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Presidential Documents

Title 3—

The President

Executive Order 13782 of March 27, 2017

Revocation of Federal Contracting Executive Orders

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Revocation.* Executive Order 13673 of July 31, 2014, section 3 of Executive Order 13683 of December 11, 2014, and Executive Order 13738 of August 23, 2016, are revoked.

Sec. 2. *Reconsideration of Existing Rules.* All executive departments and agencies shall, as appropriate and to the extent consistent with law, consider promptly rescinding any orders, rules, regulations, guidance, guidelines, or policies implementing or enforcing the revoked Executive Orders and revoked provision listed in section 1 of this order.

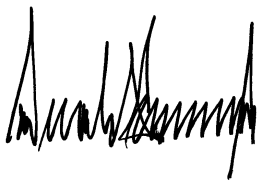
Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 27, 2017.

[FR Doc. 2017–06382
Filed 3–29–17; 8:45 am]
Billing code 3295–F7–P

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1820

Revision of Regulations Governing Freedom of Information Act Requests and Appeals

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule.

SUMMARY: The rule updates the U.S. Office of Special Counsel's (OSC's) FOIA regulations to reflect substantive and procedural changes to the FOIA. In addition, in response to comments received on a different rulemaking, this final rule clarifies that our consultation procedures may include consultation with other offices prior to OSC responding to a FOIA request, incorporates existing records retention obligations, and updates the definition of representatives of the news media.

DATES: This final rule is effective on March 30, 2017.

FOR FURTHER INFORMATION CONTACT: Amy Beckett, Senior Litigation Counsel, U.S. Office of Special Counsel, by telephone at (202) 254–3600, by facsimile at (202) 254–3711, or by email at *abeckett@osc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (the Act) mandated several changes to agency FOIA programs, and it required agencies to review and update relevant FOIA regulations. In addition, OSC is updating its regulations in response to comments received during a recent rulemaking. At that time, OSC made a few additional mechanical changes responsive to the comments, but stated it would consider the comments proposing broader changes pending OSC's regulatory review required by the Act.

OSC has now considered the remaining comments, and has adopted some of them including a suggestion that § 1820.6 refer to the statutory 20-day appeal response window. In response to a comment that OSC include language regarding existing records retention obligations, OSC added provisions at §§ 1820.5(d) and 1820.6(d) that address the requirement to retain FOIA-related federal records. In addition, OSC updated the definition of ''news media'' in § 1820.7. In response to a comment regarding the consultation provision at § 1820.3, OSC clarified the circumstances under which it would consult with non-OSC offices prior to OSC issuing a FOIA response. When consulting on records responsive to an OSC-received FOIA request, OSC retains the responsibility for responding to the request.

Accordingly, OSC updates its FOIA regulations as follows:

FOIA Regulations. In accordance with the Act, OSC extends the time period for submitting appeals from 45 to 90 days; codifies OSC's existing practice of informing requesters of the availability of the Agency's Public Liaison and the dispute resolution services of the National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS); and notifies requesters of FOIA's intent to offer dispute resolution services at every stage of the FOIA process. OSC clarifies its FOIA consultation provisions relating to the need to sometimes consult with other offices when preparing its response to a FOIA request. OSC also updates its definition of ''representative of the news media'' to conform to current statutory language. This updated definition also responds to ongoing changes in the gathering and delivery of news.

OSC adds language to 5 CFR 1820.5 to establish OSC's FOIA dispute resolution program, including requiring OSC to notify requesters of the availability of dispute resolution services and language emphasizing that dispute resolution is available to requesters at every phase of the FOIA request and appeals process. OSC also adds language regarding records retention for FOIA-related federal records.

The existing language of 5 CFR 1820.6 is changed to notify requesters of their new statutory 90-day time limit to appeal. OSC also adds language regarding records retention for FOIA-related federal records.

The revisions to 5 CFR 1820.7 update language requiring that a member of the news media be a ''person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public,'' removing the ''organized and operated'' standard previously included. The change also includes a non-exhaustive list of entities that meet the updated definition of ''member of the news media.''

Procedural Determinations

Administrative Procedure Act (APA): OSC finds that good cause exists, pursuant to 5 U.S.C. 553(b), that notice and public comment on this rule-making would be unnecessary and contrary to the public interest because most of these revisions to OSC's FOIA regulations are mandated by the FOIA Improvement Act of 2016 and OSC is not exercising any discretion in issuing these revisions; and also because the additional changes respond to previously considered comments on a recent rulemaking. This action is taken under the Special Counsel's authority at 5 U.S.C. 1212(e) to publish regulations in the **Federal Register**.

Executive Order 12866 (Regulatory Planning and Review): This rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

Congressional Review Act (CRA): The rule is not subject to the reporting requirement of 5 U.S.C. 801 because it does not substantially affect the rights or obligations of non-agency parties and therefore is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1998).

Regulatory Flexibility Act (RFA): Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Unfunded Mandates Reform Act (UMRA): This revision does not impose any federal mandates on state, local, or tribal governments, or on the private sector within the meaning of the UMRA.

National Environmental Policy Act (NEPA): This rule will have no physical impact upon the environment and therefore will not require any further review under NEPA.

Paperwork Reduction Act (PRA): This rule does not impose any new recordkeeping, reporting, or other

information collection requirements on the public.

Executive Order 13132 (Federalism): This revision does not have new federalism implications under Executive Order 13132.

Executive Order 12988 (Civil Justice Reform): This rule meets applicable standards of 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 5 CFR Part 1820

Administrative practice and procedure, Dispute resolution, Freedom of information, Government employees, Touhy regulations.

For the reasons stated in the preamble, OSC amends 5 CFR part 1820 as follows:

PART 1820—FREEDOM OF INFORMATION ACT REQUESTS; PRODUCTION OF RECORDS OR TESTIMONY

■ 1. The authority citation for 5 CFR part 1820 is revised to read as follows:

Authority: 5 U.S.C. 552 and 1212(e).

■ 2. Section 1820.3 is revised to read as follows:

§ 1820.3 Consultations and referrals.

When OSC receives a FOIA request for a record in the agency's possession, it may determine that another office is better able to decide whether or not the record is exempt from disclosure under the FOIA. If so, OSC will either:

(a) Respond to the request for the record after consulting with the other office that has a substantial interest in the record; or

(b) Refer the responsibility for responding to the request to another Federal agency deemed better able to determine whether to disclose it. Consultations and referrals will be handled according to the date that the FOIA request was initially received by the first agency or Federal government office.

■ 3. Section 1820.5 is amended by adding paragraphs (c) and (d) to read as follows:

§ 1820.5 Responses to requests.

* * * * *

(c) *Dispute resolution program.* OSC shall inform FOIA requesters at all stages of the FOIA process of the availability of dispute resolution services. In particular, OSC's FOIA acknowledgement letters shall notify requesters that the FOIA Liaison is available to assist them with requests. The acknowledgment letter and any agency response will include a notice that the FOIA Public Liaison may provide dispute resolution services, and will also notify the requester of the dispute resolution services provided by the National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS).

(d) *Maintenance of files.* OSC must preserve federal record correspondence and copies of requested records until disposition is authorized pursuant to Title 44 of the United States Code and the relevant approved records retention schedule.

■ 4. Section 1820.6 is revised to read as follows:

§ 1820.6 Appeals.

(a) *Appeals of adverse determinations.* A requester may appeal a determination denying a FOIA request in any respect to the Office of General Counsel, U.S. Office of Special Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036–4505. The appeal must be in writing, and must be submitted either by:

(1) Regular mail sent to the address listed in this subsection, above; or

(2) By fax sent to the FOIA Officer at, (202) 254–3711, or the number provided on the FOIA page of OSC's Web site *https://osc.gov/Pages/FOIAResources.aspx;* or

(3) By email to *foiaappeal@osc.gov,* or other electronic means as described on the FOIA page of OSC's Web site, *https://osc.gov/Pages/FOIAResources.aspx.*

(b) *Submission and content.* The Office of General Counsel must receive the appeal within 90 days of the date of the letter denying the request. For the quickest possible handling, the appeal letter and envelope or any fax cover sheet or email subject line should be clearly marked ''FOIA Appeal.'' The appeal letter must clearly identify the OSC determination (including the assigned FOIA request number, if known) being appealed. OSC will not ordinarily act on a FOIA appeal if the request becomes a matter of FOIA litigation.

(c) *Responses to appeals.* Ordinarily, OSC shall have 20 business days from receipt of the appeal to issue an appeal decision. 5 U.S.C. 552(a)(6)(A)(ii). OSC's decision on an appeal will be in writing. A decision affirming a denial in whole or in part shall inform the requester of the provisions for judicial review of that decision. If the denial is reversed or modified on appeal, in whole or in part, OSC will notify the requester in a written decision and OSC will reprocess the request in accordance with that appeal decision. OSC will notify the requester of the availability of dispute resolution services provided by the FOIA Public Liaison and the dispute resolution services provided by the National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS).

(d) *Maintenance of files.* OSC must preserve federal record correspondence and copies of requested records until disposition is authorized pursuant to Title 44 of the United States Code and the relevant approved records retention schedule.

■ 5. Section 1820.7(b)(6) is revised to read as follows:

§ 1820.7 Fees.

* * * * *

(b) * * *

(6) ''Representative of the news media'' or ''news media requester'' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A non-exhaustive list of news media entities could include, in addition to television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news''), electronic outlets for print newspapers, magazines, and television and radio stations, and web-only outlets or other alternative media as methods of news delivery evolve. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization, whether print or electronic. A publication contract would be the clearest proof, but OSC may also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

* * * * *

Dated: March 21, 2017.

Bruce Gipe,

Chief Operating Officer.

[FR Doc. 2017–06047 Filed 3–29–17; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2017–0171; Special Conditions No. 33–018–SC

Special Conditions: General Electric Company, GE9X Engine Models; Incorporation of Composite Fan Blades

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the General Electric (GE) GE9X turbofan engine models. These engine models will have novel or unusual design features associated with composite fan blades. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 14, 2017. We must receive your comments by May 1, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0171 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning these special conditions, contact Jay Turnberg, Engine and Propeller Directorate, Aircraft Certification Service, 1200 District Avenue, Burlington, Massachusetts, 01803–5213; telephone (781) 238–7755; facsimile (781) 238–7199; email *Jay.Turnberg@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the Type Certificate approval and thus, delivery of the affected engines.

In addition, the substance of these special conditions has been subjected to the notice and comment period in several prior instances, and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the engine, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On January 29, 2016, GE applied for a type certificate for their new GE9X turbofan engine models. The High-Bypass-Ratio GE9X engine models incorporate composite fan blades, a novel or unusual design feature. These fan blades have significant material property characteristics differences from conventional, single load path, metallic fan blades. Additionally, they have multiple load path features and/or crack arresting feature capabilities that, during the blade life, may prevent delamination, crack propagation, and/or blade failure.

