations of an issuer or obligated person under the terms of an indenture, loan agreement, or similar contract that will be repaid over time. Under the proposed amendments, for example, a direct purchase of municipal securities by an investor and a direct loan by a bank would be debt obligations of the issuer or obligated person. As proposed, the term lease is intended to capture a lease that is entered into by an issuer or obligated person, including an operating or capital lease. Under the proposed amendments, for example, if an issuer or obligated person enters into a lease-

<sup>101</sup> See e.g., MSRB Letter to SEC CIO, *supra* note 18.

<sup>102</sup> *Id.*

<sup>103</sup> See *infra* note 111.

<sup>100</sup> See *supra* notes 76, 77, and 78.

purchase agreement to acquire an office building or an operating lease to lease an office building for a stated period of time, both would be a lease under the proposed amendments. Debt obligations and leases are included in the proposed definition of financial obligation because the incurrence of a material debt obligation or lease and agreement to the material terms of a debt obligation or lease, which affect security holders, and the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a debt obligation or lease, any of which reflect financial difficulties, could provide important information about the current financial condition of the issuer or obligated person, including potential impacts to the issuer's or obligated person's liquidity and overall creditworthiness, and whether security holders could be affected.

The term guarantee<sup>104</sup> is intended to capture a contingent financial obligation of the issuer or obligated person to secure obligations of a third party or obligations of the issuer or obligated person. Under certain circumstances, in order to facilitate a financing by a third party, an issuer or obligated person may provide a guarantee to reduce risks to the provider of the financing and lower the cost of borrowing for the third party. That guarantee may assume different forms including a payment guarantee or other arrangement that could expose the issuer or obligated person to a contingent financial obligation. For example, an issuer that is a county could agree to guarantee the repayment of municipal securities issued by a town located in the county. In this instance, the county could be required to use its own funds to repay the town's municipal securities. Furthermore, an issuer or obligated person may provide a guarantee with respect to its own financial obligation. For example, an issuer or obligated person could, in connection with the issuance of variable rate demand obligations, agree to repurchase, with its own capital, bonds that have been tendered but are unable to be remarketed. In this instance, the issuer or obligated person uses its own funds to purchase the bonds instead of a third party liquidity facility. A guarantee provided for the benefit of a third party or a self-liquidity facility or other contingent arrangement would be a guarantee under the proposed amendments. Like debt obligations and leases, guarantees are included in the

proposed definition because the incurrence of such material guarantees and the agreements to the material terms of such guarantees, which affect security holders, and the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a guarantee, any of which reflect financial difficulties, could provide important information about the current financial condition of the issuer or obligated person, including potential impacts to the issuer's or obligated person's liquidity and overall creditworthiness, and whether security holders have been affected.

As proposed, the term derivative instrument is intended to capture any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument to which an issuer or obligated person is a counterparty.<sup>105</sup> The Commission preliminarily believes that the proposed definition should include derivative instruments that would be entered into by an issuer or obligated person because a derivative instrument could impact the issuer's or obligated person's liquidity and overall creditworthiness or the terms may affect security holders. For example, a common derivative instrument that issuers and obligated persons may enter into is an interest rate swap (*i.e.*, a swap used to hedge interest rate risk), which allows issuers and obligated persons to fix all or part of their exposure to variable interest rates. The use of a derivative instrument, such as a swap or security-based swap, can provide issuers and obligated persons with benefits, including the ability to reduce borrowing costs and/or manage interest rate risk. However, the use of a derivative instrument can also expose the issuer or obligated person to a variety of risks, some of which may be significant.<sup>106</sup> The agreement to material

<sup>105</sup> The Commission recognizes that certain of the items intended to be captured under the term derivative instrument may not currently be used by many issuers and obligated persons. However, this list is intended to be sufficiently comprehensive to cover the use of derivative instruments that may develop in the future.

<sup>106</sup> See *e.g.*, Yvette Shields, *Chicago's Market Foray Triggers Bleak Disclosures*, *The Bond Buyer* (May 12, 2015), available at <http://www.bondbuyer.com/news/regionalnews/chicagos-market-foray-triggers-bleak-disclosures-1073129-1.html> (discussing the City of Chicago's payment of \$31 million in termination fees to get out of certain interest rate swaps). See also Elizabeth Campbell, *Chicago Settling \$390 Million Tab When City Can Least Afford It*, *Bloomberg* (Mar. 17, 2016), available at <https://www.bloomberg.com/news/articles/2016-03-17/chicago-settling-390-million-tab-when-city-can-least-afford-it> (stating that the City of Chicago had already paid about \$290 million

terms of a derivative instrument, which affect security holders, and the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a derivative instrument, any of which reflect financial difficulties, could adversely impact the issuer's or obligated person's liquidity and overall creditworthiness or adversely affect security holders.<sup>107</sup> For example, if an issuer or obligated person enters into a derivative instrument with terms that may create contingent liquidity risk for the issuer or obligated person, such as a requirement to post collateral or pay a termination fee upon the occurrence of certain events, then such terms could adversely impact the issuer or obligated person's overall liquidity and overall creditworthiness.<sup>108</sup> Further, for example, the occurrence of a termination event under the terms of a derivative instrument reflecting financial difficulties could adversely impact the issuer's or obligated person's overall creditworthiness. Accordingly, the incurrence of a material derivative instrument or the agreement to material terms of a derivative instrument, which affect security holders, and the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a derivative instrument, any of which reflect financial difficulties, could provide important information about the current financial condition of the issuer or obligated person, including potential adverse impacts to the issuer's or obligated person's liquidity and overall creditworthiness, and whether security holders have been affected.

Monetary obligations resulting from a judicial, administrative, or arbitration proceeding are included in the proposed definition<sup>109</sup> because the requirement to pay<sup>110</sup> such an obligation could adversely impact the issuer's or obligated person's overall creditworthiness and liquidity and adversely affect security holders. For example, a monetary obligation

to exit various swaps and was planning to spend \$100 million more).

<sup>107</sup> See 2012 Municipal Report, *supra* note 58, at 91–92.

<sup>108</sup> See *e.g.*, NFMA 2015 Recommended Best Practices, *supra* note 78.

<sup>109</sup> A settlement order or consent decree that includes a monetary obligation would be included under this proposed definition.

<sup>110</sup> The Commission preliminarily believes that notice of the incurrence of a monetary obligation resulting from a judicial, administrative, or arbitration proceeding, should be provided within 10 business days of the initial imposition of the monetary obligation.

<sup>104</sup> The description of a "guarantee" set forth in this proposing release is solely for purposes of the Rule.

resulting from a judicial, administrative, or arbitration proceeding could be imposed upon an issuer or obligated person that could immediately and adversely impact an issuer's or obligated person's creditworthiness, including its ability to repay its outstanding municipal securities, because of its overall financial condition.<sup>111</sup> While information about monetary obligations resulting from judicial, administrative, or arbitration proceedings may be publicly available, having this information available on EMMA would help provide investors and other market participants with ready and prompt

<sup>111</sup> In 2012, a court awarded a trucking school an \$11.4 million judgment against the City of Hillview, Kentucky which prompted the city of 9,000, which typically brings in less than \$3 million a year in taxes and revenues, to enter into bankruptcy proceedings when it was initially unable to negotiate a repayment deal. While the City of Hillview posted a notice of the commencement of the bankruptcy to EMMA in 2015, the monetary judgment was imposed on the city in 2012, leaving investors without timely access to important information about the incurrence of a debt obligation that affected the city's creditworthiness and terms of the securities that they issue. This information may have impacted an investor's investment decision regarding the city's municipal securities. See Notice: To All Creditors of City of Hillview, Kentucky and Other Parties in Interest (Sep. 2, 2015), available at <http://emma.msrb.org/EP869434-EP673418-EP1075085.pdf>. See also Katy Stech, *How a \$15 Million Legal Bill Put a Kentucky Town in Bankruptcy*, Wall St. J. (Sep. 30, 2015), available at <http://blogs.wsj.com/bankruptcy/2015/09/30/how-a-15-million-legal-bill-put-a-kentucky-town-in-bankruptcy/>. See also Katy Stech, *Bankrupt Kentucky City Reaches Repayment Deal*, Wall St. J. (Mar. 30, 2016), available at <http://www.wsj.com/articles/bankrupt-kentucky-city-reaches-repayment-deal-1459366153>. For further example, in 2008, a court awarded a developer a \$43 million judgment against the Town of Mammoth Lakes, California. The judgment, which was three times the size of the town's operating budget, prompted the town to enter into bankruptcy when it was initially unable to negotiate a settlement with the developer. While the town posted notice of the commencement of the bankruptcy to EMMA in 2012, the monetary judgment was imposed on the town in 2008, leaving investors without timely access to important information about the incurrence of a debt obligation that affected the town's creditworthiness and terms of the securities they issue. This information may have impacted an investor's investment decision regarding the town's municipal securities. See Notice of Commencement of Case and Objection Deadline (July 19, 2012), available at <http://emma.msrb.org/EP670581-EP522435-EP923717.pdf>. See also Louis Sabagun, *Mammoth Lakes Files for Bankruptcy Over \$43 Million Judgment*, L.A. Times (July 2, 2012), available at <http://articles.latimes.com/2012/jul/02/local/la-me-mammoth-lakes-20120703>. See also Robert Holmes, *Mammoth Lakes: Back From the Brink*, Urban Land (June 10, 2013), available at <http://urbanland.uli.org/industry-sectors/mammoth-lakes-back-from-the-brink/>. See also Dakota Smith, *L.A. Needs to Borrow Millions to Cover Legal Payouts*, City Report Says, L.A. Times (Jan. 9, 2017), available at <http://www.latimes.com/local/lanow/la-me-in-legal-payouts-20170109-story.html>; Jessica DiNapoli, *Hillview's Bankruptcy Negative for Small Town Government—Moody's*, Reuters (Aug. 31, 2015), available at <http://www.reuters.com/article/usa-kentucky-hillview-idUSL1N112RP20150831>.

access to this information in an electronic format and in one central location. Further, while information about a monetary obligation resulting from judicial, administrative, or arbitration proceedings may be disseminated through the media or otherwise in the issuer's or obligated person's immediate community, such information may not be circulated to investors and other market participants who reside outside of the issuer's or obligated person's locality. Accordingly, the material incurrence of a monetary obligation resulting from judicial, administrative, or arbitration proceedings and the agreements to the material terms of such obligation, which affect security holders, and the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of such obligation, any of which reflect financial difficulties, could provide important information about the current financial condition of the issuer or obligated person, including potential adverse impacts to the issuer's or obligated person's liquidity and overall creditworthiness, and whether security holders have been affected.

The proposed definition would help improve the timely availability of important information to investors and other market participants regarding financial obligations and provide investors the ability to take such information into account when making investment decisions and other market participants the ability to take such information into account when undertaking credit analyses.

The Commission requests comment regarding all aspects of the proposed definition of financial obligation. When responding to the requests for comment, please explain your reasoning.

- Are there any more appropriate alternative definitions? For example, would it be more appropriate to include a definition that does not identify each type of financial obligation?
- Should each type of financial obligation included in the proposed definition be defined? Or is there an existing definition of financial obligation that the Commission could instead use?
- Are there any financial obligations that would not be covered in the proposed definition that should be?
- Should other contracts that create future payment obligations (e.g., a contract for waste disposal services) be included in the proposed definition?
- Should any of the terms included in the definition be modified? Should any

terms be added to the definition to achieve the stated goal?

- Comment is also requested on whether including a definition in the Rule is necessary.

## 2. Default, Event of Acceleration, Termination Event, Modification of Terms, or Other Similar Events Under the Terms of a Financial Obligation of the Obligated Person, Any of Which Reflect Financial Difficulties

The Commission proposes to add an event notice for the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, provided the occurrence reflects financial difficulties, to the list of events in paragraph (b)(5)(i)(C) of the Rule. As with the other event notice, a Participating Underwriter would need to reasonably determine that the issuer or obligated person has agreed to provide notice of such events in its continuing disclosure agreement.

The Commission preliminarily believes that qualifying the event notice trigger with "any of which reflect financial difficulties," would strike an appropriate balance. As proposed, the term "any of which reflect financial difficulties" applies to all of the events listed in the proposed event notice (i.e., a default, event of acceleration, termination event, modification of terms, or other similar events). For example, an issuer or obligated person may covenant to provide the counterparty with notice of change in its address and may not promptly comply with the covenant. A failure to comply with such a covenant may not reflect financial difficulties; therefore, absent other circumstances, this event likely does not raise the concerns the proposed amendments are intended to address. On the other hand an issuer or obligated person could agree to replenish a debt service reserve fund if draws have been made on such fund. In this example, if an issuer or obligated person fails to comply with such covenant, then such an event likely should be disclosed to investors and other market participants. The concept of "reflecting financial difficulties" has been used since the adoption of Rule 15c2-12 in paragraph (b)(5)(i)(C)(3) and in paragraph (b)(5)(i)(C)(4), and, as such, market participants should be familiar with the concept as it relates to the operation of Rule 15c2-12.<sup>112</sup>

<sup>112</sup> See 1994 Amendments Proposing Release, *supra* note 40; 1994 Amendments Adopting

As described above, investors and other market participants may not have any access or timely access to disclosure regarding the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, and any of which reflect financial difficulties. For example, if an issuer or obligated person defaults and such default reflects financial difficulties, investors either may not ever become aware of the default or may not become aware of the default in a timely manner. In both these cases, investors could be making investment decisions, and other market participants could be undertaking credit analyses, without important information regarding the current financial condition of the issuer or obligated person that could potentially adversely impact the issuer's or obligated person's liquidity and overall creditworthiness. If an issuer's or obligated person's liquidity and creditworthiness are adversely impacted, the credit quality and price of the issuer's or obligated person's outstanding municipal securities could be affected which could impact an investor's investment decision or a market participant's credit analysis.