Because of their novel or unusual design, these fan blades require additional airworthiness standards for GE9X engine type certification, to account for material property and failure mode differences with conventional fan blades. The applicable airworthiness regulations that exist do not contain appropriate safety standards for these new blades. The FAA may allow for application of different fan blade containment requirements, if GE demonstrates improved load path features and/or crack arresting feature capabilities of the new blade design, below the inner annulus flow path line.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, GE must show that the GE9X engine models meet the applicable provisions of part 33, ''Airworthiness Standards, Aircraft Engines,'' dated February 1, 1965, as amended by Amendments 33–1 through 33–34, dated January 5, 2015. The FAA has determined that the applicable airworthiness regulations in part 33 do not contain adequate or appropriate safety standards for the GE9X engine models because of their novel and unusual fan blade design features. Therefore, these special conditions are prescribed under the provisions of 14 CFR 11.19 and 21.16, and will become part of the type certification basis for GE9X engine models in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the engine models for which they are issued. Should the type certificate for that engine model be amended later to include any other engine models that incorporate the same novel or unusual design features, the special conditions would also apply to the other engine models under § 21.101.

In addition to complying with the applicable product airworthiness regulations and special conditions, the GE9X engine models must comply with the fuel venting and exhaust emission requirements of 14 CFR part 34.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The GE9X engine models will incorporate the following novel or

unusual design features: Composite fan blades. These fan blades will have significant differences in material property characteristics as compared to conventionally designed fan blades using non-composite metallic materials. Composite material designs can incorporate multiple load paths and/or crack arresting features that prevent delamination or crack propagation that could result in blade failure during the blade service life. These blades require additional airworthiness standards for type certification of the GE9X engine models.

Discussion

As discussed in the summary section, the GE9X engine models incorporate composite fan blades instead of conventional, single load path, metallic fan blades, which is a novel or unusual design feature for aircraft engines. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

Applicability

As discussed above, these special conditions are applicable to the GE9X engine models. Should GE apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design features, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on GE9X engine models. It is not a rule of general applicability and applies only to GE, who requested FAA approval of this engine feature.

List of Subjects in 14 CFR Part 33

Aircraft, Engines, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for GE9X engine models.

1. *Special Conditions:* General Electric Company, GE9X Engine Models; Incorporation of Composite Fan Blades. In lieu of the fan blade containment test with the fan blade failing at the outermost retention groove as specified in § 33.94(a)(1), complete the following requirements:

(a) Conduct an engine fan blade containment test with the fan blade failing at the inner annulus flow path line instead of at the outermost retention groove.

(b) Substantiate by test and analysis, or other methods acceptable to the FAA, that a fan disk and fan blade retention system with minimum material properties can withstand, without failure, a centrifugal load equal to two times the maximum load the retention system could experience within approved engine operating limitations. The fan blade retention system includes the portion of the fan blade from the inner annulus flow path line inward to the blade dovetail, the blade retention components, and the fan disk and fan blade attachment features.

(c) Using a procedure approved by the FAA, establish an operating limitation that specifies the maximum allowable number of start-stop stress cycles for the fan blade retention system. The life evaluation must include the combined effects of high-cycle and low-cycle fatigue. If the operating limitation is less than 100,000 cycles, that limitation must be specified in Chapter 5 of the Engine Manual Airworthiness Limitation Section. The procedure used to establish the maximum allowable number of start-stop stress cycles for the fan blade retention system will incorporate the integrity requirements specified in paragraphs (c)(1), (c)(2), and (c)(3) of these special conditions for the fan blade retention system.

(1) An engineering plan which establishes and maintains that the combinations of loads, material properties, environmental influences, and operating conditions, including the effects of parts influencing these parameters, are well known or predictable through validated analysis, test, or service experience.

(2) A manufacturing plan that identifies the specific manufacturing constraints necessary to consistently produce the fan blade retention system with the attributes required by the engineering plan.

(3) A service management plan that defines in-service processes for maintenance and repair of the fan blade retention system, which will maintain attributes consistent with those required by the engineering plan.

(d) Substantiate by test and analysis, or other methods acceptable to the FAA, that the blade design below the inner annulus flow path line provides multiple load paths and/or crack arresting features that prevent delamination or crack propagation to blade failure during the life of the blade.

(e) Substantiate that, during the service life of the engine, the total probability of the occurrence of a hazardous engine effect defined in § 33.75 due to an individual blade retention system failure resulting from all possible causes will be extremely improbable, with (a cumulative calculated probability of failure of less than 10^{-9}) per engine flight hour.

(f) Substantiate by test or analysis that not only will the engine continue to meet the requirements of § 33.75 following a lightning strike on the composite fan blade structure, but that the lightning strike will not cause damage to the fan blades that would prevent continued safe operation of the affected engine.

(g) Account for the effects of in-service deterioration, manufacturing variations, minimum material properties, and environmental effects during the tests and analyses required by paragraphs (b), (c), (d), (e), and (f) of these special conditions.

(h) Propose fleet leader monitoring and field sampling programs that will monitor the effects of engine fan blade usage on fan blade retention system integrity. The programs must be approved by the FAA prior to certification of the GE9X engine models.

(i) Mark each fan blade legibly and permanently with a part number and a serial number.

Issued in Burlington, Massachusetts, on March 23, 2017.

Robert J. Ganley,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2017–06277 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31129; Amdt. No. 532]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory

action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, April 27, 2017.

FOR FURTHER INFORMATION CONTACT: Thomas J Nichols, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on March 24, 2017.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, April 27,2017.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT

[Amendment 532 effective date April 27, 2017]

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6012 VOR Federal Airway V12 Is Amended To Read in Part		
PANHANDLE, TX VORTAC	MITBEE, OK VORTAC	5500
§ 95.6014 VOR Federal Airway V14 Is Amended To Read in Part		
HOBART, OK VORTAC	CARFF, OK FIX	3700
CARFF, OK FIX	*DATTA, OK FIX	3000
*3500—MRA.		
*DATTA, OK FIX	WILL ROGERS, OK VORTAC	3000
*3500—MRA.		
§ 95.6017 VOR Federal Airway V17 Is Amended To Read in Part		
CAMAR, OK FIX	MITBEE, OK VORTAC.	
W BND		4300
E BND		4900
§ 95.6096 VOR Federal Airway V96 Is Amended To Read in Part		
FORT WAYNE, IN VORTAC	*ILLIE, OH FIX	**5000
*16000—MCA ILLIE, OH FIX, NE BND.		
**2300—MOCA.		
ILLIE, OH FIX	*ANNTS, OH FIX	**16000
*16000—MCA ANNTS, OH FIX, SW BND.		
**2100—MOCA.		
ANNTS, OH FIX	DETROIT, MI VOR/DME	*3000
*2100—MOCA.		

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINT—Continued

[Amendment 532 effective date April 27, 2017]

From	To	MEA
§ 95.6140 VOR Federal Airway V140 Is Amended By Adding		
PANHANDLE, TX VORTAC	BURNS FLAT, OK VORTAC	5300
BURNS FLAT, OK VORTAC	*HISLA, OK FIX	3600
*4000—MRA.		
*HISLA, OK FIX	KINGFISHER, OK VORTAC	**3600
*4000—MRA.		
**3000—MOCA.		
Is Amended To Delete		
PANHANDLE, TX VORTAC	ZESUS, TX FIX	5800
*3000—MOCA.		
ZESUS, TX FIX	SAYRE, OK VORTAC	
	W BND	*5000
	E BND	*5800
SAYRE, OK VORTAC	ODINS, OK FIX	4000
ODINS, OK FIX	KINGFISHER, OK VORTAC	*3500
*3100—MOCA.		
§ 95.6272 VOR Federal Airway V272 Is Amended To Read in Part		
BORGER, TX VORTAC	BRISC, TX FIX	5000
Is Amended By Adding		
BRISC, TX FIX	BURNS FLAT, OK VORTAC	*5000
*4500—MOCA.		
BURNS FLAT, OK VORTAC	WILL ROGERS, OK VORTAC	4500
Is Amended To Delete		
BRISC, TX FIX	SAYRE, OK VORTAC	*5500
*4500—MOCA.		
SAYRE, OK VORTAC	SERTS, OK FIX	3900
SERTS, OK FIX	LIONS, OK FIX	*4500
*3100—MOCA.		
*3700—GNSS MEA.		
LIONS, OK FIX	WILL ROGERS, OK VORTAC	3300
§ 95.6280 VOR Federal Airway V280 Is Amended To Read in Part		
PANHANDLE, TX VORTAC	MITBEE, OK VORTAC	5500
§ 95.6440 VOR Federal Airway V440 Is Amended By Adding		
BRISC, TX FIX	BURNS FLAT, OK VORTAC	*5000
*4500—MOCA.		
BURNS FLAT, OK VORTAC	CARFF, OK FIX	3600
Is Amended To Delete		
BRISC, TX FIX	SAYRE, OK VORTAC	*5500
*4500—MOCA.		
SAYRE, OK VORTAC	CARFF, OK FIX	4000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point V140 Is Amended To Modify Changeover Point			
PANHANDLE, TX VORTAC	BURNS FLAT, OK VORTAC	56	PANHANDLE.
V272 Is Amended To Add Changeover Point			
BORGER, TX VORTAC	BURNS FLAT, OK VORTAC	51	BORGER.

Airway segment		Changeover points	
From	To	Distance	From
Is Amended To Delete Changeover Point			
SAYRE, OK VORTAC	WILL ROGERS, OK VORTAC	40	SAYRE.

[FR Doc. 2017–06294 Filed 3–29–17; 8:45 am]
BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1234

[Docket No. CPSC–2015–0019

Safety Standard for Infant Bath Tubs

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the United States Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards, or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is issuing a safety standard for infant bath tubs in response to the direction of section 104(b) of the CPSIA. In addition, the Commission is amending its regulations regarding third party conformity assessment bodies to include the mandatory standard for infant bath tubs in the list of notices of requirements (NORs) issued by the Commission.