A default could be a monetary default, where an issuer or obligated person fails to pay principal, interest, or other funds due, or a non-payment related default, which occurs when the issuer or obligated person fails to comply with specified covenants.<sup>113</sup> Generally, under standard contract terms, if a monetary default occurs, or a non-payment related default is not cured within a specified period, such default becomes an "event of default" and the trustee or counterparty to the financial obligation may exercise legally available rights and remedies for enforcement, including an event of acceleration. An event of acceleration typically provides the outstanding balance becomes immediately due and payable upon the occurrence of one or more specified events of default.<sup>114</sup> Both the occurrence of a default and an event of acceleration if reflecting financial difficulties are included in the proposed amendments because both types of events provide current information regarding the

financial condition of the issuer or obligated person and the occurrence of either event could adversely impact an issuer's or obligated person's liquidity and overall creditworthiness.<sup>115</sup> For example, the occurrence of a monetary default caused by the issuer or obligated person's failure to make a payment due likely would be relevant to evaluating the current financial condition of the issuer or obligated person. Further, for example, an event of acceleration of the financial obligation and the issuer or obligated person's obligation to pay the outstanding balance of the financial obligation immediately could have an impact on the issuer's or obligated person's liquidity and overall creditworthiness. Investors could be making investment decisions, and other market participants could be undertaking credit analyses, without important information about these types of events.

A termination event typically allows either party to a financial obligation to terminate the agreement subject to certain conditions, including in some cases payment of a termination fee by the issuer or obligated person.<sup>116</sup> Industry commenters have noted that the occurrence of a termination event, that results in an increase in outstanding debt, could affect an issuer's or obligated person's level of debt service as a percent of expenditures, which is an important indicator of credit quality for general obligation bonds, or such increase in debt could affect the amount of available revenues to pay debt service for revenue bonds which is considered in connection with rate covenants or additional bonds tests. If an issuer's or obligated person's liquidity and overall creditworthiness is impacted, the credit quality and price of the issuer's or obligated person's outstanding municipal securities could be affected, which could impact an investor's investment decision.<sup>117</sup> For example, if the terms of a derivative instrument such as a swap require, upon the occurrence of a termination event (*e.g.*, a credit rating downgrade), that an issuer or obligated person pay a termination fee, such termination event may have an immediate impact on the

issuer's or obligated person's liquidity and creditworthiness and may cause investors to reevaluate their investment decisions and other market participants to reevaluate their credit analyses.

A modification of terms of a financial obligation may occur when an issuer or obligated person is in a distressed financial situation. For example, there may be circumstances where an issuer or obligated person, due to financial difficulties, anticipates not meeting the terms of a financial obligation, such as a covenant to maintain a specified debt service coverage ratio,<sup>118</sup> and the issuer or obligated person is able to negotiate the modification of the terms of the financial obligation with the counterparty. Furthermore, in addition to negotiating a change to certain covenants in the financial obligation with the counterparty to avoid default under the terms of the financial obligation, the issuer or obligated person could agree to new terms including providing the counterparty with superior rights to assets or revenues that were previously pledged to existing security holders. Modifications agreed to could provide important information about the current financial condition of the issuer or obligated person, including potential impacts to the issuer's or obligated person's liquidity and overall creditworthiness, and whether security holders have been affected.

Other similar events under the terms of a financial obligation of the obligated person reflecting financial difficulties share similar characteristics to one of the listed events (a default, event of acceleration, termination event, or modification of terms). An issuer or obligated person could fail to perform a covenant not related to payment required under a financial obligation that does not result in the occurrence of a default, but the occurrence of this other event does reflect financial difficulties of the issuer or obligated person. For example, an issuer could fail to meet a construction deadline with respect to a facility being financed by the proceeds of a financial obligation due to financial difficulties. As a result of the failure to meet this deadline, a default does not occur, but the lender is entitled to take possession of the facility and complete construction. Like the events described above, the occurrence of the failure to meet a performance covenant reflecting financial difficulties could provide information relevant in making an assessment of the current financial condition of the issuer or obligated person, including potential

Release, *supra* note 40; *See also* Securities and Exchange Act Release No. 34-60332 (July 17, 2009), 74 FR 36832 (July 24, 2009); 2010 Amendments Adopting Release, *supra* note 54.

<sup>113</sup> *See, e.g.*, MSRB, Glossary of Municipal Securities Terms: Default, available at <http://www.msrb.org/Glossary/Definition/DEFAULT.aspx>.

<sup>114</sup> *See, e.g.*, MSRB, Glossary of Municipal Securities Terms: Acceleration, available at <http://www.msrb.org/Glossary/Definition/ACCELERATION.aspx>.

<sup>115</sup> *See* NFMA 2015 Recommended Best Practices, *supra* note 78.

<sup>116</sup> *See, e.g.*, Liz Farmer, *Cities Paying Millions to Get Out of Bad Bank Deals*, *Governing* (Mar. 6, 2015), available at <http://www.governing.com/topics/finance/gov-chicago-paying-millions-bad-swap-deals.html> (discussing payments of termination fees by several municipalities and municipal entities to exit unfavorable interest rate swaps).

<sup>117</sup> *See* NFMA 2015 Recommended Best Practices, *supra* note 78.

<sup>118</sup> *See supra* note 97.

adverse impacts to the issuer's or obligated person's liquidity and overall creditworthiness, and whether security holders have been affected.

Although the occurrence of defaults<sup>119</sup> and other events under the terms of a financial obligation of the obligated person reflecting financial difficulties listed in proposed subparagraph (b)(5)(i)(C)(16) may not be common in the municipal market, the Commission notes that the occurrence of such events can significantly and adversely impact the value of an issuer's or obligated person's outstanding municipal securities. The Commission also believes the proposed amendments would facilitate investor access to important information in a timely manner and help to enhance transparency in the municipal securities market and enhance investor protection. If an issuer or obligated person provides an event notice to the MSRB, it would be displayed on the MSRB's EMMA Web site and the public would be provided with free public access to the event notice and, if wanted, automatic alerts from EMMA regarding the occurrence of the event. In order to apprise investors of information, the Commission further preliminarily believes an event notice for the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties, generally should include a description of the event and the consequences of the event, if any. A description of the event and the consequences of the event, if any, would help further the availability of information in a timely manner to further assist investors in making more informed investment decisions.

The Commission requests comment regarding all aspects of the proposed addition of subparagraph (b)(5)(i)(C)(16) concerning the event notice for an occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial

<sup>119</sup> According to Moody's, between 1970 and 2014, 95 municipal issuers rated by Moody's have defaulted on their bonded debt or related guarantees. In particular, only eight general obligation bond issuers, including cities, counties, and other districts, defaulted during this 45-year period. However, Moody's notes that municipal issuers can experience financial distress without triggering a default. For example, they state that there were no Moody's rated municipal defaults in 2014 despite a sharp deterioration in credit quality by a number of public finance credits. See Moody's, U.S. Municipal Bond Defaults and Recoveries, 1970–2014 (July 24, 2015).

obligation of the issuer or obligated person, any of which reflect financial difficulties. When responding to the requests for comment, please explain your reasoning.

- Are there additional events that should be specified in the rule text? Is “other similar event” broad enough to capture all events that upon their occurrence may reflect that an issuer or obligated person is in financial difficulty? Are there events included in the proposed rule text that should be omitted?
- The Commission further requests comment as to whether the qualification “reflecting financial difficulties” is appropriate for subparagraph (b)(5)(i)(C)(16) of the Rule. Should any or all of the items included in the proposed rule text not be subject to the proposed qualification? Although the concept of “reflecting financial difficulties” has been used since the adoption of Rule 15c2–12, the Commission asks whether it should provide guidance regarding the use of this concept in the context of these proposed amendments to Rule 15c2–12.
- In addition, commenters should address the benefits and costs of this aspect of the proposed amendments.

#### B. Technical Amendment

The Commission proposes a technical amendment to paragraph (b)(5)(i)(C)(14) of the Rule to remove the term “and” since new events are proposed to be added to paragraph (b)(5)(i)(C) of the Rule.

#### C. Compliance Date and Transition

If the Commission adopts the proposed amendments to Rule 15c2–12, they would apply to continuing disclosure agreements that are entered into in connection with primary offerings occurring on or after the compliance date of such proposed amendments. The Commission recognizes that continuing disclosure agreements entered into prior to the compliance date of any final amendments likely would not reflect changes made to the Rule by such amendments. As a result, event items covered by a continuing disclosure agreement entered into prior to the compliance date of any amendments may be different from those event items covered by a continuing disclosure agreement entered into on or after the compliance date.

The Commission preliminarily believes that if the proposed amendments to Rule 15c2–12 were adopted it would be preferable to implement them expeditiously. If the Commission were to approve the

proposed amendments, the Commission preliminarily is considering a compliance date that would be three months after any final adoption of the proposed amendments to allow sufficient time for the MSRB to make necessary modifications to the EMMA system, and for Participating Underwriters to comply with the new Rule.<sup>120</sup> The Commission requests comment on such a compliance date and whether another compliance date might be preferable. In particular, comment is requested regarding any transition issues with respect to the proposed amendments, such as whether there would be any conflicts with respect to terms in existing continuing disclosure agreements.

The Commission notes that currently under paragraph (c) of the Rule, a dealer cannot recommend the purchase or sale of a municipal security unless such dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraphs (b)(5)(i)(C) and (D) and paragraph (d)(2)(ii)(B) of the Rule with respect to the security. In the case of municipal securities subject to a continuing disclosure agreement entered into prior to the compliance date of any final amendments, the recommending dealer would receive notice solely of those events covered by that continuing disclosure agreement, namely, the events specified in the Rule when the continuing disclosure agreement was entered into. Because, in such case, the continuing disclosure agreement likely would not cover any of the items proposed to be added to the Rule, the recommending dealer would not be required to have procedures in place that provide reasonable assurance that it would receive prompt notice of events proposed to be added to the Rule.<sup>121</sup>

<sup>120</sup> The 2010 Amendments became effective on August 9, 2010, six months after Commission approval, with the exception of the Commission interpretive guidance (Part 241) which became effective June 10, 2010. Due to the limited scope of the proposed amendments as compared to the 2010 Amendments, the Commission proposes that the compliance date of the proposed amendments discussed herein would be no earlier than three months after any final approval of the proposed amendments, should the Commission adopt these proposed rule amendments.

<sup>121</sup> 17 CFR 240.15c2–12(c) requires a dealer to have procedures in place that provide reasonable assurance that the dealer will receive prompt notice of any event that the Rule requires to be disclosed. Dealers are also required to comply with MSRB fair practice rules (*i.e.*, rules that relate primarily to customer protection, fair dealing and supervision), including, for example, MSRB Rule G–47 that requires dealers transacting in municipal securities to provide all material information known about the transaction, including material information about



The Commission requests comment on the impact of the proposed amendments with respect to dealers that recommend the purchase or sale of municipal securities. The Commission also requests comment on what changes, if any, dealers would have to make to their procedures in connection with any final amendments that the Commission may adopt relating to the receipt of event notices. The Commission further seeks comment on any other transition issues in connection with the proposed amendments to Rule 15c2–12.

#### D. Request for Comment

The Commission seeks comment on all aspects of the proposed amendments to the Rule. In addition to the comments requested throughout this proposing release, comment is requested on whether the proposed amendments would further enhance the availability of important information to investors, and whether the proposed amendments would help facilitate investors' ability to obtain such information. Further, the Commission seeks comment regarding the impact of the proposed amendments on Participating Underwriters, dealers, issuers, obligated persons, investors, the MSRB, information vendors, and others that may be affected by the proposed amendments. In addition, the Commission seeks comment on whether there are alternative approaches or modifications to the Commission's proposed approach to achieve our objectives with regard to the two events proposed here to be included in Rule 15c2–12(b)(5)(i)(C). Commenters are requested to indicate their views and to provide any other suggestions that they may have.

#### IV. Paperwork Reduction Act

Certain provisions of the proposed amendments to the Rule contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").<sup>122</sup> In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission has submitted revisions to the currently approved collection of information titled "Municipal Securities Disclosure" (17 CFR 240.15c2–12) (OMB Control No. 3235–0372) to the Office of Management and Budget ("OMB"). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

the security that is reasonably accessible to the market.

<sup>122</sup> 44 U.S.C. 3501 *et. seq.*

#### A. Summary of Collection of Information

Under paragraph (b) of Rule 15c2–12, a Participating Underwriter currently is required: (1) To obtain and review an official statement deemed final by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB; (4) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices (*i.e.*, continuing disclosure documents) to the MSRB in an electronic format as prescribed by the MSRB.<sup>123</sup> In addition, under paragraph (c) of the Rule, a dealer that recommends the purchase or sale of a municipal security must have procedures in place that provide reasonable assurance that it will receive prompt notice of any event specified in paragraph (b)(5)(i)(C) of the Rule and any failure to file annual financial information regarding the security.<sup>124</sup>

Under paragraph (b)(5)(i)(C) of the Rule, Participating Underwriters are required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide event notices to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days, when any of the following events with respect to the securities being offered in an offering occurs: (1) Principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax

<sup>123</sup> 17 CFR 240.15c2–12(b).

<sup>124</sup> 17 CFR 240.15c2–12(c).

opinions, the issuance by the I.R.S. of proposed or final determinations of taxability, Notices of Proposed Issue or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security; (7) modifications to rights of security holders, if material; (8) bond calls, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of securities, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the obligated person; (13) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (14) appointment of a successor or additional trustee or the change of a name of a trustee, if material.<sup>125</sup>

Under the proposed amendments, the Commission proposes to add two additional event notices that a Participating Underwriter in an Offering must reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the municipal securities, to provide to the MSRB. Specifically, the proposed amendments would amend the list of events for which notice is to be provided to include the proposed events.

For purposes of the proposed amendments, the Commission is proposing to define the term "financial obligation" to mean a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. As proposed to be defined, the term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2–12.

#### B. Proposed Use of Information

The proposed amendments would provide dealers with timely access to important information about municipal securities that they can use to carry out their obligations under the securities laws, thereby reducing the likelihood of antifraud violations. This information could be used by individual and

<sup>125</sup> 17 CFR 240.15c2–12(b)(5)(i)(C).

institutional investors; underwriters of municipal securities; other market participants, including dealers; analysts; municipal securities issuers; the MSRB; vendors of information regarding municipal securities; the Commission and its staff; and the public generally.<sup>126</sup> The proposed amendments would enable market participants and the public to be better informed about material events that occur with respect to municipal securities and their issuers and would assist investors in making decisions about whether to buy, hold or sell municipal securities.

### C. Respondents

In November 2015, OMB approved an extension without change of a currently approved collection of information associated with the Rule. The currently approved paperwork collection associated with Rule 15c2-12 applies to dealers, issuers of municipal securities, and the MSRB. The paperwork collection associated with these proposed amendments would apply to the same respondents.

The proposal would add two additional event disclosure items that a Participating Underwriter in an Offering is required to reasonably determine that the issuer or an obligated person has undertaken in a continuing disclosure agreement to submit event notices to the MSRB in a timely manner not in excess of ten business days of their occurrence. The Commission gathered updated information regarding the paperwork burden associated with Rule 15c2-12 in connection with the 2015 extension of its currently approved collection and is using these estimates in preparing the paperwork collection estimates associated with its current proposal because it believes they continue to be reasonable estimates as of the date of this proposal. In 2015, the Commission estimated that the number of respondents impacted by the paperwork collection associated with the Rule consists of approximately 250 dealers and 20,000 issuers.<sup>127</sup> The Commission expects that the proposed amendments would not change the number of dealer respondents described in the currently approved PRA collection. The Commission also expects that the proposed amendments would not change the number of issuer respondents in comparison to the Rule's currently approved PRA collection. The

number of respondents would not change because the proposed amendments would not expand the types of securities covered under subparagraphs (b)(5) and (c) of the Rule, and thus would not increase the number of dealers or issuers having a paperwork burden. The Commission's currently approved PRA collection included a paperwork collection burden for the MSRB and, for purposes of the proposed amendments, the Commission expects that the MSRB also would be a respondent.

### D. Total Annual Reporting and Recordkeeping Burden

In the currently approved PRA collection, the Commission included estimates for the hourly burdens that the Rule imposes upon dealers, issuers of municipal securities, and the MSRB. Because the proposed amendments do not change the structure of the rule or who it applies to, the Commission has relied on these estimates to prepare the analysis discussed below for each of the aforementioned entities.

The Commission estimates the aggregate information collection burden for the amended Rule would consist of the following:

#### 1. Dealers

Consistent with the Commission's estimates in 2015, the Commission estimates that approximately 250 dealers potentially could serve as Participating Underwriters in an offering of municipal securities. Therefore, the Commission estimates that, under the proposed amendments, the maximum number of dealer respondents would be 250.

Under the current Rule, the Commission has estimated that the total annual burden on all 250 dealers is 22,500 hours. This estimate includes an estimate of (1) 2,500 hours per year for 250 dealers (10 hours per year per dealer) to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB, and (2) 20,000 hours per year for 250 dealers (80 hours per year per dealer) serving as Participating Underwriters to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.<sup>128</sup>

#### i. Proposed Amendments to Events To Be Disclosed Under a Continuing Disclosure Agreement

Under the current Rule, the Commission has estimated that 250 dealers would spend an average of 10 hours per year per dealer to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB. The proposed amendments to paragraph (b)(5)(i)(C) of the Rule would not alter a dealer's obligation to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB.

The Commission does not believe that the proposed amendments would change the number of issuers with municipal securities offerings that are subject to the Rule. The proposed changes to the Rule would result in a need for issuers to make changes to certain provisions of their continuing disclosure agreements,<sup>129</sup> and a need for dealers to reasonably determine that the issuer or obligated person in an offering subject to the Rule has undertaken, in a written agreement or contract that includes the changes required by the proposed amendments, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB. Because the continuing disclosure agreements that are reviewed by dealers as part of their obligation under the Rule tend to be standard form agreements and the proposed amendments would require targeted changes to those agreements to incorporate the proposed events, the Commission does not believe that the proposed amendments would increase the annual hourly burden for dealers to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB.<sup>130</sup>

Thus, the Commission estimates that pursuant to the Rule as proposed to be amended, 250 dealers would continue to incur an estimated average burden of

<sup>129</sup> See *infra*, Section IV.D.2. for a discussion of issuers' reporting and recordkeeping burden and Section IV.E.2. for a discussion of issuers' total annual cost, including the one-time costs for issuers to update their standard form continuing disclosure agreements to reflect the proposed amendments.

<sup>130</sup> See *infra*, Section IV.E.1. for a discussion of dealers' total annual cost associated with the proposed amendments.

<sup>126</sup> See *supra*, Section II.B.

<sup>127</sup> See Submission for OMB Review; Comment Request (Extension: Rule 15c2-12, SEC File No. 270-330, OMB Control No. 3235-0372), 80 FR 9758 (Feb. 24, 2015) ("PRA Notice"). The number of issuers in the estimate reflects those issuers that are subject to a continuing disclosure agreement.

<sup>128</sup> *Id.*

2,500 hours per year (10 hours per year per dealer) to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB.

Under the current Rule, the Commission has also estimated that each of the 250 dealers serving as a Participating Underwriter will expend an average of 80 hours per year per dealer to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule. Determining whether an issuer or obligated person has filed continuing disclosure documents will usually include an examination of the filings made over a five-year period on the MSRB's EMMA system. An underwriter may also ask questions of an issuer, and, where, appropriate, obtain certifications from an issuer, obligated person, or other appropriate party about facts such as the occurrence of specific events listed in paragraph (b)(5)(i)(C) of the Rule and the timely filing of annual filings and any required event notices or failure to file notices.

The Commission does not believe that the proposed amendments would change the number of Participating Underwriters that are subject to the Rule. However, the Commission has estimated that the amendments to the Rule would result in an average expenditure of an additional 10 hours per year per dealer for each dealer to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.

Accordingly, including the additional hourly burden resulting from the proposed amendments, the Commission estimates that 250 dealers would incur an estimated average burden of 25,000 hours per year to comply with the Rule, as proposed to be amended.<sup>131</sup>

#### ii. One-Time Paperwork Burden

The Commission estimates that a dealer would incur a one-time paperwork burden to have its internal compliance attorney prepare and issue a notice advising its employees about the proposed revisions to Rule 15c2-12,

<sup>131</sup> (22,500 hours (total estimated annual hourly burden for all dealers under the current Rule) + 2,500 hours (total estimated additional annual hourly burden for all dealers under the proposed amendments to the Rule) = 25,000 hours.

including any updates to policies and procedures affected by the proposed amendments. In the 2010 Amendments Adopting Release, the Commission estimated that it would take a dealer's internal compliance attorney approximately 30 minutes to prepare and issue a notice describing the dealer's obligations in light of the 2010 Amendments to the Rule.<sup>132</sup> The Commission believes that this 30 minute estimate to prepare a notice is also a reasonable estimate of the amount of time required for a dealer's internal compliance attorney to prepare such a notice for these proposed amendments to the Rule because the types of changes that would be necessitated by the proposed amendments are similar to the types of changes necessitated by the 2010 Amendments. The Commission believes that the task of preparing and issuing a notice advising the dealer's employees about the proposed amendments, including any updates to policies and procedures affected by the proposed amendments, is consistent with the type of compliance work that a dealer typically handles internally. Accordingly, the Commission estimates that 250 dealers would each incur a one-time, first-year burden of 30 minutes to prepare and issue a notice to its employees regarding the dealer's new obligations under the proposed amendments, including any updates to policies and procedures affected by the proposed amendments, for a total one-time, first-year burden of 125 hours.

#### iii. Total Annual Burden for Dealers

Under the proposed amendments, the total burden on dealers would be 25,125 hours for the first year<sup>133</sup> and 25,000 hours for each subsequent year.<sup>134</sup>

#### 2. Issuers

The proposed amendments would result in a paperwork burden on issuers of municipal securities. For this purpose, issuers include issuers of municipal securities described in paragraph (f)(4) of the Rule and obligated persons described in paragraph (f)(10) of the Rule.

In its currently approved collection, the Commission estimates that approximately 20,000 issuers will

<sup>132</sup> See 2010 Amendments Adopting Release, *supra* note 54, at 33128.

<sup>133</sup> (250 (dealers impacted by the proposed amendments to the Rule) × 100 hours (10 hours + 80 hours + 10 hours)) + (250 (dealers impacted by the proposed amendments to the Rule) × .5 hour (estimate for one-time burden to issue notice regarding dealer's obligations under the proposed amendments to the Rule)) = 25,125 hours.

<sup>134</sup> 250 (dealers impacted by the proposed amendments to the Rule) × 100 hours = 25,000 hours.

annually submit to the MSRB approximately 62,596 annual filings, 73,480 event notices, and 7,063 failure to file notices.<sup>135</sup>

#### i. Proposed Amendments to Event Notice Provisions of the Rule

The Commission proposes to modify paragraph (b)(5)(i)(C) of the Rule, which presently requires Participating Underwriters in an Offering to reasonably determine that an issuer or obligated person has entered into a continuing disclosure agreement that, among other things, contemplates the submission of an event notice to the MSRB in an electronic format upon the occurrence of any events set forth in the Rule. The current Rule contains fourteen such events. The proposed amendments to this paragraph of the Rule would add two new event disclosure items. In 2015, the Commission estimated that approximately 20,000 issuers of municipal securities with continuing disclosure agreements would prepare and submit approximately 73,480 event notices annually. The Commission believes that the proposed amendments to paragraphs (b)(5)(i)(C) of the Rule would increase the current annual paperwork burden for issuers because they would result in an increase in the number of event notices to be prepared and submitted.

Under the proposed amendments, subparagraph (b)(5)(i)(C)(15) would be added to the Rule and would contain a new disclosure event in the case of the incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material. The proposed addition to the Rule would expand the circumstances in which issuers would submit an event notice to the MSRB. The Commission estimates that the proposed amendment in subparagraph (b)(5)(i)(C)(15) of the Rule would increase the total number of event notices submitted by issuers annually by approximately 2,100 notices.<sup>136</sup>

<sup>135</sup> See PRA Notice, *supra* note 127.

<sup>136</sup> The Commission based its estimate on the number of events that would result from an incurrence of a financial obligation of the obligated person, if material, on the following: (i) Estimates of the size of the municipal bank loan market vary, but range as high as \$80 billion per year. See Jack Casey, *How the SEC Could Help with Issuer Bank Loan Disclosure*, The Bond Buyer (May 25, 2016) ("How the SEC Could Help"), available at <http://www.bondbuyer.com/news/washington-securities-law/how-the-sec-could-help-with-issuer-bank-loan-disclosure-1104508-1.html> ("How the SEC Could

Under the proposed amendments, subparagraph (b)(5)(i)(C)(16) of the Rule would be amended to include default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties. The inclusion of such event in this subparagraph of the Rule would result in an expansion of the circumstances in which issuers would submit an event notice to the MSRB. The Commission estimates that proposed amendments to subparagraph (b)(5)(i)(C)(16) of the Rule would increase the total number of event notices to be submitted by issuers annually by approximately 100 notices.<sup>137</sup>

*Help*"); (ii) In 2015, S&P evaluated 126 bank loans totaling \$5.2 billion. See Martin Z. Braun, *Regulators Warn Banks about Compliance Risks for Muni Bank Loans*, Bloomberg (Apr. 4, 2016), available at <http://www.bloomberg.com/news/articles/2016-04-04/regulators-warn-banks-about-compliance-risks-for-muni-bank-loans> (bank loans reviewed by S&P in 2015 averaged approximately \$41.3 million); and (iii) \$80 billion (estimated size of annual municipal bank loan market)/\$40 million average loan size of loans = 2,000 loans. In Section III.A. of this proposing release, the Commission notes that a particular municipal bank loan may not be material because of the bank loan's relative size or other factors. However, to provide an estimate for the paperwork burden that would not be under-inclusive the Commission has elected to use this estimate. In addition, the Commission estimates that up to 100 additional notices per year may be attributable to the incurrence of other types of financial obligations. For example, two derivative or other transactions were reported to the MSRB's EMMA system during 2015 and three derivative or other transactions were reported to the MSRB's EMMA system during the first half of 2016. However, the Commission believes that many non-bank financial obligations of obligated persons currently are not reported to the MSRB and that many may not be made public at all. Therefore, 2,000 events related to material bank loans annually + 100 other types of material financial obligations annually = 2,100 total events annually for the incurrence of a material financial obligation of the obligated person.