DATES: This rule will become effective October 2, 2017. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of October 2, 2017.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–6820; email: *kwalker@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

The CPSIA was enacted on August 14, 2008. Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to: (1) Examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. Standards issued under section 104 are to be ''substantially the same as'' the applicable voluntary standard or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' Section 104(f)(2) of the CPSIA lists examples of durable infant or toddler products, including products such as ''bath seats'' and ''infant carriers.'' Although section 104(f)(2) does not specifically identify infant bath tubs, the Commission has defined an infant bath tub as a ''durable infant or toddler product'' in the Commission's product registration card rule under CPSIA section 104(d).[1]

On August 14, 2015, the Commission issued a notice of proposed rulemaking (NPR) for infant bath tubs. 80 FR 48769. The NPR proposed to incorporate by reference the voluntary standard, ASTM F2670–13, *Standard Consumer Safety Specification for Infant Bath Tubs,* with several modifications to strengthen the standard, as a mandatory consumer product safety rule. In this document, the Commission is issuing a mandatory consumer product safety standard for infant bath tubs. As required by section 104(b)(1)(A), the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop this proposed standard, largely through the ASTM process. Based on modifications to the voluntary standard since the NPR published, the final rule incorporates by reference the most recent voluntary standard, developed by ASTM International, ASTM F2670–17, without modification.

Additionally, the final rule amends the list of NORs issued by the Commission in 16 CFR part 1112 to include the standard for infant bath tubs. Under section 14 of the CPSA, the Commission promulgated 16 CFR part 1112 to establish requirements for accreditation of third party conformity assessment bodies (or testing laboratories) to test for conformity with a children's product safety rule. Amending part 1112 adds an NOR for the infant bath tub standard to the list of children's product safety rules.

II. Product Description

A. Definition of Infant Bath Tub

Paragraph 3.1.2 of ASTM F2670–17 defines an ''infant bath tub'' as a ''tub, enclosure, or other similar product intended to hold water and be placed into an adult bath tub, sink, or on top of other surfaces to provide support or containment, or both, for an infant in a reclining, sitting, or standing position during bathing by a caregiver.'' Paragraph 1.1 of the voluntary standard specifically excludes ''products commonly known as bath slings, typically made of fabric or mesh'' from the scope of the standard.

Infant bath tubs within the scope of the final rule include products of various designs, such as ''bucket style'' tubs that support a child sitting upright, tubs with an inclined seat for infants too young to sit unsupported, inflatable tubs, folding tubs, and tubs with spa features, such as handheld shower attachments and even whirlpool settings. Paragraph 6.1 of ASTM F2670–17 permits infant bath tubs to have ''a permanent or removable passive crotch restraint as part of their design,'' but does not permit ''any additional restraint system(s) which requires action on the part of the caregiver to secure or release.''

B. Market Description

Typically, infant bath tubs are produced and/or marketed by juvenile

[1] Requirements for Consumer Registration of Durable Infant or Toddler Products; Final Rule, 74 FR 68668, 68669 (Dec. 29, 2009); 16 CFR 1130.2(a)(16).

product manufacturers and distributors. Currently, at least 25 manufacturers and importers supply infant bath tubs to the U.S. market, including 22 domestic firms: 14 are domestic manufacturers, seven are domestic importers, and one firm has an unknown supply source. Three foreign companies export directly to the United States via Internet sales or to U.S. retailers.[2]

According to preliminary data collected with the CPSC's 2013 Durable Products Nursery Exposure Survey, households with children under 6 years old own approximately 8.9 million infant bath tubs. Of those, approximately 4.4 million are currently in use.

III. Incident Data

A. Overview of Incident Data

The Commission is aware of a total of 247 incidents (31 fatal and 216 nonfatal) related to infant bath tubs that were reported to have occurred from January 2004 through December 2015. This total includes 45 new infant bath tub-related incidents reported since the NPR[3] (collected between May 20, 2015 and December 31, 2015). None of the newly reported incidents is a fatality. All of the new incidents fall within the hazard patterns identified in the NPR. Just over half (146 out of 247 or 59 percent) of the reports were submitted to the CPSC by retailers and manufacturers through the CPSC's ''Retailer Reporting System.'' The remaining 101 incident reports were submitted to the CPSC from various sources, such as the CPSC Hotline, Internet reports, newspaper clippings, medical examiners, and other state/local authorities.

More recently, staff also reviewed the incident data for 2016 and identified an additional 34 incidents with no fatalities. Staff did not identify any new hazard patterns in the 2016 data. The more detailed discussion of incident data that follows does not include year 2016 incidents.

1. Fatalities

Of the 31 decedents in the fatal incidents, 29 of the victims were between the ages of 4 months and 11 months old; the other two fatalities were a 23-month-old and a 3-year-old. The fatalities were evenly split with 16 males and 15 females. In 30 of the 31 fatalities, a parent or guardian was not present at the time the incident occurred. Drowning was the cause of death reported for 30 of the 31 fatalities. The remaining fatality involved a child with ventricular septal defect, and the coroner listed that the immediate cause of death was attributed to pneumonia.

2. Nonfatal Incidents

Thirty-two injuries were reported among the 216 nonfatal incidents. Eight of nine hospitalizations were due to near-drowning, and one was due to a scalding water burn. In all eight near-drowning hospitalizations, the parent or guardian had left the child alone for at least a short period of time when the incident occurred. Five additional near-drowning incidents required emergency department treatment. The remaining incidents ranged from rashes, upper respiratory infections due to mold on the product, slip and fall injury, laceration by sharp edge, a hit on head by toy accessory, and a concussion from falling from a tub.

3. National Injury Estimates[4]

Commission staff estimates a total of 2,300 injuries (sample size = 89, coefficient of variation = 0.18) related to infant bath tubs occurred from 2004 to 2015, which were treated in U.S. hospital emergency departments.[5] The injury estimates for individual years are not reportable because they fail to meet publication criteria.[6]

One drowning death was reported through the NEISS and is included in the fatality counts for infant bath tubs. About 94 percent of the estimated emergency department visits during the 11-year period involved infants 12 months of age or younger, and all but three cases involved children 24 months of age or younger. The cases involving children older than 2 years of age included: A 5-year-old who received a laceration while playing with the infant bath tub, a 3-year-old falling off an infant tub, and a 6-year-old landing in a straddle position on an infant tub while getting out of a bathtub.

The estimated emergency department visits were split almost evenly among male (48%) and female (52%) children. For the emergency department-treated injuries related to infant bath tubs, the following characteristics occurred most frequently:

- Hazard—falls (35%); a majority of the reports did not specify the manner or cause of fall;
- Injured body part—head (37%), all/over half of body (20%), and face (18%);
- Injury type—internal organ injury (included closed head injuries) (29%), drowning or nearly drowning (20%), and contusions/abrasions (18%);
- Disposition—treated and released (83%) and admitted or transferred to a hospital (14%).

B. Hazard Pattern Characterization Based on Incident Data

Figure 1 shows the distribution of hazard patterns for infant bath tubs by frequency.

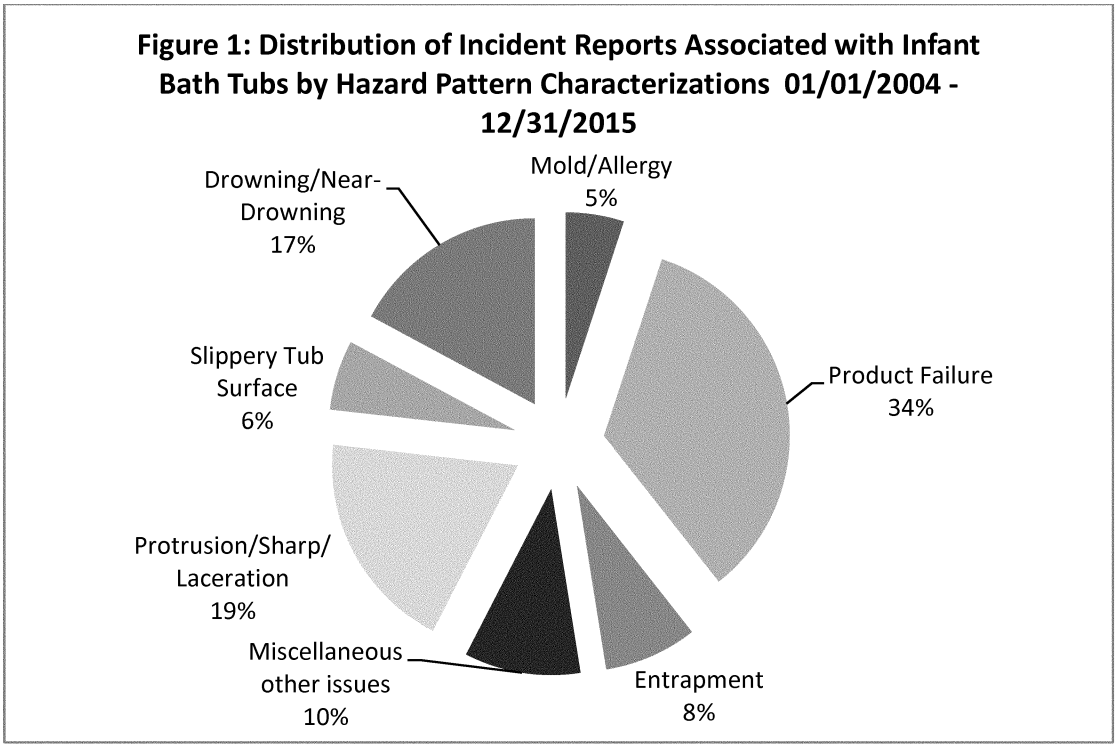
[2] Staff made these determinations using information from Dun & Bradstreet and Reference USAGov, as well as firm Web sites.

[3] Data discussed in the NPR was collected from January 1, 2004 through May 20, 2015.

[4] The source of the injury estimates is the National Electronic Injury Surveillance System (NEISS), a statistically valid injury surveillance system. NEISS injury data is gathered from emergency departments of hospitals that are selected as a probability sample of all the U.S. hospitals with emergency departments. The surveillance data gathered from the sample hospitals enable CPSC staff to make timely national estimates of the number of injuries associated with specific consumer products.

[5] National injury estimates for 2004–2014 were presented in the NPR.

[6] According to the NEISS publication criteria, an estimate must be 1,200 or greater, the sample size must be 20 or greater, and the coefficient of variation must be 33 percent or smaller.



Source: CPSC epidemiological databases IPII, INDP, DTHS, and NEISS completed investigations (NEISS IDIs). Note, percentages may not add up to 100% due to rounding.

• *Drowning/Near-Drownings* account for 17 percent (43 of 247) of reported incidents. Of the 43 drowning or near-drowning incidents, 30 were fatalities and 13 were near-drowning incidents. Because no one witnessed most of the incidents, Commission staff cannot determine a pattern that led to the submersions. However, in 38 of 43 incidents, the parent or guardian was not present at the time the incident occurred. Frequently, the child was found floating. In the other five incidents in which the parent or guardian was present, four of the children survived. Only one reported fatality was not ruled a drowning; this incident is included in the miscellaneous category.