<sup>137</sup> The Commission based this estimate on the following: (i) 420 principal/interest payment delinquencies and non-payment related defaults were reported to the MSRB's EMMA system in 2015; (ii) The bank loan market may be as much as 20 percent of the municipal securities market (see *How the SEC Could Help*, *supra* note 136); (iii)  $420 \times .2 = 84$ ; and (iv) some bank loans may not be material to securities subject to Rule 15c2-12. Based on these factors and industry sources, the Commission has estimated that there would typically be no more than 100 events annually. The Commission preliminarily believes that the actual number of events annually may be significantly less than 100 because defaults and other events reflecting financial difficulties are generally a rare occurrence in the municipal securities market. However, to provide an estimate for the paperwork burden that would not be under-inclusive the Commission has elected to use a higher estimate with respect to the number of events that occur each year.

#### ii. Total Burden on Issuers for Proposed Amendments to Event Notices

In 2015, the Commission estimated that the process for an issuer to prepare and submit event notices to the MSRB in an electronic format, including time to actively monitor the need for filing, would require an average of approximately two hours per filing. The Commission estimates that time required for an issuer to prepare and submit the proposed two additional types of event notices to the MSRB in an electronic format, including time to actively monitor the need for filing, would also require an average of approximately two hours per filing, because the two proposed types of event notices would require substantially the same amount of time to prepare as those prepared for existing events. The Commission considered the hourly burdens placed on both issuers that use designated agents to submit continuing disclosure filings to the MSRB and the burdens placed on issuers that do not use designated agents in computing this overall average. Under the proposed amendments to paragraph (b)(5)(i)(C) of the Rule, the Commission estimates that the 20,000 issuers of municipal securities with continuing disclosure agreements would prepare an additional 2,200 event notices annually,<sup>138</sup> raising the total number of event notices prepared by issuers annually to approximately 75,680.<sup>139</sup> This increase in the number of event notices would result in an increase of 4,400 hours in the annual paperwork burden for issuers to submit event notices.<sup>140</sup> This increase

<sup>138</sup>  $2,100$  (estimated number of incurrence of a financial obligation event notices under proposed amendments) +  $100$  (estimated number of event notices reflecting financial difficulties under proposed amendments) =  $2,200$  (total number of additional event notices that would be prepared under the proposed amendments to the event notice provisions of the Rule).

<sup>139</sup>  $73,480$  (current estimated number of annual event notices) +  $2,200$  (total number of additional event notices that would be prepared under the proposed amendments to the event notice provisions of the Rule) =  $75,680$  annual event notices. The Commission is therefore estimating that the proposed amendments would increase the number of issuers' annual event notices by approximately three percent.  $2,200$  (estimated additional annual event notices)/ $73,480$  (estimated current annual event notices) =  $.299$  = approximately three percent. The proposed amendments to the event notice provisions of the Rule would increase total filings submitted by approximately 1.5%:  $2,200$  (estimated additional event notices under the proposed event notice amendments)/ $143,139$  (estimated number of continuing disclosure documents submitted under current Rule (73,480 (event notices) + 62,596 (annual filings) + 7,063 (failure to file notices) = 143,139)) =  $.015$  = approximately 1.5%.

<sup>140</sup>  $2,200$  (total number of additional event notices that would be prepared under the proposed amendments to the event notice provisions of the

would result in an annual paperwork burden for issuers to submit event notices of approximately 151,360 hours (146,960 hours + 4,400 hours).

#### iii. Total Burden for Issuers

Accordingly, under the proposed amendments, the total burden on issuers to submit continuing disclosure documents would be 603,658 hours.<sup>141</sup>

### 3. MSRB

In its currently approved collection, the Commission estimated that the MSRB incurred an annual burden of approximately 12,699 hours to collect, index, store, retrieve, and make available the pertinent documents under the Rule.<sup>142</sup> The Commission staff understands from MSRB staff that MSRB staff currently estimates that 12,699 hours is still a reasonable estimate with respect to operating the primary market and continuing disclosure submission platform, managing those submissions securely and deploying educational resources and other tools that make the submissions meaningful and useful. The Commission estimates, based on preliminary consultations between Commission staff and MSRB staff, that it would require approximately 1,162 hours for the MSRB to implement the necessary modifications to EMMA to reflect the additional mandatory disclosures under Rule 15c2-12 in the proposed amendments. Thus, the Commission estimates that the total burden on the MSRB to collect, store, retrieve, and make available the disclosure documents covered by the proposed amendments to the Rule would be 13,861 hours for the first year,<sup>143</sup> and 12,699 hours for each subsequent year.

### 4. Annual Aggregate Burden for Proposed Amendments

The Commission estimates that the ongoing annual aggregate information collection burden for the Rule after giving effect to the proposed

Rule)  $\times 2$  hours (estimated time to prepare an event notice under 2015 PRA Notice) = 4,400 hours.

<sup>141</sup>  $438,172$  hours (current estimated burden for issuers to submit annual filings) +  $151,360$  hours (estimated annual burden for issuers to submit event notices under the proposed amendments) +  $14,126$  hours (current estimated annual burden for issuers to submit failure to file notices) =  $603,658$  hours.

<sup>142</sup> See 2015 PRA Notice, *supra* note 127.

<sup>143</sup> First-year burden for MSRB: 12,699 hours (annual burden under currently approved collection) + 1,162 hours (estimate for one-time burden to implement the proposed amendments) = 13,861 hours.

amendments would be 641,357 hours.<sup>144</sup>

### E. Total Annual Cost

#### 1. Dealers and the MSRB

The Commission does not expect dealers to incur any additional external costs associated with the proposed amendments to the Rule because the proposed amendments do not change the obligation of dealers under the Rule to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB, and to determine whether the issuer or obligated person has failed to comply with such undertakings in all material respects. As previously noted, the Commission believes that the task of preparing and issuing a notice advising the dealer's employees about the proposed amendments is consistent with the type of compliance work that a dealer typically handles internally,<sup>145</sup> so that the Commission does not expect that dealers would incur any additional external costs.

The Commission does not expect the MSRB to incur any additional external costs associated with the proposed amendments to the Rule. In its currently approved collection, the Commission estimated that the MSRB would expend approximately \$10,000 annually in hardware and software costs for the MSRB's EMMA system.<sup>146</sup> The Commission believes that the MSRB would not incur additional external costs specifically associated with modifying the indexing system to accommodate the proposed changes to the Rule because the Commission expects that the MSRB would implement these changes internally; these internal costs have been accounted for in the hourly burden section in Section IV.D.3.

#### 2. Issuers

The Commission believes that issuers generally will not incur external costs associated with the preparation of event notices filed under these proposed amendments because issuers will

<sup>144</sup> 25,000 hours (total estimated annual burden for dealers) + 603,658 hours (total estimated annual burden for issuers) + 12,699 hours (total estimated annual burden for MSRB) = 641,357 total estimated annual burden hours. The initial first-year burden would be 642,644 hours: 25,125 hours (total estimated burden for dealers in the first year) + 603,658 hours (total estimated burden for issuers) + 13,861 hours (total estimated burden for MSRB in the first year) = 642,644 hours.

<sup>145</sup> See *infra* Section IV.D.1.(ii).

<sup>146</sup> See PRA Notice, *supra* note 127.

generally prepare the information contained in the continuing disclosures internally; these internal costs have been accounted for in the hourly burden section in Section IV.D.2.ii.

The Commission also expects that some issuers could be subject to some costs associated with the proposed amendments to the Rule if they pay third parties to assist them with their continuing disclosure responsibilities. In its currently approved collection, the Commission estimated that up to 65% of issuers may use designated agents to submit some or all of their continuing disclosure documents to the MSRB for a fee estimated to range from \$0 to \$1,500 per year depending on the designated agent an issuer uses.<sup>147</sup> The Commission estimated that the average total annual cost that would be incurred by issuers that use the services of a designated agent would be \$9,750,000.<sup>148</sup>

The Commission believes this estimate is still reasonable. In 2015, the Commission estimated that issuers would submit 62,596 annual filings, 73,480 event notices, and 7,063 failure to file notices, for a total of 143,139 continuing disclosure documents submitted annually. Under the proposed amendments to the Rule, some issuers would need to prepare additional event notices for submission to the MSRB. Some issuers could use the services of a designated agent to submit these additional event notices to the MSRB. Under the proposed amendments to the Rule, the Commission estimates that a high-end estimate of the number of additional event notices that issuers would need to submit annually under the proposed amendments would be 2,200.<sup>149</sup> The two proposed event disclosure items also would result in the submission of information regarding each event. The Commission believes that issuers that use the services of a designated agent for submission of event notices to the MSRB could incur additional costs of approximately six percent<sup>150</sup> associated with the proposed amendments to the Rule, so that the

<sup>147</sup> See 2015 PRA Notice, *supra* note 127.

<sup>148</sup> *Id.* 20,000 (number of issuers) × .65 (percentage of issuers that may use designated agents) × \$750 (estimated average annual cost for issuer's use of designated agent) = \$9,750,000.

<sup>149</sup> See *supra* note 138.

<sup>150</sup> The Commission is estimating that the proposed amendments would increase the number of issuers' annual event filings by approximately three percent, and would increase the number of issuers' total annual filings by approximately 1.5 percent. See *supra* note 139. The six percent estimate for additional costs reflects these estimated increases in filings as well as an estimated reimbursement of approximately 4.5 percent of costs by issuers to designated agents for the agents' costs of making necessary changes to their systems.

average total annual cost that would be incurred by issuers that use the services of a designated agent under the Rule as proposed to be amended would be \$10,335,000.<sup>151</sup>

There likely would also be some costs incurred by issuers to revise their current template for continuing disclosure agreements to reflect the proposed amendments to the Rule. The Commission understands that models currently exist for continuing disclosure agreements that are relied upon by legal counsel to issuers and, accordingly, these documents would likely be updated by outside attorneys to reflect the proposed amendments. Based on a review of industry sources, the Commission believes that continuing disclosure agreements tend to be standard form agreements. In the 2010 Amendments Adopting Release, the Commission estimated that it would take an outside attorney approximately 15 minutes to revise the template for continuing disclosure agreements for an issuer in light of the 2010 Amendments to the Rule.<sup>152</sup> The Commission preliminarily believes that this 15 minute estimate to prepare a revised continuing disclosure agreement is also a reasonable estimate of the average amount of time required for an outside attorney to revise the template for continuing disclosure agreements for the proposed amendments to the Rule, because the proposed amendments would require changes similar to the types of changes necessitated by the 2010 Amendments. Thus, the Commission estimates that the approximate average cost of revising a continuing disclosure agreement to reflect the proposed amendments for each issuer would be approximately \$100,<sup>153</sup> for a one-time total cost of \$2,000,000<sup>154</sup> for all issuers, if an outside counsel were used by each

<sup>151</sup> 20,000 (number of issuers) × .65 (percentage of issuers that may use designated agents) × \$795 (\$750 × 1.06) (estimated average annual cost for issuer's use of designated agent under the proposed amendments to the Rule) = \$10,335,000.

<sup>152</sup> See 2010 Amendments Adopting Release, *supra* note 54, at 33137.

<sup>153</sup> 1 (continuing disclosure agreement) × \$400 (hourly wage for an outside attorney) × .25 hours (estimated time for outside attorney to revise a continuing disclosure document in accordance with the proposed amendments to the Rule) = \$100. The Commission recognizes that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that costs for outside counsel would be an average of \$400 per hour.

<sup>154</sup> \$100 (estimated cost to revise a continuing disclosure agreement in accordance with the proposed amendments to the Rule) × 20,000 (number of issuers) = \$2,000,000.

issuer to revise the continuing disclosure agreement.

#### F. Retention Period of Recordkeeping Requirements

As an SRO subject to Rule 17a-1 under the Exchange Act,<sup>155</sup> the MSRB is required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place. Broker-dealers registered pursuant to Exchange Act Section 15 are required to comply with the books and records requirements of Exchange Act Rules 17a-3 and 17a-4.<sup>156</sup> Participating Underwriters and dealers transacting business in municipal securities are subject to existing recordkeeping requirements of the MSRB.<sup>157</sup> The proposed amendments to the Rule would contain no recordkeeping requirements for any other persons.

#### G. Collection of Information Is Mandatory

Any collection of information pursuant to the proposed amendments to the Rule would be a mandatory collection of information.

#### H. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information pursuant to the proposed amendments to the Rule would not be confidential and would be publicly available.<sup>158</sup> Specifically, the collection of information that would be provided pursuant to the continuing disclosure documents under the proposed amendments would be accessible through the MSRB's EMMA system and would be publicly available via the Internet.

#### I. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2), the Commission solicits comments regarding: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) the accuracy of the Commission's estimate of the burden of the revised collections of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and (5) whether there are cost savings associated with the collection of information that have not been identified in this proposal.

The Commission has submitted to OMB for approval the proposed revisions to the current collection of information titled "Municipal Securities Disclosure." Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090, with reference to File No. S7-01-17, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street NE., Washington, DC 20549. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, should refer to File No. S7-01-17, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street NE., Washington, DC 20549.

### V. Economic Analysis

#### A. Introduction

As discussed above, the Commission is proposing amendments to Rule 15c2-12 under the Exchange Act relating to municipal securities disclosure. The proposed amendments would amend the list of event notices the Participating Underwriter must reasonably determine that an issuer or obligated person has agreed to provide to the MSRB in its continuing disclosure agreement to include the proposed events. In addition, the Commission proposes an amendment to Rule 15c2-12(f) to add a definition for "financial obligation" and a technical amendment to subparagraph

(b)(5)(i)(C)(14).<sup>159</sup> The Commission believes the proposed amendments would facilitate investors' and other market participants' access to more timely and informative disclosure and help to enhance transparency in the municipal securities market.

As discussed in Section II.D., the need for more timely disclosure of information in the municipal securities market about financial obligations is highlighted by market developments beginning in 2009 which feature the increasing use of direct placements by issuers and obligated persons as financing alternatives to public offerings of municipal securities. According to FDIC Call Report data, the dollar amount of commercial bank loans to state and local governments has more than doubled since the financial crisis, increasing from \$66.5 billion as of the end of 2010 to \$153.3 billion by the end of 2015.<sup>160</sup> In comparison, the dollar amount of municipal securities outstanding remained relatively flat over the same time period.<sup>161</sup>

The use of direct placements, as well as other financial obligations, may benefit issuers and obligated persons in the form of convenience or lower borrowing costs relative to a public offering of municipal securities. For example, there is typically no requirement to prepare an offering document or obtain a credit rating, liquidity facility, or bond insurance for a direct placement or other financial obligation.<sup>162</sup> However, benefits to issuers and obligated persons from raising capital through direct placements and other financial

<sup>159</sup> See *supra* Section III.

<sup>160</sup> The dollar amount of commercial bank loans to state and local governments is computed using Call Report data, available at <https://cdr.ffiec.gov/public/>. The dollar amount is the sum of item RCON2107, "OBLIGATIONS (OTHER THAN SECURITIES AND LEASES) OF STATES AND POLITICAL SUBDIVISIONS IN THE U.S.," across all the depository institutions for the stated time period. See Federal Reserve Board, Micro Data Reference Manual (July 1, 2016) ("MDRM"), available at <http://www.federalreserve.gov/apps/mdrm/data-dictionary> (includes detailed variable definition).

<sup>161</sup> As of the end of 2010, the dollar amount of municipal securities outstanding was \$3.77 trillion. As of the end of 2015, the dollar amount of municipal securities outstanding was \$3.72 trillion. See Federal Reserve Board, Financial Accounts of the United States: Historical Data, Annual 2005 to 2015, at 114 Table L.212 ("Historical Flow of Funds"), available at <https://www.federalreserve.gov/releases/z1/current/annuals/a2005-2015.pdf>.

<sup>162</sup> See Daniel Bergstresser & Peter Orr, *Direct Bank Investment in Municipal Debt*, 35 *Mun. Fin. J.* 3 (2014) ("Bergstresser & Orr"); California Debt and Investment Advisory Commission, *New Frontiers in Public Finance: A Return to Direct Lending* (Oct. 3, 2012), available at <http://www.treasurer.ca.gov/cdiac/webinars/2012/20121003/presentation.pdf>.

<sup>155</sup> 17 CFR 240.17a-1.

<sup>156</sup> 17 CFR 240.17a-3, 17a-4.

<sup>157</sup> See MSRB Rules G-8, G-9. Exchange Act Rules 17a-3 and 17a-4 state that, for purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, such entities will be deemed in compliance with Exchange Act Rules 17a-3 and 17a-4 if they are in compliance with MSRB Rules G-8 and G-9, respectively.

<sup>158</sup> Continuing disclosure agreements may not be available if they are not subject to state Freedom of Information Act requirements. Internal dealer notices would not generally be publicly available but may be available to the Commission, the MSRB and FINRA.

obligations may negatively affect investors who have previously invested in the issuer's or obligated person's outstanding municipal securities. For instance, the incurrence of a financial obligation, such as a direct placement, if material, could substantially impact an issuer's or obligated person's overall indebtedness and creditworthiness and thereby the value of the municipal securities held by investors. In addition, an issuer or obligated person may agree to covenants of a financial obligation that alter the debt payment priority structure of the issuer's or obligated person's outstanding securities, and the new debt payment priority structure may negatively affect existing security holders. Events such as a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties could also impact the value of municipal securities held by investors.<sup>163</sup>

However, under the current regulatory framework, investors and other market participants may not have any access or timely access to information related to the incurrence of financial obligations and other events proposed to be included, despite their potential impact on investors in municipal securities. More specifically, investors and other market participants may not have any access to disclosure of the proposed events if the issuer or obligated person does not provide annual financial information or audited financial statements to EMMA, or does not, subsequent to the occurrence of the proposed events, issue debt in a primary offering subject to Rule 15c2-12 that results in the provision of a final official statement to EMMA. Further, even if investors and other market participants have access to information about the proposed events, such access may not be timely if, for example, the issuer or obligated person has not submitted annual financial information or audited financial statements in a timely manner or does not often issue debt that results in an official statement being submitted to EMMA. As discussed earlier, such annual financial information and audited financial statements may not be available until several months or up to

<sup>163</sup> Although historically, municipal securities have had significantly lower rates of default than corporate and foreign government bonds, as mentioned in Section II.D., defaults by issuers and obligated persons have occurred in the past. Since 2011, the municipal securities market has experienced four of the five largest municipal bankruptcy filings in U.S. history. See *supra* note 71.

a year after the end of the issuer's or obligated person's fiscal year, and a significant amount of time could pass before the issuer's or obligated person's next primary offering subject to Rule 15c2-12. As a result, investors could be making investment decisions on whether to buy, sell or hold municipal securities without the current information about an issuer's or obligated person's outstanding debt; and other market participants could also be undertaking credit analyses without such information. Moreover, even when investors and other market participants do have access to information about such events in the issuer's or obligated person's annual financial information or audited financial statements or in a subsequent official statement, the disclosure typically is limited.

Numerous market participants, including the MSRB, FINRA, academics and industry groups, have encouraged issuers and obligated persons to voluntarily disclose information about certain financial obligations.<sup>164</sup> In particular, the MSRB has noted its concern that the lack of disclosure of direct placements may hinder an investor's ability to understand the risks of an investment, and has published several regulatory notices encouraging voluntary disclosure of information about certain financial obligations, including bank loan financings.<sup>165</sup> However, despite these ongoing efforts, few issuers or obligated persons have made voluntary disclosures of financial obligations, including direct placements, to the MSRB.<sup>166</sup>

The Commission is mindful of the costs imposed by and benefits obtained from its rules. The following economic analysis seeks to identify and consider the likely benefits and costs that would result from the proposed amendments, including their effects on efficiency, competition, and capital formation. Overall, the Commission preliminarily believes that the proposed amendments to Rule 15c2-12 would facilitate investors' and other market participants' access to more timely and informative disclosure in the secondary market about financial obligations of issuers and obligated persons, provide information that could be used to make more informed investment decisions or produce more informed analyses, and enhance investor protection. The discussion below elaborates on the likely costs and benefits of the proposed amendments and their potential impact

<sup>164</sup> See *supra* notes 76, 77, and 82. See also Bergstresser & Orr, *supra* note 162.

<sup>165</sup> See *supra* note 76.

<sup>166</sup> See *supra* Section II.D.

on efficiency, competition, and capital formation.

Where possible, the Commission has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation that may result from the proposed rule amendments. However, the Commission is unable to quantify some of the economic effects. For example, because most municipal securities trade infrequently, recent trade prices are generally not available to estimate the value of these securities.<sup>167</sup> Even when recent trade information is available, prices may nevertheless deviate from the fundamental value of these securities given the existence of an information asymmetry between issuers or obligated persons and other market participants. In addition, the current municipal securities disclosures could be delayed or inadequately informative. Accordingly, information about the terms of a financial obligation, such as the interest rate paid by the issuer or obligated person, or how a financial obligation changes the priority structure of an issuer's or obligated person's outstanding municipal securities, is of limited availability. Therefore, we are limited in the extent to which we can reasonably estimate the value of the municipal securities and the scope of the potential improvement in pricing of municipal securities under the proposed amendments. Further, information about some of the factors that could affect borrowing costs, such as the nature of the relationship between lenders and issuers or obligated persons, including the length of the relationship, and the number of lenders from which the issuers or obligated persons borrow is not readily available.<sup>168</sup> Therefore, we are unable to provide a reasonable estimate of the potential change in borrowing costs issuers or obligated persons may experience, or any costs that lenders may incur. We are requesting comment on all aspects of our analysis and estimates, and also request any information or data that would enable such quantification.

### B. Economic Baseline

To assess the economic impact of the proposed amendments to Rule 15c2-12, we are using as our baseline the existing regulatory framework for municipal securities disclosure, including current Rule 15c2-12, and current relevant MSRB rules.

<sup>167</sup> See 2012 Municipal Report *supra* note 58.

<sup>168</sup> Academic research shows that lending relationship could affect borrowing costs. See *infra* note 196.

## 1. The Current Municipal Securities Market

As discussed earlier, the need for more timely and informative disclosure of the municipal securities is highlighted by market developments beginning in 2009, which feature the increasing use of direct placements by issuers and obligated persons as financing alternatives to public offerings of municipal securities. As a starting point of our baseline analysis, we provide an overview of the current state of the municipal securities market and issuers' and obligated persons' use of direct placements based on data from the Federal Reserve Board's Flow of Funds data,<sup>169</sup> and Call Report data from the FDIC.<sup>170</sup>

According to Flow of Funds data, the notional amount of the total municipal securities outstanding in the U.S. was \$3.83 trillion as of the end of the third quarter 2016.<sup>171</sup> Prior to (and during) the 2008 financial crisis, the amount of municipal securities outstanding was increasing steadily, growing from \$2.82 trillion in 2004 to a post-crisis peak of

\$3.77 trillion in 2010.<sup>172</sup> Since 2010, the overall size of the municipal securities market has remained flat.<sup>173</sup>

However, the involvement of commercial banks in the municipal capital markets has increased dramatically in terms of purchases of municipal securities and extensions of loans to state and local governments and their instrumentalities.<sup>174</sup> U.S. chartered depository institutions' holdings of outstanding municipal securities have grown rapidly, from 6.75% of the total outstanding (or \$254.6 billion) in 2010 to 13.43% of the total outstanding (or \$498.9 billion) in 2015, a near two-fold increase.<sup>175</sup> The fastest growth has been in direct lending to state and local governments and their instrumentalities. As discussed above, the dollar amount of bank loans to state and local governments has more than doubled since the 2008 financial crisis, increasing from \$66.5 billion as of the end of 2010 to \$153.3 billion by the end of 2015, or equivalently, an increase from 1.76% of total municipal securities outstanding to 4.13%.<sup>176</sup>

The use of direct placements and other financial obligations can result in an increase in the issuer's or obligated person's outstanding debt, and negatively impact the liquidity and creditworthiness of the issuer or obligated person and the prices of their outstanding municipal securities. However, currently, there is a lack of secondary market disclosure about these financial obligations which has been discussed by the MSRB, certain market participants and academics.<sup>177</sup> As a result, investors and other market participants may not have timely access to information regarding financial obligations, and such information may not be incorporated in the prices of issuers' or obligated persons' outstanding municipal securities. Recognizing the credit implications of direct placements and other financial obligations, at least one rating agency, now requires issuers and obligated persons to notify them of the incurrence of certain financial obligations, including direct placements, and to provide all relevant documentation related to such indebtedness, and the

Commission understands that other rating agencies strongly encourage this practice as well.<sup>178</sup> This rating agency also stated it may suspend or withdraw its ratings should issuers and obligated persons fail to provide such notification in a timely manner.<sup>179</sup> However, while such voluntary measures may help mitigate mispricing, they are unlikely to completely eliminate all potential mispricing in the municipal securities market that is related to a lack of information about direct placements or other financial obligations if the measures are costly or difficult to enforce.