• *Protrusion/Sharp/Laceration issues* account for 19 percent (48 of 247) of reported incidents. A protrusion is commonly a part of the product that sticks out or has a rough surface; and in the incidents reported, the child rubbed against the protruding part in some way, which caused red marks, cuts, or bruising. The injured body parts reportedly included toes, feet, bottom, genitalia, and back. In 29 of 39 incidents, the part of the infant bath tub described as a ''bump'' or ''hump'' caused a red mark on the infant's back or discomfort to the infant in the bath tub. Typically, the bath tub ''hammock/sling'' attachment was involved in this type of protrusion incident. One incident required a hospital visit, and the remaining 47 incidents involved no injury or a minor injury. The incident requiring a hospital visit involved a scratch to the child's back, caused by a screw that penetrated the tub wall.

• *Product Failures* account for 34 percent (85 of 247) of reported incidents. Fifty-nine incidents reported the bath tub ''hammock/sling'' attachment collapsing, and eight additional incidents of the locking mechanism failing or breaking. The remaining 18 incidents involved various tub parts breaking. Of the 85 product failures, two incidents required a trip to the hospital, and the remaining incidents reported either no injury or a minor injury. The two children who required hospital trips were treated and released. One of these incidents was due to a toy breaking off from the tub and causing a deep cut to the victim's forehead. The second incident was due to a leg collapsing on a tub placed on a counter top; as a result, the child fell from the counter top to the floor and suffered a concussion.

• *Entrapment issues* account for 8 percent (20 of 247) of reported incidents. Entrapment incidents involve body parts caught or stuck on parts of the tub, mostly in a pinching manner. The body parts reportedly injured were fingers, arms, feet, legs, and genitalia. Many of these injuries occurred in tubs that fold. The most common components of the tubs causing injury were the hinges, holes, and foot area inside the tub. No reported incident required a hospital visit. All of the entrapment-related reports involved either no injury or a minor injury.

• *Slippery tub surface issues* account for 6 percent (15 out of 247) of reported incidents. Common reported incidents and concerns include scratches to the body or protrusions that contact the body, or potential submersions, including the head. One emergency room visit was due to a child slipping under water and swallowing some water; the rest of the reports involved either no injury or a minor injury.

• *Mold/Allergy issues* account for 5 percent (12 of 247) of reported incidents. Of the 12 incidents, eight were due to mold, and four were due to allergy. Reported issues included a variety of symptoms: Itching, rashes, foul odor, respiratory concerns, and a urinary tract infection. Eight incidents involved a single tub make and model, including six with mold issues and two with allergy issues. Two of the 12 incidents involved emergency room visits: One child may have developed an upper respiratory issue and one child

broke out in a rash throughout the child's back. Seven additional incidents required medical treatment: Four reported itching and rashes, one reported a urinary tract infection, and one reported mold spores on the genitalia.

• *Miscellaneous issues* account for the remaining 10 percent (24 of 247) of the reported incidents. The incidents included a fall from the tub, an unstable tub, missing pieces, leaking or overheating batteries, rust, and scalding. One incidental fatality and one hospital visit fall in this miscellaneous category. The fatality involved a child with a ventricular septal defect, with the death attributed to pneumonia. A scalding incident in which a parent poured hot water from the stove onto the foam cushion in the infant bath tub and then placed the child in the tub resulted in the hospital visit. The remaining reports were either an incident with no injury or a minor injury, including six battery-related complaints.

IV. Overview and Assessment of ASTM F2670

ASTM F2670, *Standard Consumer Safety Specification for Infant Bath Tubs,* is the voluntary standard that was developed to address the identified hazard patterns associated with the use of infant bath tubs. The standard was first approved by ASTM in 2009, and then revised in 2010, twice in 2011, 2012, 2013, twice in 2016, and the newest version was approved on January 1, 2017. The NPR referenced ASTM F2670–13, with the following modifications to the ASTM standard to adequately address hazard patterns identified in the incident data:

1. Revised latching or locking mechanism testing protocol.
2. Revised static load testing protocol.
3. Revised content of the warnings, markings, and instructions:

(a) Changed the text in the drowning warnings, and

(b) added fall hazard warning.

4. Specified a standard format (including black text on a white background, table design, bullet points, and black border) for the warnings on the product, on the packaging, and in the instructions.

5. Required that the safety alert symbol and the word ''WARNING'' on the drowning hazard label be ''at least 0.4 in. (10mm) high unless stated otherwise, shall be the same size, and shall be in bold capital letters. The remainder of the text shall be in characters whose upper case shall be at least 0.2 in. (5 mm) high unless stated otherwise.''

In the time since the NPR was published, ASTM approved and published three more versions of the voluntary standard. The most recent version, ASTM F2670–17, was approved and published on January 1, 2017. As explained below, ASTM F2670–17 addresses all of the Commission's proposed modifications and concerns described in the NPR, allowing the Commission to adopt ASTM F2670–17, without modification, as the mandatory safety standard for infant bath tubs.

A. Revised Latching or Locking Mechanism Requirements

The NPR proposed a modification to F2670–13 to allow more time for the latching or locking mechanism testing to accommodate more complicated mechanisms. Through the ASTM process, the wording and rationale for the latching or locking mechanism durability testing in paragraph 7.1.2 of F2670 evolved. The language is consistent with the language in the NPR and is now incorporated into ASTM F2670–17. For the final rule, the Commission is adopting the language in 7.1.2 of F2670–17, without modification.

B. Revised Static Load Requirements

The NPR proposed a modification to paragraph 7.4.2 of F2670–13 to change the static load test apparatus to a shot bag, which was recommended by the ASTM subcommittee, but not yet balloted through ASTM at the time of the NPR. ASTM has now balloted the revision, which is included in F2670–17. The revised language is consistent with the modifications in the NPR, and thus, the Commission adopts paragraph 7.4.2 of F2670–17 for the final rule, without modification.

C. Revised Content of the Warnings, Markings, and Instructions

The NPR proposed that the drowning and fall hazard warnings state:

Drowning Hazard: Babies have drowned while using infant bath tubs.

- Stay *in arm's reach* of your baby.
- Use in empty adult tub or sink.
- Keep drain open.

Fall Hazard: Babies have suffered head injuries falling from infant bath tubs.

- Place tub only [insert manufacturer's intended locations(s) for safe use (*e.g.,* in adult tub, sink or on floor; in adult tub or on floor)].
- Never *lift or carry* baby in tub.

Although ASTM F2670–13 contained warning statements for both drowning and fall hazards, the warning header only identified drowning as the hazard. The Commission proposed in the NPR to separate the warnings to identify more clearly the drowning hazard and fall hazard and to provide guidance on how to avoid these hazards. Additionally, the NPR proposed warning language that was more personal by use of the word ''baby.'' For example, the NPR used the word ''babies'' as opposed to ''infant'' and the phrase ''stay in arm's reach of your baby'' as opposed to ''ALWAYS keep infant within adult's reach.''

After the NPR, the warning content in the voluntary standard was revised to be consistent with the modifications in the NPR, except for one statement. ASTM F2670–17 contains a revision to the hazard statement ''Keep drain open,'' clarifying that caregivers should keep the drain in an adult tub open during bathing, stating ''Keep drain open in adult tub or sink.'' The Commission agrees that the added statement clarifies the direction to caregivers. Accordingly, the final rule adopts the revised warning content in ASTM F2670–17, without modification.

D. Warning Label Format

At the time of the NPR, F2670–13 did not require any specific formatting for warning statements. The NPR proposed specific changes to the format of warning statements consistent with ANSI Z535.4, *American National Standard for Product Safety Signs and Labels.* CPSC staff regularly cites ANSI Z535.4 as a baseline in developing warning materials. Since the NPR was published, ASTM convened a task group, the ASTM Ad Hoc Wording Task Group (Ad Hoc TG), which consists of members of the various durable nursery product voluntary standards committees, including CPSC staff. The purpose of the Ad Hoc TG is to harmonize the wording, as well as warning format, across durable infant and toddler product ASTM voluntary standards. CPSC's Human Factors Division hazard communication subject matter expert, who also is the CPSC staff representative on the ANSI Z535 committee, represents CPSC staff on this task group. ASTM's Ad Hoc TG recommendations related to the format of warning statements were published as a reference document entitled, ''Ad Hoc Wording—May 4, 2016,'' as part of the F15 Committee Documents. The approved Ad Hoc Wording guidance document recommends formatting requirements that are similar to the ANSI Z535.4 requirements, with modifications intended to make the Ad Hoc TG's recommendations more stringent.

After publication of the Ad Hoc Wording recommendation, the ASTM

committee for infant bath tubs balloted and approved incorporation of the Ad Hoc Wording guidance recommendations into ASTM F2670–17. Commission staff states that adopting the Ad Hoc Wording guidance document recommendations provides noticeable and consistent warning labels, including warning formatting, on infant bath tubs and across juvenile products. Therefore, for the final rule, the Commission adopts the warning formatting requirements incorporated into ASTM F2670–17, without modification.

E. Warning Label Font Size

The NPR proposed to increase the font size of the safety alert symbol, and the word ''WARNING,'' to be not less than 0.4 in. (10 mm) high and the remainder of the text with upper case characters not less than 0.2 in. (5 mm) high.[7] The Commission proposed this revision to align the font size for infant bath tub labeling with ASTM F1967, *Standard Consumer Safety Specifications for Infant Bath Seats,* which is already incorporated into a federal standard. Similar to bath tub incidents, bath seat incidents also include drownings associated with caregivers leaving children unattended. Currently, increased font size for warning statements is unique to the infant bath seats voluntary and mandatory standards. The Ad Hoc Wording guidance document does not include this modification. The Ad Hoc Wording guidance document recommends that the font size of the safety alert symbol, and the word ''WARNING,'' be not less than 0.2 in. (5 mm) high and the remainder of the text with upper case characters be not less than 0.1 in. (2.5 mm) high. ASTM F2670–17 follows the Ad Hoc Wording guidance document, and does not include the increased font size that the Commission proposed in the NPR.

The Commission recognizes that the Ad Hoc Wording guidance document improves the warning label format, and therefore, the effectiveness of the warning statements. ASTM F2670–17 contains all of the Ad Hoc Wording guidance document recommendations. As stated above, the specific formatting changes in the AD Hoc Wording guidance follow the guidance of ANSI Z535.4, differing from what was proposed in the NPR only in terms of the specific size exception that had been proposed for the drowning warning label. The warning label changes in F2670–17 bring the formatting and language of the warning label into close alignment with the NPR proposal, except for the size requirements. The Commission concludes that all of the formatting and wording revisions incorporated into ASTM F2670–17 improve the labeling over the labeling in F2670–13, referenced in the NPR. The Commission cannot state definitively that increasing the font size of this particular warning statement will influence caregiver behavior more than the totality of formatting changes already incorporated into ASTM F2670–17. However, in an August 10, 2016 letter to ASTM,[8] CPSC staff encouraged further exploration of the increased size of the warnings to determine whether these additional changes will provide even greater effect. Therefore, the final rule incorporates by reference ASTM F2670–17, without any modifications.

F. Infant Bath Slings

Updated incident data for the final rule demonstrates that 59 of the 85 ''product failure'' incidents involve the infant bath hammock or sling collapsing. No injuries or minor injuries resulted from the bath hammock/sling incidents. In October 2016, CPSC recalled the infant bath tub with a sling accessory that was involved in the majority of infant bath sling incidents.[9]

Currently, ASTM F2670–17 does not include provisions that will specifically address the incidents involving bath hammocks/slings. Staff advises that the ASTM subcommittee on bath tubs is working to evaluate this issue, but has not yet completed its work. CPSC staff continues to work with two ASTM task groups formed to address the risks of bath slings. One group is developing performance requirements for infant bath slings that only can be used with infant bath tubs. A second group is developing requirements for infant bath slings that are used separately or as tub accessories, which will be addressed under a new, separate standard. CPSC staff states that new requirements for bath hammocks/slings that can be used with an infant bath tub will be added to the voluntary standard in the near future, as the task group is preparing to present recommendations to the larger subcommittee during an April 2017 ASTM meeting, and anticipates balloting of the new provisions shortly after the meeting. Therefore, the Commission is proceeding with a final rule on infant bath tubs and urges the ASTM subcommittee to finalize the inclusion of infant bath hammock/sling requirements to the ASTM standard.

If the voluntary standard for infant bath tubs is revised to include requirements for infant bath slings used with an infant bath tub and the Commission is notified of the revised standard by ASTM, CPSC staff will assess the revised voluntary standard. Staff will then make a recommendation to the Commission regarding whether to revise the mandatory standard for infant bath tubs to incorporate new provisions on infant bath slings, using the process for updating durable infant and toddler product rules pursuant to section 104 of the CPSIA. Similarly, if ASTM creates a new voluntary standard related to infant bath slings that are used separately or as tub accessories, CPSC staff will assess the ASTM standard and make a recommendation to the Commission whether to create a new mandatory durable infant and toddler standard under section 104 of the CPSIA for such products.

V. Response to Comments

The August 14, 2015 NPR solicited information and comments concerning all aspects of the NPR, and specifically asked about the cost of compliance with, and testing to, the proposed mandatory infant bath tub standard, the proposed 6-month effective date for the new mandatory rule and the amendment to part 1112. The Commission received 12 comments related to the NPR. Seven commenters expressed general support of the NPR, along with additional, more specific, comments. Five commenters either requested more time for the ASTM committee to consider the NPR proposals and revise the voluntary standard, as appropriate, or disagreed with some of the proposed requirements in the NPR. Comments and other supporting documentation, such as summaries of ASTM meetings, are available on: *www.Regulations.gov,* by searching Docket No. CPSC–2015–0019.

We summarize the comments received on the NPR and CPSC's responses below.

A. Test Requirements

(Comment 1) Two commenters recommended that the text of the static load test protocol match the ASTM F2670 standard language. The commenters noted that wording in the NPR was similar to what was balloted and approved by ASTM, but not exact.

(Response 1) At the time of the NPR, staff recommended using the exact wording that the ASTM subcommittee

[7] This requirement applies to a separate drowning hazard label and if the drowning and fall hazard labels are displayed together. If the fall hazard label is separate, smaller text size applies.

[8] *https://www.regulations.gov/document?D=CPSC-2015-0019-0023.*

[9] *https://www.cpsc.gov/Recalls/2017/Summer-Infant-Recalls-Infant-Bath-Tubs* (viewed on Web site 11/22/2016.)

was proposing. After the NPR, the ASTM subcommittee chairman made editorial changes to the proposal, which resulted in slight differences between the ASTM wording and the NPR wording. The Commission agrees that the static load test protocol language reflected in ASTM F2670–17 is nearly the same as the language proposed in the NPR, and will accept the ASTM F2670–17 language in the final rule, without modification.

(Comment 2) Two commenters recommended including the revised static load test protocol rationale (X1.2 Section 7.4.2) in the final rule.

(Response 2) Consistent with the response to comment 1, the Commission agrees that the rationale for the static load test protocol language reflected in ASTM F2670–17 be included in the final rule, without modification.

(Comment 3) Two commenters stated that the Latching or Locking Mechanism Durability test protocol in the NPR is identical to what has been balloted and approved for a revision to F2670. The commenters requested that the final rule accept this language.

(Response 3) The Commission agrees with the Latching or Locking Mechanism Durability test language in ASTM F2670–17 Section 7.1 and will incorporate this revision into the final rule, without modification.

(Comment 4) Two commenters recommended including the revised Latching or Locking Mechanism Durability test language rationale (X1.1 Section 7.1.2) in the final rule.

(Response 4) The Commission agrees. The final rule incorporates the rationale for the Latching or Locking Mechanism Durability test protocol language reflected in ASTM F2670–17.

(Comment 5) One commenter recommended that stands for bath tubs be included in the final rule. The commenter indicated that the current voluntary standard does not include stands, but stated a concern about an influx into the U.S. market of European-designed products that have matching stands.

(Response 5) The Commission is aware that infant bath tub stands are not covered by the current voluntary standard, ASTM F2670–17. CPSC staff advised that staff is not aware of any incident data involving bath tub stands. CPSC staff will monitor incident data and the retail market for use of these products. Currently, however, based on the lack of incident data, the Commission is not including bath tub stands in the final rule.

B. Incident Data

(Comment 6) One commenter questioned whether CPSC staff shared all of CPSC's incident data with ASTM. The NPR referenced 202 incidents related to infant bath tubs, while CPSC staff reported to ASTM an awareness of 156 incidents that occurred from 2004 to 2014. The commenter questioned whether CPSC had included ''sling'' data in its incident review for the NPR, noting that sling accessories are not included in the scope of the current ASTM standard.

(Response 6) CPSC staff included bath slings data in its incident review for the NPR and provided such data to ASTM. Inclusion of this data prompted ASTM to form two task groups to address incidents related to bath slings. One group is developing performance requirements for infant bath slings that only can be used with infant bath tubs. ASTM intends to include these requirements in ASTM F2670. A second group is developing requirements for infant bath slings that are used separately or as tub accessories, which will be addressed under a new, separate voluntary standard.

With regard to data discrepancies between CPSC and ASTM, such discrepancies may exist for several reasons. *First,* the scope of the data sets may be different. For example, the NPR data included incidents reported to CPSC involving infant bath tubs received from January 1, 2004, through May 20, 2015. The data delivered to ASTM for the fall 2014 meetings included data received by CPSC through July 24, 2014. CPSC provided an additional update to ASTM for the spring 2016 meeting.

Second, CPSC cannot share confidential data with ASTM. The CPSC rulemaking packages include *all* data received by staff; this includes data received through the Retailer Reporting Program (RRP). Tab A to the staff's briefing package for the final rule on infant bath tubs demonstrates that CPSC received a sizeable portion of the nonfatal incident data through RRP; the same was true for the NPR. Because RRP information is submitted confidentially, CPSC provides a general summary of RRP data for rulemaking packages, but cannot share incident details received through the RRP with ASTM, unless CPSC completes a follow-up in-depth investigation, or such reports were also received from other sources.

Third, the Infant Bath Tub subcommittee appears to maintain data in a manner that does not match identically to incident data supplied by CPSC staff nor to the incident data in the NPR. Incident data maintained by the ASTM subcommittee is described by the commenter. CPSC staff provided 167 infant bath tub-related incidents to ASTM in fall 2014. Thirty incidents involved a fatality and 137 reports described a nonfatal incident. When the ASTM subcommittee prepared its data, 12 nonfatal incidents provided by CPSC staff were not included in the subcommittee's spreadsheet. CPSC document numbers for these 12 incidents (some have been investigated) are: H0430279A, I07B0418A, I1170518A, I1210049A, H1330201A, I1380526A, I1390145A, I13B0030A, I1430085A, I1430327A, I1450108A, 60318884. Of the 12 incidents, 11 involved slings, and one involved a faucet adapter, which was later determined to be out of scope for this product category.

(Comment 7) One commenter stated that incidents related to infant bath tubs have declined significantly over the years. The commenter stated that no urgency for a rule on infant bath tubs exists because of this decline.

(Response 7) CPSC is issuing the final rule for infant bath tubs to fulfill a congressional mandate under section 104 of the CPSIA to create mandatory standards for durable infant and toddler products. Moreover, NPR data consisted of incidents received by CPSC on or before May 20, 2015. Accordingly, any comparison of the number of incidents reported to CPSC that occurred in 2015 to any past years is inappropriate because the data from past years do not represent the full year of 2015 data. In the NPR, of the overall 31 fatalities, four deaths were reported in each of 2010 and 2011; two deaths were reported in 2012; and one each was reported in 2013 and 2014. In the most current infant bath tub Epidemiology memorandum, Tab A of the staff briefing package for a final rule on infant bath tubs, staff states that as of February 17, 2016, CPSC has not received any fatal incident reports for infant bath tubs. CPSC generally *does not expect* completed reporting of fatal incidents for a particular year for 2 to 3 years later, due to lag time of the many ways fatal incidents are reported to CPSC. For instance, CPSC does not expect all reported 2014 fatalities to be received by CPSC until around late 2016, or sometime in 2017. Because of the lag time in receiving incident data, CPSC does not publish or draw conclusions using the number of fatalities reported in the most recent years. It is possible, and would not be unexpected, for additional infant bath tub fatalities that occurred in 2014 or

2015, to be reported to CPSC in the future.

Recent data collection on infant bath tub incidents reported to CPSC on or before February 17, 2016 reflect an increase in the number of nonfatal incidents related to infant bath tubs for the years 2013 (26 reports), 2014 (31 reports), and 2015 (44 reports). CPSC also experiences a lag time between the date of a nonfatal incident and CPSC receiving the reports.

C. Initial Regulatory Flexibility Act (IRFA)

(Comment 8) One commenter, a domestic manufacturer of inflatable infant bathtubs, stated that it would be adversely affected by defining ''inflatable bathtubs'' to be durable products falling within the scope of a mandatory rule. The commenter stated that the proposed rule would require the manufacturer to provide consumers with prepaid product registration cards and to provide an option for consumers to register products via the Internet. The commenter asserted that this would increase its costs by 1.5 to 2.0 percent on an ongoing basis.