## 2. Rule 15c2-12

As discussed above, the Commission first adopted Rule 15c2-12 in 1989 as a means reasonably designed to prevent fraud in the municipal securities market by enhancing the quality, timing, and dissemination of disclosure in the municipal securities primary market.<sup>180</sup> Currently, Rule 15c2-12, most recently amended in 2010, prohibits the Participating Underwriter from purchasing or selling municipal securities in connection with an Offering unless the Participating Underwriter reasonably determines that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide the MSRB with: (1) Certain annual financial and operating information and audited financial statements, if available; (2) notices of the occurrence of any 14 specific events; and (3) notices of the failure of an issuer or obligated person to make a timely annual filing, on or before the date specified in the continuing disclosure agreement. The current Rule does not impose on a Participating Underwriter any obligation to reasonably determine that an issuer or obligated person has undertaken in its continuing disclosure agreement to disclose the proposed events. As discussed in Section I., investors and other market participants may not have any access or timely access to disclosure about the proposed events. Investors and other market participants may not have access to such information because the issuer or obligated person may not provide annual financial information or audited financial statements to EMMA, or does not, subsequent to the occurrence of the proposed events, issue debt in a primary offering subject to Rule 15c2-12 that requires provision of a final official statement to EMMA. Even if investors and other market

<sup>169</sup> Municipal securities are defined in the table description for the Flow of Funds data as follows. "Municipal securities are obligations issued by state and local governments, nonprofit organizations, and nonfinancial corporate businesses. State and local governments are the primary issuers; detail on both long and short-term (original maturity of 13 months or less) debt is shown. This instrument excludes trade debt of, and U.S. government loans to, state and local governments. Debt issued by nonprofit organizations includes nonprofit hospital bonds and issuance to finance activities such as lending to students. Debt issued by the nonfinancial corporate business sector includes industrial revenue bonds. Most municipal debt is tax-exempt; that is, the interest earned on holdings is exempt from federal income tax. Since 1986, however, some of the debt issued has been taxable, including the Build America Bonds authorized under the American Recovery and Reinvestment Act of 2009." See Federal Reserve Board, Financial Accounts of the United States: All Table Descriptions, at 30-31 (Dec. 8, 2016) available at [http://www.federalreserve.gov/apps/fof/Guide/z1\\_tables\\_description.pdf](http://www.federalreserve.gov/apps/fof/Guide/z1_tables_description.pdf).

<sup>170</sup> Commercial banks report their individual lending to municipalities in call report. The data item used in the analysis is item 2107, OBLIGATIONS (OTHER THAN SECURITIES AND LEASES) OF STATES AND POLITICAL SUBDIVISIONS IN THE U.S. It includes all obligations of states and political subdivisions in the United States (including those secured by real estate), other than leases and other than those obligations reported as securities issued by such entities in "Securities Issued by States Political Subdivision in the U.S. (8496, 8497, 8498, and 8499)" or "Mortgage-backed securities (8500, 8501, 8502, and 8503). It excludes all such obligations held for trading, States and political subdivisions in the U.S. includes: (1) The fifty states of the United States and the District of Columbia and their counties, municipalities, school districts, irrigation districts, and drainage and sewer districts; and (2) the governments of Puerto Rico and of the U.S. territories and possessions and their political subdivisions. See MDRM, *supra* note 160.

<sup>171</sup> Flow of Funds, *supra* note 64, at 121 Table L. 212.

<sup>172</sup> Historical Flow of Funds, *supra* note 161, at 121 Table L. 212.

<sup>173</sup> *Id.*

<sup>174</sup> See Bergstresser & Orr, *supra* note 162, at 1-2.

<sup>175</sup> Historical Flow of Funds, *supra* note 161, at 121 Table L. 212.

<sup>176</sup> See MDRM, *supra* note 160.

<sup>177</sup> See MSRB Letter to SEC CIO, *supra* note 18, NFMA letter to the Commission's Chair, *supra* note 19. See also Bergstresser & Orr, *supra* note 162, at 2-3.

<sup>178</sup> See *supra* note 81.

<sup>179</sup> *Id.*

<sup>180</sup> See *supra* Section II.B.



participants have access to disclosure about the proposed events, such access may not be timely if the issuer or obligated person has not submitted annual financial information or audited financial statements to EMMA in a timely manner or does not issue debt that requires an official statement be provided to EMMA for an extended period of time. Typically, investors and other market participants do not have access to an issuer's or obligated person's annual financial information or audited financial statements until several months or up to a year after the end of the issuer's or obligated person's applicable fiscal year, and a significant amount of time could pass before an issuer's or obligated person's next primary offering subject to Rule 15c2-12.<sup>181</sup>

Furthermore, even if it is accessible to investors and other market participants, the disclosure of the information about the proposed events in an issuer's or obligated person's official statement, annual financial information, or audited financial statements may not include certain details about the financial obligations. Specifically, disclosure of a financial obligation in an issuer's or obligated person's financial statements may be a line item about the amount of the financial obligation, and may not provide investors and other market participants with information relating to an issuer's or obligated person's agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, if material.

### 3. MSRB Rules

MSRB rules do not address the disclosure of the events listed in Rule 15c2-12. However, as described above, the MSRB has highlighted the increased use of direct placements as a financing alternative.<sup>182</sup> The MSRB has encouraged issuers to voluntarily disclose direct placements on EMMA,<sup>183</sup> including providing instructions to issuers on how they may provide such disclosures using EMMA. Despite the MSRB's efforts to encourage voluntary disclosure, the number of disclosures made using EMMA has been limited.

In March 2016, the MSRB published a regulatory notice requesting comment on a concept proposal to require municipal advisors to disclose information regarding the direct placements of their municipal entity

clients to EMMA.<sup>184</sup> On August 1, 2016, the MSRB announced that it had decided not to pursue the ideas set forth in the MSRB Request for Comment. Many who commented on the MSRB's Request for Comment noted that the best way to ensure disclosure of direct placements is to amend Rule 15c2-12.<sup>185</sup>

### 4. Existing State of Efficiency, Competition, and Capital Formation

Under current rules, certain inefficiencies may arise in the municipal securities market as a result of the lack of timely disclosure of information on important credit events. In particular, because the proposed events need not be included in the issuer's and obligated person's continuing disclosure agreements, the impact of such events may not be learned by market participants in a timely manner. The lack of timely disclosure may cause the prices of certain municipal securities to not reflect fundamental value.

As discussed above, there exists an information asymmetry between lenders and municipal securities investors under the current Rule 15c2-12. The terms of a financial obligation incurred by an issuer or obligated person may include covenants that give the lender or counterparty priority rights over existing security holders. Existing security holders may be unaware of the change in priority structure of the issuer's or obligated person's municipal securities for an extended period of time, and future investors may buy the securities at inflated prices which do not reflect the change in priority structure. Existing investors may also be unaware of the occurrence of certain events under the terms of a financial obligation, such as a default, where the lender might have renegotiated the terms of lending agreement and which may reflect the worsened financial condition of the issuer or obligated person. The information asymmetry between lenders and municipal securities investors could place investors in a disadvantageous position relative to lenders when making municipal securities investment decisions.<sup>186</sup>

The price inefficiencies in the municipal securities market and the disparity in available information for different types of investors could result

in obstacles for the efficient allocation of capital. For example, while some investors may overinvest in municipal securities due to incomplete information about the amount and priority structure of an issuer's or obligated person's debt obligations, other municipal securities investors who are aware of the possible information asymmetry may underinvest because of a perceived information disadvantage relative to issuers or obligated persons or risks associated with making investment decisions.

### C. Benefits, Costs and Effects on Efficiency, Competition, and Capital Formation

The Commission has considered the potential costs and benefits associated with the proposed amendments.<sup>187</sup> The Commission believes that the primary economic benefits of the proposed amendments stem from the potential improvement in the timeliness and informativeness of municipal securities disclosure. In particular, the Commission believes that the proposed Rule 15c2-12 amendments would provide investors with more timely access to information that could be used to make more informed investment decisions, and enhance investor protection. In addition, improved disclosure would assist other market participants including rating agencies and municipal securities analysts in providing more accurate credit ratings and credit analysis as they would have more timely access to information regarding an issuer's or obligated person's outstanding debt.<sup>188</sup> The disclosure produced by the issuer or obligated person would become more informative under the proposed amendments, because it would include not only the existence of the financial obligation that the issuer or obligated person has incurred, but also specified material terms of the financial obligations that can affect security holders, including affecting their priority rights. Disclosure that is both

<sup>187</sup> The Commission understands that it is possible that the issuer or obligated person may not comply with its previous continuing disclosure undertakings and may not provide the MSRB with notice of the proposed events pursuant to proposed Rule 15c2-12 amendments, in which case, the actual costs and benefits of the proposed amendments would depend on the issuer or obligated person's commitment to disclosure.

<sup>188</sup> As discussed above, at least one credit rating agency currently is requiring disclosure of information about bank loans. The benefit to rating agencies of the proposed increased disclosure exists only to the extent that the proposed amendments provide new information that the rating agencies are not already collecting as part of rating a bond issue.

<sup>181</sup> See *supra* note 14.

<sup>182</sup> See *supra* note 76.

<sup>183</sup> See MSRB Notice 2012-18, *supra* note 20.

<sup>184</sup> See MSRB Request for Comment, *supra* note 76.

<sup>185</sup> See Comment Letters in Response to MSRB Request for Comment, *supra* note 76.

<sup>186</sup> For discussion of the implications of asymmetric information for market efficiency see *infra* note 203.

more timely and informative can positively affect efficiency, competition, and capital formation. The Commission also notes that the proposed amendments would introduce costs to other parties, including issuers, obligated persons, underwriters and lenders, as the alternative financing option (*e.g.*, direct placements) becomes more expensive. We discuss the economic costs and benefits of the proposed amendments in more detail below as well as the effects of proposed amendments on efficiency, competition, and capital formation.

#### 1. Anticipated Benefits of the Proposed Rule 15c2–12 Amendments

##### i. Benefits to Investors

The Commission preliminarily believes that the proposed Rule 15c2–12 amendments would potentially yield several benefits to municipal securities investors. First, the proposed amendments would provide investors with access to more timely and informative disclosure about an issuer's or obligated person's financial condition, both of which can assist them in making more informed investment decisions when trading in the secondary market.

As discussed in Section III.A., the information regarding the proposed events is relevant for investors' investment decision making. The incurrence of a financial obligation can result in an increase in the issuer's or obligated person's outstanding debt; agreement to a covenant, event of default or remedy under the terms of a financial obligation of the issuer or obligated person may create contingent liquidity and credit risk that could also potentially impact the issuer's or obligated person's liquidity and overall creditworthiness. The occurrence of a default, event of acceleration, termination event, modification of terms, or other similar event under terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties, could provide relevant information regarding whether the financial condition of the issuer or the obligated person has changed or worsened, and if the issuer or obligated person has agreed to new terms that would provide the counterparty with superior rights to assets or revenues that were previously pledged to existing security holders. All these pieces of information contain relevant information about the cash flows investors may expect to receive, and can therefore impact the prices of municipal securities. Without this information, prices of municipal

securities could be distorted from fundamental value in both the primary and secondary markets.

However, currently, notice of these events may not be available to the public at all, because the issuer or obligated person may not provide annual financial information or audited financial statements to EMMA, and a Participating Underwriter in an Offering is not currently required under Rule 15c2–12 to reasonably determine that an issuer or obligated person has undertaken to provide notices of these events. If an issuer or obligated person provides such information in their annual financial information or audited financial statements, this information may not become available until several months or up to a year after the end of the issuer's or obligated person's applicable fiscal year, and a significant amount of time could pass before the issuer or obligated person's next primary offering subject to Rule 15c2–12. Moreover, the disclosure information may not include all the proposed events. For example, the disclosure may include only the existence of the financial obligation that the issuer or obligated person has incurred, but not specified material terms of the financial obligations that can affect security holders, including those terms that, for example, affect security holders' priority rights. Therefore, investors could be making investment decisions without knowing that their contractual rights have been adversely impacted. As such, the current level of disclosure regarding the proposed events is neither timely nor adequately informative about the issuer's or obligated person's creditworthiness.

To the extent that investors in the municipal securities market rely on credit ratings as a meaningful indicator of credit risk, the recent efforts of certain credit rating agencies to collect information from issuers and obligated persons about the incurrence of direct placements may help improve the accuracy of credit ratings and mitigate potential mispricing in the municipal securities market.<sup>189</sup> However, because not all credit rating agencies require information on direct placements to provide a rating, and there are other undisclosed financial obligations and significant events (such as defaults) that may affect the issuers' and obligated

persons' creditworthiness besides the incurrence of financial obligations, such efforts alone are unlikely to remove all potential mispricing related to direct placements.

Under the proposed amendments to Rule 15c2–12, Participating Underwriters would be required to reasonably determine that an issuer or obligated person had agreed in its continuing disclosure agreement to provide notices for the proposed events within 10 business days. Consequently, pursuant to the proposed amendments, municipal securities investors and other market participants would potentially have access to the disclosure within 10 business days as opposed to waiting for the issuer's or obligated person's next primary offering subject to Rule 15c2–12, or until the release of annual financial information or audited financial statements, or not receive any information at all. Therefore, the proposed amendments would provide investors access to information regarding the issuer's or obligated person's financial obligations in a more timely manner. In addition, the proposed notices would include agreement to covenants, events of default, remedies, priority rights or other similar terms of a direct or contingent financial obligation of the issuer or obligated person that affect security holders, so the disclosures provided to MSRB would be informative about not just the existence of the incurred financial obligation, but also how they may impact security holders. Overall, the proposed amendments would provide information investors could use to better assess the risks involved with an investment in a municipal security, and therefore make more informed investment decisions.