(Response 8) The requirement that manufacturers of durable infant or toddler products provide each consumer with a product registration card was established by the Consumer Product Safety Improvement Act of 2008, and not by the this rule on infant bath tubs. In 16 CFR part 1130, the Commission determined that infant bath tubs are durable infant or toddler products. No exclusion was made for inflatable bath tubs. Therefore, the statutory and regulatory requirements concerning the provision of product registration cards to consumers already apply to manufacturers of inflatable infant bath tubs and will be unaffected by the final rule.

(Comment 9) One commenter stated: ''in order to ensure that the lifespan of our inflatable tub would match that of the hard plastic tubs and folding tubs . . . ., the thickness of the vinyl used would have to be increased to the point where the cost of manufacturing and subsequent retail price of the item would be more than the market would bear.'' The commenter estimated that this would increase the cost of the product by 10 to 15 percent.

(Response 9) The commenter may misunderstand some of the requirements of the proposed rule and the voluntary standard. Although inflatable infant bath tubs are classified as durable infant or toddler products, ASTM F2670 does not require the products to have a minimum expected life. The standard contains requirements that, among other things, are intended to ensure that the bath tub will not collapse or break during use and that any latching or locking mechanisms on the product are durable.

(Comment 10) One commenter stated that the cost of labelling is not as small as indicated in the NPR. Although the commenter agreed that the labelling costs are one-time costs, the commenter said it would take ''multiple years to recoup the loss in margin.'' The commenter did not provide an estimate of the labelling costs. The commenter stated that the commenter would likely ''cease manufacturing inflatable infant bathtubs for sale in the U.S'' if the standard is codified as it is currently written.

(Response 10) Although the commenter asserted that the labelling cost would be greater than indicated, the commenter did not provide any specific estimates of the expected labelling costs. Without more information, the Commission cannot provide a specific response to this comment.

D. Performance and Labelling Requirements

(Comment 11) Two commenters requested that CPSC in the mandatory rule require a maximum water fill line on infant bath tubs. One commenter suggested that the ''fill line demarcation be specified at depths of no greater than 2 inches.'' The other commenter suggested the manufacturer be responsible for providing a maximum fill line that is in a ''suitable position.''

(Response 11) A similar suggestion to require a water fill line was raised in the rulemaking for infant bath seats. For the same reason we gave in that rulemaking, the Commission will not include a water fill line in the infant bath tubs final rule. CPSC staff has voiced concern that a water fill line on infant bath tubs could imply a safe water level, even though staff is aware that children have drowned in very little water. Staff advises, and the Commission agrees, that the ASTM wording required in the user instruction, ''Babies can drown in as little as 1 inch of water. Use as little water as possible to bathe your baby,'' accurately describes the risk associated with any level of water. CPSC staff will continue to monitor this issue.

(Comment 12) A commenter indicated that icons for key safety messages were clearer to consumers, but the commenter did not specifically recommend that CPSC require use of icons and pictograms in the final rule for infant bath tubs.

(Response 12) The Commission acknowledges that icons and pictograms can be used to convey a hazard more effectively, especially for consumers with limited or no English literacy. However, CPSC staff advises that the design of effective graphics can be difficult. For example, some seemingly obvious graphics are poorly understood and can give rise to consumer interpretations that are opposite of what the message of the graphic is intended to convey (deemed ''critical confusions'' in human factors literature). Use of icons and pictograms generally require a consumer study to ensure that the intended message is conveyed. However, if revised warning statements prove to be inadequate to address safety hazards associated with infant bath tubs, CPSC staff may recommend developing graphic symbols in the future to further reduce the risk of injury. Currently, however, the Commission is not mandating use of graphics for warning labels in the infant bath tubs final rule.

(Comment 13) A commenter stated: ''any safety wording should be equally visible in Spanish as well as English.''

(Response 13) The NPR states that the warning label shall appear, at a minimum, in the English language. The Commission does not dismiss the usefulness of providing warnings in Spanish and other non-English languages, and recognizes that adding Spanish versions of the warnings most likely would improve warning readability among the U.S. population more than adding any other language. Nevertheless, the Commission's incident data analyses for infant bath tubs have not revealed a pattern of incidents involving people who speak Spanish. Accordingly, the final rule does not require warnings to be in English and Spanish, but does not prohibit manufacturers from providing the required warnings in another language, in addition to English.

(Comment 14) Two commenters urged CPSC to monitor ASTM's work on including infant bath sling accessories to the infant bath tub standard.

(Response 14) CPSC staff has been an active participant in the ASTM task group work regarding infant bath sling accessories sold with and used with infant bath tubs. Staff will continue this work. We encourage the infant bath sling task group to finalize recommended sling requirements so that the ASTM subcommittee can discuss this progress and vote for inclusion of bath sling requirements in the voluntary standard for infant bath tubs. Once this work is complete, CPSC staff will assess whether any revised voluntary standard adequately addresses incident data on bath slings

and make a recommendation to the Commission. The Commission will consider whether to incorporate such revisions into an amendment to the mandatory bath tubs standard through the revision process described in section 3 of Public Law 112–28.

(Comment 15) One commenter recommended that, based on the incident data, CPSC restrict the scope of the rule to cover only infant bath tubs for infants under 24 months of age.

(Response 15) The Commission is not including an age limit in the final rule for infant bath tubs. Section 104(f) of the CPSIA defines ''durable infant or toddler products'' as ''durable products intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' Although infant bath tubs are considered durable infant or toddler products, no age requirement or age cut-off for use of the product is included in the ASTM standard. Depending on the manufacturer's design, infant bath tubs can accommodate users from newborns to preschoolers. Safety requirements included in the ASTM standard, and incorporated into the final rule for bath tubs, benefit infants and toddlers across all intended ages of foreseeable users.

(Comment 16) One commenter stated support for the ''new wording as it is clearer,'' and stated that the ''new FALLING HAZARD is a good addition.'' The commenter suggested adding an additional warning to ''NOT USE ON RAISED SURFACES, SUCH AS TABLES OR WORKTOPS.''

(Response 16) One incident involved a skull fracture sustained when a bath tub fell from a kitchen counter. Based on the incident data, staff advises that the fall warnings included in ASTM F2670–17 adequately and succinctly convey the message of where the infant bath tub can be used safely based on the manufacturer's intended use. Specifically, section 8.5.2.2 of the voluntary standard states:

Additional warning statements shall address the following:

- Place tub only [insert manufacturer's intended location(s) for safe use (*e.g.,* in adult tub, sink, or on floor)].
- Never lift or carry baby in tub.

Staff will continue to monitor incidents for use of bath tubs on elevated surfaces.

(Comment 17) One commenter stated: ''the requirement in 16 CFR 1234.2(b)(6)(i)(C) previously proposed by CPSC was discussed by the task group; it was considered too nebulous, subjective and virtually unenforceable, and therefore was recommended to be deleted.''

(Response 17) Proposed 16 CFR 1234.2(b)(6)(i)(C) states: ''9.3 In addition to the warnings, the instructional literature shall emphasize and reinforce the safe practices stated in the warnings.'' The intent of the statement was to ensure that the instructional statements in section 9 of the voluntary standard remain consistent with the warning statements in section 8. Current wording in section 9 of ASTM F2670–17 meets this objective. Accordingly, for the final rule, the Commission adopts the wording in section 9 of ASTM F2670–17, without modification.

E. General and Legal

(Comment 18) Two commenters recommended delaying publication of the final rule until major warnings format and content revisions proposed in the NPR can be properly reviewed, balloted through the ASTM process, and then implemented into F2670.

(Response 18) Since the NPR was published, ASTM's subcommittee for infant bath tubs reviewed, balloted, and published a new standard (F2670–17) with improved warning formatting and content revisions in alignment with the NPR, except for the font size of certain warning statements. For the final rule, the Commission incorporates by reference ASTM F2670–17, without modification.

(Comment 19) One commenter noted that the NPR contains several errors when referring to figures that show example warning labels. The Commenter stated:

- Figure 1 is missing from the NPR. The NPR starts with Figure 2;
- A reference to Figure 3 is missing in proposed section 1234.2(b)(4)(i)(F);
- A reference to Figure 3 in proposed section 1234.2(b)(6)(i)(B)(3) is inaccurate and should instead reference Figure 4; and
- A reference to Figure 4 in proposed section 1234.2(b)(6)(i)(B)(3) is inaccurate and should reference a different example warning label similar to Figure 3.

(Response 19) The omission of Figure 1 from the NPR was intentional. Figure 1 is referenced in paragraph 5.6 of ASTM F2670–13, which the Commission proposed to incorporate by reference without modification. The NPR only discussed sections of the proposed rule that differed from ASTM F2670–13. Reusing Figure 1 in the NPR would have created two ''Figure 1'' designations in the final rule. Otherwise, we agree with the comment and references to figures are corrected in the final rule by incorporation of ASTM F2670–17 without modification.

(Comment 20) A commenter stated that, while they appreciated CPSC staff's work on the proposed rule, they were concerned about staff's ''ability to seemingly be able to arbitrarily change language or standards without any justification.'' In addition the commenter stated: ''[i]t is the role of the Commission, **not professional staff** to dictate changes in policy.'' (Emphasis in original).

(Response 20) The Commission does not agree that staff ''arbitrarily'' changes language in a standard ''without any justification.'' In fact, staff ensures that each package for proposed and final rules contains ample explanation and thorough documentation of the appropriate engineering and/or scientific analysis to support staff's recommendations. By voting to issue the NPR, the Commission expressed its policy decisions. Furthermore, at ASTM meetings, CPSC staff is not speaking for the Commission, but is expressing staff's views, based on staff's expertise.

Moreover, since the proposed rule was published, CPSC staff continued participating on the ASTM Ad Hoc TG on warning labels. The Ad Hoc TG discussed labeling issues, including formatting, and a best-practices approach for ASTM juvenile products standards warning labels moving forward. The latest version of the voluntary standard, ASTM F2670–17, incorporates the Ad Hoc TG's recommendations. For the final rule, the Commission incorporates by reference ASTM F2670–17, without modification.