Second, improvement in municipal disclosure may reduce information asymmetries between investors and other more informed parties such as issuers, obligated persons, counterparties and lenders, and therefore enhance investor protection. As discussed above, for example, the terms of a financial obligation may include covenants that give lenders or counterparties priority rights over existing security holders. Specifically, for example, a bank loan agreement could give the lender a lien on assets or revenues that also secure the repayment of an issuer's or obligated person's outstanding municipal securities which could adversely affect the rights of existing security holders. If disclosure is not available to security holders about such events, they will be unable to take any actions they would have taken had they been informed, such as exiting

<sup>189</sup> See *supra* note 81 for examples of credit rating agency initiatives. For academic evidence on pricing effect of credit rating agencies' actions, see John R.M. Hand, Robert W. Holthausen, & Richard Leftwich, *The Effect of Bond Rating Agency Announcements on Bond and Stock Prices*, 47 J. Fin. 733, 733–752 (1992).

their position. In this situation, the direct lenders enjoy an information advantage over investors. More timely and informative disclosure of the proposed events could reduce investors' disadvantage by providing them with a means to obtain information in a timely manner if their contractual rights have been negatively impacted and take appropriate actions.

## ii. Benefits to the Issuers or Obligated Persons

Issuers and obligated persons may also experience a decrease in borrowing costs that are related to public offerings of municipal securities under the proposed amendments because of the increased level of disclosure. For example, in the context of corporate issuers, economic theories suggest that information asymmetry can lead to an adverse selection problem and therefore reduced the level of liquidity for firms' equity.<sup>190</sup> In an asymmetric information environment, investors recognize that issuers may take advantage of their position by issuing securities at a price that is higher than justified by the issuer's fundamental value. As a result, investors demand a discount to compensate themselves for the risk of adverse selection. This discount translates into a higher cost of capital. By committing to increased levels of disclosure, the firm can reduce the risk of adverse selection faced by investors, reducing the discount they demand and ultimately decreasing the firm's cost of capital. The theory of adverse selection applies broadly to financial markets, or any market that involves asymmetric information between the participants. Therefore, the Commission preliminarily believes that a similar analysis can be applied to municipal securities. As the proposed rule amendments would result in municipal securities disclosures that provide more information that is relevant to investors, the costs of raising capital may decrease for issuers and obligated persons.

Currently, the Commission is unable to provide reasonable estimates of the potential change in borrowing costs. Such costs may vary significantly depending on a number of factors, including the characteristics of the issuer or obligated person (*e.g.*, size, credit ratings, etc.), and possible changes in their borrowing behavior.

<sup>190</sup> See Douglas W. Diamond & Robert E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital*, 46 J. Fin. 1325, 1325–1359 (1991).

## iii. Benefits to Rating Agencies and Municipal Analysts

The proposed Rule 15c2–12 amendments would help rating agencies and municipal analysts gain access to more updated information about the issuer's and obligated person's credit and financial position at a lower cost. As rating agencies and municipal analysts have stated on a number of occasions, direct placements can have credit implications for ratings on an issuer's or obligated person's outstanding municipal securities.<sup>191</sup> Rating agencies must expend resources to collect information about financial obligations including direct placements to provide more accurate ratings. A certain rating agency stated that it would suspend or withdraw ratings if issuers or obligated persons do not provide such notification in a timely manner. The process for suspending or withdrawing ratings could also be costly for a rating agency.<sup>192</sup> The proposed amendments may reduce the need for rating agencies or analysts to separately implement a process to gain more timely access to the information regarding proposed events. Therefore, under the proposed amendments, rating agencies and municipal analysts may have access to information they need to produce more accurate credit ratings and analyses at a cost lower than the baseline scenario. A portion of any cost savings may be passed through to investors and represent a benefit to them depending on how much they rely on rating agencies for information.

## 2. Anticipated Costs of the Proposed Rule 15c2–12 Amendments

### i. Costs to Issuers and Obligated Persons

The Commission expects that, under the proposed amendments, issuers and obligated persons would experience an increase in administrative costs from undertaking in their continuing disclosure agreements to produce the proposed notices. As discussed above,<sup>193</sup> an advantage of a direct placement versus a public offering of municipal securities is the lower costs due to, among other things, no requirement to prepare a public offering document for the borrowing transaction. Under the proposed amendments, Participating Underwriters would be required to reasonably determine that issuers or obligated persons have undertaken in a continuing disclosure

<sup>191</sup> See Moody's, Special Comment: Direct Bank Loans Carry Credit Risks Similar to Variable Rate Demand Bonds for Public Finance Issuers (Sept. 15, 2011); see also *supra* note 81.

<sup>192</sup> See *supra* note 81.

<sup>193</sup> See *supra* Section V.A.

agreement to submit event notices to the MSRB within 10 days of the events. Issuers and obligated persons providing notice consistent with the proposed amendments would incur a cost to do so. As discussed earlier, the Commission assesses that the increase in the number of event notices would result in an increase of 4,400 hours in the annual paperwork burden for all issuers to submit event notices. As discussed above in Section IV.E.2., the Commission has estimated that these hours spent preparing event notices would be done internally, for an estimated cost of \$1,513,600.<sup>194</sup> The Commission also believes issuers would incur an additional estimated cost of \$585,000 in fees for designated agents to assist in the submission of event notices.<sup>195</sup>

Borrowing costs also could potentially increase for issuers and obligated persons compared to the baseline scenario as lenders might be less willing to continue engaging in direct placements or other types of alternative financings in their current form under the proposed amendments because lenders may be less able to profit from their information advantage over other investors. Currently, an issuer or obligated person may agree to provide superior rights to the counterparty in assets or revenues that were previously pledged to existing security holders when they enter into a financial obligation without disclosing the information to the public. Lenders might be willing to offer lower rates to issuers and obligated persons in return for the superior rights. A public disclosure of such arrangements under the proposed amendments, therefore, could potentially reduce opportunities for lenders to move ahead in the priority queue either because issuers and

<sup>194</sup> This estimate reflects an assumption that issuers perform this internal work through internal counsel. 4400 hours (estimated increase in hours for issuers to prepare event notices under the proposed amendments to the Rule) × \$344 (average rate for an internal compliance attorney) = \$1,513,600. The \$344 per hour estimate for an internal compliance attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, and adjusted for inflation.

<sup>195</sup> See *supra* Section IV.E.2. See also *supra* notes 148, 150, 151. As discussed above, the Commission has estimated that 65% of issuers may use designated agents to submit some or all of their continuing disclosure documents to the MSRB, and that the average total annual cost that would be incurred by issuers that use the services of a designated agent would be \$9,750,000. The Commission has estimated that the two proposed amendments would cause issuers that use the services of a designated agent to incur additional costs of six percent, or \$585,000 (\$9,750,000 × 6% = \$585,000). See *supra* note 150.

obligated persons are discouraged from providing lenders with priority at the current level, or because investors demand covenants which prevent issuers and obligated persons from doing so and reduce the benefits lenders currently enjoy. Currently, while investors may also claim their rights under the covenants, they may not be aware that their rights have been affected without the disclosures, and therefore may fail to make such claims. Therefore, borrowing costs that are related to financial obligations may rise for the issuers or obligated persons.<sup>196</sup>

Currently, the Commission is unable to provide reasonable estimates of the potential change in borrowing costs related to direct placements, as well as other financial obligations. Similarly, as discussed earlier, such costs may vary significantly depending on a number of factors, including both the characteristics of the issuer or obligated person (e.g., size, credit ratings, etc.) and the level of the disclosure issuers or obligated persons committed themselves to provide under their continuing disclosure agreements. In addition, as discussed earlier, since borrowing costs related to municipal securities might also decrease as disclosure increases, the opposite effects might neutralize the proposed amendments' ultimate impact on borrowing costs when viewed in totality.

#### ii. Costs to Dealers

Pursuant to Rule 15c2-12, a dealer acting as a Participating Underwriter in an Offering has an existing obligation to contract to receive the final official statement.<sup>197</sup> The final official statement includes, among other things, a description of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with any previous

<sup>196</sup> There is also likelihood that lenders' private information about the borrowers developed over the course of their lending relationship with the borrowers could be eroded as a result of a detailed disclosure by the issuers and obligated persons, which could impact lenders incentives to continue lending, developing proprietary information and maintain long-term relationships with borrowers, and borrowing costs thereby. However, such an impact would depend upon the level of the disclosure provided by the issuers and obligated persons in their notices. Lenders generally develop proprietary information about the borrower during a lending relationship because they actively engage in information gathering and monitoring. Lenders and borrowers tend to form stable relationships. Such stability provides economies of scale for the lenders to offset the costly information production and monitoring, and it benefits the borrowers by increasing the availability of financing and lowering overall borrowing costs. See Mitchell A. Petersen & Raghuram G. Rajan, *The Benefits of Lending Relationships: Evidence from Small Business Data*, 49 J. Fin. 3, 3-37 (1994).

<sup>197</sup> 17 CFR 240.15c2-12(a) and (b)(3).

undertakings in a written contract or agreement to provide certain continuing disclosures.<sup>198</sup> Dealers acting as Participating Underwriters in an Offering also have an existing obligation under Rule 15c2-12 to reasonably determine that an issuer or obligated person has undertaken in its continuing disclosure agreement for the benefit of holders of the municipal securities to provide notice to the MSRB of specified events. In addition, dealers are prohibited under Rule 15c2-12 from recommending the purchase or sale of municipal securities unless they have procedures in place that provide reasonable assurance that they will receive promptly event notices and failure to file notices with respect to the recommended security. Dealers typically use EMMA or other third party vendors to satisfy this existing obligation.

As a practical matter, dealers' obligations under the proposed Rule 15c2-12 amendments would include verifying that the continuing disclosure agreement contains an undertaking by the issuer or obligated person to provide the proposed new event notices to the MSRB, verifying whether the issuer or obligated person has complied with their prior undertakings, and verifying whether the final official statement includes, among other things, an accurate description of the issuer's or obligated person's prior compliance with continuing disclosure obligations. Because the proposed Rule 15c2-12 amendments would not significantly alter existing dealer obligations, dealers should not be subject to significant costs. As discussed earlier, the Commission has estimated that 250 dealers would each incur a one-time, first-year burden of 30 minutes to prepare and issue a notice to its employees regarding the dealer's new obligations under the proposed amendments, and that the proposed amendments would result in an average expenditure of an additional 10 hours per year per dealer for each dealer to determine whether issuers or obligated person have failed to comply with any previous undertakings in a written contract or agreement. Therefore, under the proposed amendments, the total burden on dealers would increase 125 hours for the first year and 2500 hours on an annual basis.<sup>199</sup> However, as discussed in Section IV.E.1., the Commission does not believe dealers will incur any additional external costs associated with the proposed amendments to the Rule because the

<sup>198</sup> 17 CFR 240.15c2-12(f)(3).

<sup>199</sup> See Section IV.D.1.

proposed amendments do not change the obligation of dealers under the Rule to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB. Specifically, the Commission believes that the task of preparing and issuing a notice advising the dealer's employees about the proposed amendments is consistent with the type of compliance work that a dealer typically handles internally. Thus, dealers would incur an annual internal compliance cost of \$903,000 for the first year, and \$860,000 in subsequent years.<sup>200</sup>

#### iii. Costs to Lenders

Under the proposed amendments, lenders may incur a cost from the disclosure about financial obligations and the terms of the agreements creating such obligations. The increased level of disclosure may reduce lenders' information advantage over other investors. As discussed above, lenders may enjoy certain priority rights in these financial arrangements, which may not be publicly disclosed, or reflected in the price of the issuer's or obligated person's outstanding municipal securities. To the extent that such benefits may be reduced by the disclosure, lenders would incur a cost. In addition, lenders might have reduced incentives to provide financing to issuers or obligated persons, or may only be willing to lend at an increased interest rate, one that better reflects the risks underlying an issuer's or obligated person's entire portfolio of issuances and borrowings, both of which could potentially lead to a loss of investment opportunities and hence a cost to lenders.<sup>201</sup> However, as noted above, under the baseline scenario, benefits of direct placements and other financial obligations accrue to lenders, as well as issuers and obligated persons, at the expense of investors in municipal securities. The Commission

<sup>200</sup> First year costs: 125 hours (first year burden on dealers) × \$344 (average hourly cost of internal compliance attorney) + 2500 hours (annual hourly burden on dealers) × \$344 (average hourly cost of internal compliance attorney) = \$903,000. Subsequent annual costs: 2500 hours (annual hourly burden on dealers) × \$344 (average hourly cost of internal compliance attorney) = \$860,000.

<sup>201</sup> Lenders' information advantage could also be impacted if their private information about the borrowers developed over the course of their lending relationship with the borrowers were eroded as a result of a detailed disclosure by the issuers and obligated persons. However, such an impact would depend upon the disclosure provided by the issuers and obligated persons in their notices.

preliminarily believes that any loss of investment opportunities or other costs to lenders as described in this section translate into benefits to investors such as those described above.

The Commission is unable to quantify the potential cost to lenders at this time. Whether the existing lending relationship between lenders and issuers or obligated persons would be affected and how large the impact might be would depend on the level of the disclosure and the nature of the lending relationship, such as the length of the relationship and the number of banks/lenders from who the issuers or obligated persons borrow. However, how much issuers or obligated persons would change in terms of their disclosure behavior, and how much lenders would change in their lending behavior in response to the proposed amendment is not predictable. Without such data, the Commission is unable to provide reasonable estimates of the potential cost to lenders.