(Comment 21) A commenter stated that the text of the rule for infant bath tubs should be available for free and in the public domain, rather than incorporating by reference an ASTM standard that is subject to copyright restrictions. The commenter made several arguments supporting this contention, including:

- Citizens have the right ''without limitation, to read, speak, and disseminate the laws that we are required to obey, including laws that are critical to public safety and commerce'';
- the right to freedom of speech is ''imperiled'' if citizens cannot freely communicate provisions of law with each other;
- equal protection and due process are ''jeopardized'' if only citizens that can afford to purchase the law have access;
- the cost of obtaining standards incorporated by reference into current CPSC regulations would be in the hundreds of dollars to purchase, and would require consultation of other agencies regulations;

• public access to the law is crucial to CPSC's mission: ''rationing access to the law hurts trade, it hurts public safety, and it makes it much more difficult for the CPSC to carry out its congressionally-mandated mission.''; and

• prohibiting the wide dissemination of the mandatory rules for durable infant standards makes the public less safe.

The commenter argued that, based on fundamental principles in the Constitution and judicial opinions, as reviewed by the commenter, it is unlawful and unreasonable for the Commission to make voluntary standards mandatory without providing free access to the law.

(Response 21) The infant bath tub standard is authorized by Congress under section 104 of the CPSIA. This CPSIA provision directs the Commission to issue standards for durable infant or toddler products that are ''substantially the same as,'' or more stringent than, applicable voluntary standards. Thus, unless the Commission determines that more stringent requirements are needed, the Commission's rule must be nearly the same as the voluntary standard. ASTM's voluntary standards are protected by copyright, which the Commission (and the federal government generally) must observe. The United States may be held liable for copyright infringement. 28 U.S.C. 1498. The Office of the Federal Register (OFR) has established procedures for incorporation by reference that seek to balance the interests of copyright protection and public accessibility of material. 1 CFR part 51. The CPSC complies with these requirements whenever incorporating material by reference. In addition, when the Commission proposes a section 104 rule, ASTM's copyrighted voluntary standards are available for free during the comment period.

The Commission's process for developing section 104 rules is open and transparent. CPSC staff works with stakeholders through the ASTM process, specifically the ASTM subcommittee responsible for each product type, to evaluate each voluntary standard and its ability to address the injuries found in CPSC's incident data. The ASTM subcommittee includes representatives from government, manufacturers, retailers, trade organizations, laboratories, and consumer advocacy groups, as well as consultants and members of the public. CPSC staff that participates in ASTM meetings are required to place such meetings on the Commission's public calendar, draft a meeting summary, and provide such summary to the Commission's Office of the Secretary, pursuant to 16 CFR 1031.11(f) and 1012. Once rulemaking commences, staff also places meeting summaries on the rulemaking docket. As required, the Commission's section 104 rulemakings follow notice and comment procedures of the Administrative Procedure Act (APA) with an NPR and a final rule that explain the substance of the proposed and final requirements.

We disagree that the public is less safe because final rules under section 104 of the CPSIA are based on a voluntary standard. Voluntary standards generally can be updated more frequently than a traditionally enacted mandatory standard to respond to changing products and emerging hazards. Durable infant and toddler products, in particular, are subject to frequent product changes, including design modifications. Section 104 of the CPSIA also includes a mechanism allowing the CPSC to update the mandatory standard when voluntary standard modifications occur.

(Comment 22) A commenter objected to the process for promulgating rules related to durable infant and toddler products under section 104 of the CPSIA. More specifically, the commenter objected to the lack of availability and accessibility of the voluntary standard that the Commission proposes to incorporate by reference. The commenter stated that although ASTM made a copy of the voluntary standard that CPSC proposes to incorporate by reference into the rule available for viewing on ASTM's Web site:

• A redline of CPSC's modifications to the voluntary standard was not made available;

• the standard was ''read only'';

• the standard was displayed with a legal warning restricting use;

• the standard did not allow for copy and paste of the text in the standard; and

• the document is difficult for people with visual impairments to use.

(Response 22) The Freedom of Information Act requires that the text of the material being incorporated by reference be ''reasonably available.'' 5 U.S.C. 552(a)(1)(E); 1 CFR part 51. As set forth in response to comment 21, the Commission complies with this requirement. Nothing in the law requires the specific enhancements to text of the proposed mandatory standard articulated by the commenter.

(Comment 23) A commenter suggested that a conflict of interest occurs when a government entity relies on a voluntary standards body, such as ASTM, that profits from the sale of what essentially becomes the law. The commenter stated that many government agencies have joined ASTM as organizational members, and that 44 CPSC employees are members of ASTM. The commenter also noted that the ASTM standard for infant bath tubs is five pages long and that when CPSC's proposed edits to the standard are incorporated, the standard is six to seven pages long. The commenter asserted that based on this: ''the government is clearly an author of this work.''

(Response 23) CPSC staff did not author the voluntary standard on infant bath tubs. ASTM began working on the voluntary standard for infant bath tubs in 2006, well before the congressional mandate to issue mandatory standards based on the voluntary standards for durable infant and toddler products. CPSC staff contributed, as it always has, to the development of the voluntary standard to address incident data, along with all stakeholders who participate on the relevant subcommittee. Through the rulemaking process, the Commission assesses each voluntary standard for its ability to adequately address injuries found in CPSC's incident data. If the voluntary standard should be more stringent, the Commission proposes modifications for the mandatory rule. In the case of infant bath tubs, based on modifications made in the voluntary standard since issuance of the NPR, the Commission incorporates by reference the most recent voluntary standard, ASTM F2670–17, as the final rule for infant bath tubs, without modification.

(Comment 24) A commenter argued that CPSC's Voluntary Standards Coordinator, by serving on the board of ANSI, has been placed in the position of ''serving two masters,'' as the person has a fiduciary responsibility to ANSI, as well as to his employer, the U.S. government. The commenter criticized the CPSC for not ''clearly delineat[ing] the roles government employees will take when assuming fiduciary responsibilities for private organizations.'' The commenter stated that although CPSC's Voluntary Standards Coordinator served on the board of ANSI, the CPSC had no memorandum of understanding (MOU) with ANSI regarding this relationship; and instead, CPSC asserted its reliance on the Commission's regulation at 16 CFR part 1031. The commenter stated that the Office of Government Ethics (OGE) has provided the guidance on government employees serving on the boards of external nonprofits, and the OGE recommends an MOU among the agency, employee and the nonprofit

organization to avoid violation of 18 U.S.C. 208(a).

(Response 24) CPSC does not rely on a unique MOU among the agency, employee, and each voluntary standards organization. Because CPSC employees, based on job description, participate in different capacities with different organizations, the Commission has regulations (16 CFR part 1031) setting forth best practices and ethical responsibilities of employees involved in voluntary standards activities.

VI. Incorporation by Reference

Section 1234.2(a) of the final rule provides that infant bath tubs must comply with ASTM F2670–17. The OFR has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that, for a final rule, agencies must discuss in the preamble to the rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. Additionally, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, the discussion in section VII of this preamble summarizes the provisions of ASTM F2670–17. Interested persons may purchase a copy of ASTM F2670–17 from ASTM, either through ASTM's Web site, or by mail at the address provided in the rule. A copy of the standard may also be inspected at the CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, or at NARA, as discussed above. Note that the Commission and ASTM arranged for commenters to have ''read only'' access to ASTM F2670–13 during the NPR's comment period.

VII. Description of the Final Rule

A. Final Safety Standard for Infant Bath Tubs

For the final rule for infant bath tubs, the Commission will incorporate by reference ASTM F2670–17, without modification. ASTM F2670–17 contains both general and product-specific requirements to address the hazards associated with infant bath tubs. ASTM F2670–17 includes the following key provisions: Scope, Terminology, General Requirements, Performance Requirements, Test Methods, Marking and Labeling, and Instructional Literature.

Scope. Section 1 of ASTM F2670–17 provides the scope of products covered by the standard, which: ''establishes performance requirements, test methods, and labeling requirements to promote the safe use of infant bath tubs.'' As stated in section II.A. of this preamble, ASTM F2670–17 defines an ''infant bath tub'' as a ''tub, enclosure, or other similar product intended to hold water and be placed into an adult bath tub, sink, or on top of other surfaces to provide support or containment, or both, for an infant in a reclining, sitting, or standing position during bathing by a caregiver.'' This description includes ''bucket style'' tubs that support a child sitting upright, tubs with an inclined seat for infants too young to sit unsupported, inflatable tubs, folding tubs, and tubs with more elaborate designs including handheld shower attachments and even whirlpool settings. ASTM F2670–17 excludes from its scope ''products commonly known as bath slings, typically made of fabric or mesh.''

Terminology. Section 3 of ASTM F2670–17 provides definitions of terms specific to the infant bath tub standard.

General Requirements. Section 5 of ASTM F2670–17 sets forth general requirements for infant bath tubs, including:

- Sharp Edges or Points (referencing 16 CFR 1500.48 and 1500.49);
- Small Parts (referencing 16 CFR 1501);
- Lead in Paint and Surface Coatings (referencing 16 CFR 1303);
- Resistance to Collapse;
- Scissoring, Shearing, and Pinching;
- Openings;
- Protective Components;
- Requirements for Toys (incorporating ASTM F963); and
- Labeling.

Performance Requirements and Test Methods. Section 6 of ASTM F2670–17 contains performance requirements for restraint systems, static load, and suction cups. Section 7 of the standard sets forth test methods for the performance requirements set forth in sections 5 and 6 of the standard.

Marking and Labeling. Section 8 of ASTM F2670–17 contains requirements for marking products, including warnings that must be applied to the product and the product packaging. Section 8 sets forth the substance, format, and prominence requirements for warning information.

Instructional Literature. Section 9 of ASTM F2670–17 requires that instructions provided with infant bath tubs be easy to read and understand. Additionally, the section contains requirements for instructional literature contents and format, as well as prominence of certain language.

B. Amendment to 16 CFR Part 1112 to Include NOR for Infant Bath Tubs Standard

The final rule amends part 1112 to add a new § 1112.15(b)(41) that lists 16 CFR part 1234, *Safety Consumer Safety Specification for Infant Bath Tubs,* as a children's product safety rule for which the Commission has issued an NOR. Section XIII of the preamble provides additional background information regarding certification of infant bath tubs and issuance of an NOR.

VIII. Effective Date

The APA generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). CPSC generally considers 6 months to be sufficient time for suppliers of durable infant and toddler products to come into compliance with a new standard under section 104 of the CPSIA, and the Commission proposed a 6-month effective date in the NPR for infant bath tubs. We received no comments on the proposed effective date. Accordingly, the final rule will have a 6-month effective date. We note that two recent versions of the voluntary standard, ASTM F2670–16 and ASTM F2670–16a, both contain a majority of changes that align with the NPR, so manufacturers that comply with the voluntary standard will have had a year to prepare production to the new federal regulation.

IX. Regulatory Flexibility Act

A. Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that agencies review a proposed rule and a final rule for the rule's potential economic impact on small entities, including small businesses. Section 604 of the RFA generally requires that agencies prepare a final regulatory flexibility analysis (FRFA) when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As discussed in this analysis, adopting ASTM F2670–17 without modification would not be expected to have a significant impact on a substantial number of small entities.