#### iv. Costs to Municipal Securities Rulemaking Board

The proposed Rule 15c2–12 amendments would increase the type of event notices submitted to the MSRB which may result in the MSRB incurring costs associated with such additional notices. As discussed earlier, the Commission estimates, based on preliminary consultations with MSRB staff, that it would require approximately 1,162 hours to implement the necessary modifications to EMMA to reflect the additional disclosures under Rule 15c2–12 in the proposed amendments. Accordingly, the total estimated one-time cost to the MSRB of updating EMMA would be \$373,002.<sup>202</sup>

#### 3. Effects on Efficiency, Competition, and Capital Formation

The proposed Rule 15c2–12 amendments have the potential to affect efficiency, competition, and capital formation by improving the timeliness and informativeness of disclosure to investors, reducing information asymmetry among market participants, and enhancing transparency about issuers' and obligated persons' debt structures. As described above, lack of disclosure can lead to information

<sup>202</sup> See *supra* Section IV.D.3. Estimates are calculated as follows: 1,162 hours × \$321 (hourly rate for Senior Database Administrator). \$321 per hour figure for a Senior Database Administrator is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, and adjusted for inflation.

asymmetries among different types of investors (*i.e.*, investors in publicly offered municipal securities and direct lenders), and between investors and issuers and obligated persons, which can result in securities prices that do not reflect market value.<sup>203</sup> The proposed amendments would require a Participating Underwriter to reasonably determine that an issuer or obligated person has undertaken in a continuing disclosure agreement to provide notice to the MSRB of the proposed events. Such disclosures could provide an investor engaged in investment decision-making, and ratings agencies and municipal analysts undertaking a ratings review or credit analysis, with more timely access to information about the issuer's or obligated person's credit profile and financial condition, reduce mispricing of municipal securities, and therefore enhance the efficiency of the municipal securities market.

As discussed above, at least one credit rating agency currently requires issuers and obligated persons to provide notification and documentation of the incurrence of certain financial obligations including direct placements in order to maintain their credit ratings, a process that may involve duplicative costs, because each rating agency would have to implement similar process to collect the same information, and issuers and obligated persons would have to provide identical responses multiple times.<sup>204</sup> The proposed amendments may improve efficiency in the disclosure process by eliminating such potential duplicative costs. By potentially reducing information asymmetries between municipal securities investors and other more-informed market participants, including issuers, obligated persons and lenders, the proposed Rule 15c2–12 amendments could promote competition among municipal capital market participants. As discussed earlier, by allowing lenders to enjoy an information advantage about the proposed events, existing rules may provide certain lenders with a competitive advantage over the municipal securities investors because lenders could be in better

<sup>203</sup> Specifically, when there is asymmetric information about material risks, investors may not be able to distinguish low-risk securities from high-risk securities. In such cases, market participants will only value securities as if they bear an average level of risk, undervaluing low-risk securities and overvaluing high-risk securities. Such mispricing can harm market efficiency and distort capital allocation. See, *e.g.*, Paul M. Healy & Krishna G. Palepu, *Information Asymmetry, Corporate Disclosure, and the Capital Markets: A Review of the Empirical Disclosure Literature*, 31 J. Acct. & Econ. 405, 405–40 (2001).

<sup>204</sup> See *supra* note 81.

position to compete with municipal securities investors for investment opportunities. Currently, for example, the terms of a financial obligation incurred by an issuer or obligated person may include covenants that give the lender or counterparty priority rights over existing security holders. As a result, for example, the lender or counterparty may have a senior lien on assets or revenues that were previously pledged to secure repayment of an issuer's or obligated person's outstanding municipal securities. Unless an issuer or obligated person voluntarily discloses this information, existing investors may be unaware that an issuer's or obligated person's outstanding debt amount and priority structure has changed. Under the current Rule, existing investors may also be unaware of the occurrence of an event such as a default, where the lender might have renegotiated the terms of lending agreement reflecting financial difficulties of the issuer or obligated person. In both these scenarios, municipal security investors are disadvantaged, existing security holders may continue to hold the municipal securities without learning that the credit quality of the municipal securities has deteriorated, and future investors may buy the securities at inflated prices. Therefore, more timely and informative disclosure of the proposed events by issuers' and obligated persons' could help reduce the information gap between the lenders and municipal securities investors, leveling the playing field for market participants looking for investment opportunities in the municipal capital market.

The proposed amendments to Rule 15c2–12 may also promote competition among issuers and obligated persons looking for funding. Under the current rule, issuers or obligated persons who are not engaged in alternative financings such as direct placements might be competing for capital in a relatively disadvantaged position—all else equal, they should be at least as creditworthy as their counterparts who have incurred undisclosed material financial obligations. However, the market could be pricing these issues identically, placing more creditworthy issuers and obligated persons at a competitive disadvantage. Since the proposed amendments could improve pricing efficiency and increase the likelihood that prices reflect credit risk, the proposed amendments may also promote competition for capital among issuers and obligated persons.

The proposed Rule 15c2–12 amendments may also positively affect

efficiency by providing issuers and obligated persons with incentives to make management decisions that promote an efficient market for municipal securities. For example, when issuers or obligated persons are considering a direct placement versus a public municipal securities offering, they may weigh, among other things, the benefits of lower borrowing costs against future liquidity risk considerations. That is, issuers and obligated persons might choose financial obligations over a public offering of municipal securities if, among other things, the value of lower borrowing costs exceeds the costs of future liquidity concerns associated with the financial obligations. However, to the extent that borrowing costs may be priced incorrectly under the baseline scenario due to information asymmetries, issuers and obligated persons might be making decisions that, while optimal for themselves based on available pricing information, do not necessarily take into account the costs that financial obligations may impose on other creditors. Moreover, they may have incentives to exploit the mispricing should it yield lower borrowing costs, which may sustain or even amplify the market inefficiency. If issuers and obligated persons were to increase financial obligations and such information was not incorporated in the market in a timely fashion as is the case under the baseline, mispricing of municipal securities would also likely increase. Such concerns might be reduced under the proposed amendments, which aim to reduce information asymmetries that may lead issuers and obligated persons to favor direct placements and other financial obligations over public offerings. To the extent that this reduces the incentive to exploit mispricing, price inefficiencies in the municipal securities market may diminish.

The proposed Rule 15c2–12 amendments may also help facilitate capital formation. As discussed earlier, under the baseline scenario, there may be price inefficiencies in the market for municipal securities that result from asymmetric information between different sets of municipal securities investors and lenders. By increasing the timeliness and informativeness of disclosure, the proposed rules could reduce the potential for price inefficiencies, resulting in improved allocation of capital. For example, municipal securities investors may underinvest because of a perceived disadvantage or make investment decisions based on untimely and

incomplete information. Under the proposed rule amendments, as the municipal securities market becomes more efficient and investors make more informed decisions, capital would be better deployed at an aggregate level, resulting in more efficient capital allocation.

A more transparent and competitive market could also improve market liquidity and facilitate capital formation. According to academic research, disclosure policy influences market liquidity because uninformed investors concerned about asymmetric information, price protect themselves in their securities transactions by offering to sell at a premium or buy at a discount. This price protection could be manifested in higher bid-ask spreads and reduced market liquidity.<sup>205</sup> Therefore, by reducing information asymmetry in the municipal capital market, the proposed amendments can potentially improve liquidity in the municipal market. As the municipal securities market becomes more transparent, and investors sense stronger protections, they may be more likely to participate in the municipal securities market as a result. Therefore, to the extent that increased participation in the municipal securities market reflects new investment, as opposed to substitution away from other securities markets, enhanced disclosure could also positively affect capital formation.

#### D. Alternative Approaches

Instead of the proposed Rule 15c2–12 amendments, the Commission could encourage issuers and obligated persons to voluntarily disclose on an ongoing basis information about the incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material, and default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties. However, it is unclear whether issuers or obligated persons would have sufficient incentives to do

<sup>205</sup> See Michael Welker, *Disclosure Policy, Information Asymmetry, and Liquidity in Equity Markets*, 11 *Contemp. Acct. Res.* 801, 801–827 (1995). Welker provides evidence that disclosure policy reduces information asymmetry and increases liquidity in equity markets. See also Christian Leuz & Robert E. Verrecchia, *The Economic Consequences of Increased Disclosure*, 38 *J. Acct. Res.* 91, 91–124 (2000).

so. As discussed above, despite previous efforts of municipal securities market participants, the MSRB and numerous industry groups<sup>206</sup> to encourage timely voluntary disclosure regarding financial obligations, issuers and obligated persons have not consistently disclosed such information. Voluntary disclosure likely would be less costly for issuers and obligated persons since they may choose to disclose less frequently or not at all, but it would fail to yield the same benefits as the disclosures proposed in the amendments that require a Participating Underwriter to reasonably determine that an issuer or obligated person has undertaken in a continuing disclosure agreement to provide to the MSRB notice of the proposed events. If issuers and obligated persons were to voluntarily disclose at the level set forth in the proposed amendments, the costs of the disclosure also would be comparable.

#### E. Request for Comment

To assist the Commission in evaluating the costs and benefits that could result from the proposed amendments to the Rule, the Commission requests comments on the potential costs and benefits identified in this proposal, as well as any other costs or benefits that could result from the proposed amendments to the Rule. In addition, the Commission also seeks comment on alternative approaches to the proposed amendments and the associated costs and benefits of these approaches. Specifically, the Commission seeks comment with respect to the following questions: Are there any costs and benefits to any entity that are not identified or misidentified in the above analysis? Are there any effects on efficiency, competition, and capital formation that are not identified or misidentified in the above analysis? Please be specific and provide analysis and data in support of your views. Should the Commission consider any of the alternative approaches outlined above instead of the proposed amendments? Which approach and why? Are there any other alternative processes to improve municipal disclosure related to financial obligations that the Commission should consider? If so, what are they and what would be the associated costs or benefits of these alternative approaches?

## VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of

<sup>206</sup> See Section II.D; see also *supra* note 76.

1996 (“SBREFA”),<sup>207</sup> the Commission requests comment on the potential effect of the proposed amendments on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation.

Under SBREFA, a rule is considered “major” where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a “major rule” for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## VII. Regulatory Flexibility Certification

The Regulatory Flexibility Act (“RFA”) requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.<sup>208</sup> Section 3(a)<sup>209</sup> of RFA generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on small entities unless the Commission certifies that the rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.<sup>210</sup> For purposes of Commission rulemaking in connection with the RFA,<sup>211</sup> a small entity includes: (1) A broker-dealer that had total capital (net

worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,<sup>212</sup> or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization;<sup>213</sup> and (2) a municipal securities dealer that is a bank (including a separately identifiable department or division of a bank) if it has total assets of less than \$10 million at all times during the preceding fiscal year; had an average monthly volume of municipal securities transactions in the preceding fiscal year of less than \$100,000; and is not affiliated with any entity that is not a “small business.”<sup>214</sup>

As discussed above in Section IV, the Commission estimates that approximately 250 dealers would be Participating Underwriters within the meaning of Rule 15c2-12. The Commission does not believe that any Participating Underwriters would be small broker-dealers or municipal securities dealers. Accordingly, the Commission certifies that the proposed rule amendments would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed rule amendments could have an effect on small entities that has not been considered. The Commission requests that commenters describe the nature of any impact on small entities

<sup>212</sup> 17 CFR 240.17a-5(d).

<sup>213</sup> See 17 CFR 240.0-10(c). See also 17 CFR 240.0-10(i) (providing that a broker or dealer is affiliated with another person if: Such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis).

<sup>214</sup> 17 CFR 240.0-10(f).

and provide empirical data to support the extent of such impact.

## VIII. Statutory Authority and Text of Proposed Rule Amendments

Pursuant to the Exchange Act, and particularly Sections 2, 3(b), 10, 15(c), 15B, 17 and 23(a)(1) thereof, 15 U.S.C. 78b, 78c(b), 78j, 78o(c), 78o-4, 78q and 78w(a)(1), the Commission is proposing amendments to § 240.15c2-12 of Title 17 of the *Code of Federal Regulations* in the manner set forth below.

### Text of Proposed Rule Amendments

#### List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

### PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

- 1. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

- 2. Section 240.15c2-12 is amended by:

- a. In paragraph (b)(5)(i)(C)(14) removing “and”;

- b. Adding new paragraphs (b)(5)(i)(C)(15) and (16);

- c. Adding new paragraph (f)(11);

The additions and revisions read as follows.

#### § 240.15c2-12 Municipal securities disclosure.

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) \* \* \*

(C) \* \* \*

(15) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of

<sup>207</sup> Public Law 104-121, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

<sup>208</sup> 5 U.S.C. 601 *et seq.*

<sup>209</sup> 5 U.S.C. 603.

<sup>210</sup> 5 U.S.C. 605(b).

<sup>211</sup> Although Section 601 of the RFA defines the term “small entity,” the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term “small entity” for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10 under the Exchange Act, 17 CFR 240.0-10. See Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS-305).

terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

\* \* \* \* \*

(f) \* \* \*

(11) The term financial obligation means a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative

instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

\* \* \* \* \*

By the Commission.

Dated: March 1, 2017.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017-04323 Filed 3-14-17; 8:45 am]

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