For the final rule, the Commission is incorporating by reference the voluntary standard for infant bath tubs, ASTM F2670–17, without modification. As set forth in section IX.B below, six of the 10 small manufacturers and four of the five small importers are already believed to be in compliance with the requirements of the voluntary standard. Because the products are not complex, modifications

required to bring the remaining products into compliance should be minor. All firms will need to make changes to their product's warning labels and use different equipment in the static load test. CPSC expects the cost of these modifications to be low. Firms will incur additional costs associated with third party testing. However, CPSC does not expect the impact of third party testing to be economically significant for most firms. Accordingly, the Commission certifies that the final rule for infant bath tubs will not have a significant economic impact on a substantial number of small entities.

B. Impact on Small Businesses

Under U.S. Small Business Administration (SBA) guidelines, a manufacturer of infant bath tubs is small if it has 500 or fewer employees, and importers and wholesalers are considered small if they have 100 or fewer employees. Based on these guidelines, 16 of the 22 domestic firms known to be supplying infant bath tubs to the U.S. market are small firms—10 manufacturers, five importers, and one firm with an unknown supply source.

1. Small Domestic Manufacturers

The impact of the final rule on small manufacturers will differ, based on whether manufacturers' infant bath tubs are already compliant with F2670–16. Six domestic manufacturers are in compliance with ASTM F2670–16 and are likely to continue to comply with the new voluntary standard approved in Janury 2017, ASTM F2670–17. Firms in compliance with the voluntary standard will not need to make physical modifications to their products, but still will need to make some modifications to the warning labels on their products. However, the costs of modifying an existing label are usually small.

Four domestic manufacturers appear to be noncompliant with ASTM F2607–16 and will need to modify their products in order to meet ASTM F2607–17. The Commission expects product modifications to be minor because the products are not complex; the products are generally composed of one or two pieces of hard or soft plastic molded together. Modifications to meet the standard primarily involve adjusting the size of grooves or openings on the side of the product to avoid finger entrapment. All firms will need to modify their warning labels to meet the mandatory standard. Staff believes 6 months is sufficient time to make the necessary changes and the costs associated with doing so are low. Therefore, the impact of the final rule is likely to be small for most producers who do not comply with ASTM F2607–16.

Under section 14 of the CPSA, infant bath tubs are also subject to third party testing and certification. Once the new requirements become effective, all manufacturers will be subject to the additional costs associated with the third party testing and certification requirements under the testing rule, *Testing and Labeling Pertaining to Product Certification* (16 CFR part 1107). Third party testing will include physical and mechanical test requirements specified in the infant bath tub final rule; lead and phthalates testing is already required. Third party testing costs are in addition to the direct costs of meeting the infant bath tub standard.

Based on testing costs for similar juvenile products, staff estimates that testing to the ASTM voluntary standard could cost approximately $500–$600 per model sample. On average, each small domestic manufacturer supplies three different models of infant bath tubs to the U.S. market annually. Therefore, if third party testing were conducted every year on a single sample for each model, third party testing costs for each manufacturer would be about $1,500–1,800 annually. Based on a review of firms' revenues and products, the impact of third party testing to ASTM F2670–17 would not exceed one percent of revenues. Thus, it seems unlikely that the impacts of the rule will be economically significant for most small producers.

2. Small Domestic Importers

Most importers will not experience significant impacts as a result of the final rule. The Commission believes that four of the five small importers are compliant with the ASTM F2670–16 voluntary standard, and therefore only would need to assure that their suppliers make the label modifications to comply with the final rule. Complying with the final rule could be more difficult for the remaining importer because changes beyond simple modifications to the warning label are probably necessary. The remaining importer, who is likely not in compliance with the voluntary standard, might need to find an alternate source of infant bath tubs if their existing suppliers do not come into compliance with the requirements of the final rule. Alternatively, this firm may discontinue importing infant bath tubs altogether or perhaps substitute another product.

As is the case with manufacturers, all importers will be subject to third party testing and certification requirements, and consequently, they will experience the associated costs, if their supplying foreign firm(s) does not perform third party testing. However, based on firms' revenues and on the number of samples that would be required, it is unlikely that there will be a significant economic impact due to the testing requirements.

As mentioned above, one small domestic firm has an unknown supply source. However, the firm has a diverse product line and claims compliance with various standards for several of its other infant products. It is possible that the firm's infant bath tub is compliant with the current bath tub standard and the firm would only need to modify existing warning labels. In any case, this firm should not experience large impacts because infant bath tubs are only one of many products it supplies. The labeling requirements also apply to importers. However, as described above, staff believes firms can easily meet this requirement.

X. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, a rule that has ''little or no potential for affecting the human environment,'' is categorically excluded from this requirement. 16 CFR 1021.5(c)(1). The final rule falls within the categorical exclusion.

XI. Paperwork Reduction Act

The final rule for infant bath tubs contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The preamble to the proposed rule (80 FR at 48776–77) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. OMB has assigned control number 3041–0171 to this information collection. We did not receive any comment regarding the information collection burden of the proposal. However, the final rule makes modifications regarding the information collection burden because the number of estimated manufacturers subject to the information collection burden is now estimated at 25 manufacturers rather than the 26 manufacturers initially estimated in the proposed rule.

Accordingly, the estimated burden of this collection of information is modified as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1234	25	3	75	1	75

Our estimate is based on the following:

Section 8.1 of ASTM F2670–17 requires that all infant bath tubs and their retail packaging be permanently marked or labeled as follows: The manufacturer, distributor, or seller name, place of business (city, state, mailing address, including zip code), and telephone number; and a code mark or other means that identifies the date (month and year as a minimum) of manufacture.

CPSC is aware of 25 firms that supply infant bath tubs in the U.S. market. For PRA purposes, we assume that all 25 firms use labels on their products and on their packaging already. All firms will need to make some modifications to their existing labels. We estimate that the time required to make these modifications is about 1 hour per model. Each of the 25 firms supplies an average of three different models of infant bath tubs. Therefore, we estimate the burden hours associated with labels to be 75 hours annually (1 hour × 25 firms × 3 models per firm = 75 hours annually).

We estimate the hourly compensation for the time required to create and update labels is $33.30 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2016, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, we estimate the annual cost to industry associated with the labeling requirements in the final rule to be approximately $2,498 ($33.30 per hour × 75 hours = $2,497.5). This collection of information does not require operating, maintenance, or capital costs.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this final rule to the OMB.

XII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules.'' Therefore, the preemption provision of section 26(a) of the CPSA applies to this final rule issued under section 104.

XIII. Amendment to 16 CFR Part 1112 To Include a Notice of Requirement for the Infant Bath Tub Standard

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other Act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Section 14(a)(2) of the CPSA requires that certification of children's products subject to a children's product safety rule be based on testing conducted by a CPSC-accepted, third party conformity assessment body. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third party conformity assessment bodies (or laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The *Safety Standard for Infant Bath Tubs,* to be codified at 16 CFR part 1234, is a children's product safety rule that requires the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third-Party Conformity Assessment Bodies,* 78 FR 15836 (March 12, 2013), which is codified at 16 CFR part 1112 (referred to here as part 1112). Part 1112 became effective on June 10, 2013 and establishes requirements for accreditation of third-party conformity assessment bodies (or laboratories) to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies a list of all of the NORs that the CPSC had published at the time part 1112 was issued. All NORs issued after the Commission published part 1112, such as the standard for infant bath tubs, require the Commission to amend part 1112. Accordingly, the Commission is now amending part 1112 to include the standard for infant bath tubs in the list of other children's product safety rules for which the CPSC has issued NORs.

Laboratories applying for acceptance as a CPSC-accepted third-party conformity assessment body to test to the new standard for infant bath tubs would be required to meet the third-party conformity assessment body accreditation requirements in 16 CFR part 1112, *Requirements Pertaining to Third-Party Conformity Assessment Bodies.* When a laboratory meets the requirements as a CPSC-accepted third-party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1234, *Safety Standard for Infant Bath Tubs,* included in its scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC Web site at: *www.cpsc.gov/labsearch.*

As required by the RFA, staff conducted a FRFA when the Commission issued the part 1112 rule (78 FR 15836, 15855–58). Briefly, the FRFA concluded that the accreditation requirements would not have a significant adverse impact on a substantial number of small test laboratories because no requirements were imposed on test laboratories that did not intend to provide third-party testing services. The only test laboratories that were expected to provide such services were those that anticipated receiving sufficient revenue from the mandated testing to justify accepting the requirements as a business decision. Moreover, a test laboratory would only choose to provide such services if it anticipated receiving revenues sufficient to cover the costs of the requirements.

Based on similar reasoning, amending 16 CFR part 1112 to include the NOR for the infant bath tubs standard will not have a significant adverse impact on small test laboratories. Moreover, based upon the number of test laboratories in the United States that have applied for CPSC acceptance of accreditation to test for conformance to other mandatory juvenile product standards, we expect that only a few test laboratories will seek CPSC acceptance of their accreditation to test for conformance with the infant bath tub standard. Most of these test laboratories will have

already been accredited to test for conformity to other mandatory juvenile product standards, and the only costs to them would be the cost of adding the infant bath tubs standard to their scope of accreditation. For these reasons, the Commission certifies that the NOR amending 16 CFR part 1112 to include the infant bath tubs standard will not have a significant impact on a substantial number of small entities.

List of Subjects

16 CFR Part 1112

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

16 CFR Part 1234

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, bath tub, and Toys.

For the reasons discussed in the preamble, the Commission amends Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

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

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

■ 2. Amend § 1112.15 by adding paragraph (b)(41) to read as follows:

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

* * * * *

(b) * * *

(41) 16 CFR part 1234, Safety Standard for Infant Bath Tubs.

* * * * *

■ 3. Add part 1234 to read as follows:

PART 1234—SAFETY STANDARD FOR INFANT BATH TUBS

Sec.

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, 104, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

§ 1234.1 Scope.

This part establishes a consumer product safety standard for infant bath tubs.

§ 1234.2 Requirements for infant bath tubs.

Each infant bath tub must comply with all applicable provisions of ASTM F2670–17, Standard Consumer Safety Specification for Infant Bath Tubs, approved on January 1, 2017. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

Dated: March 27, 2017.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2017–06270 Filed 3–29–17; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2017–N–0011]

Requirements To Submit Prior Notice of Imported Food; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the prior notice of imported food regulations to reflect a change in the electronic data interchange system and its expanded capabilities, to correct inaccurate number designations in section headings, and to reflect a change in an office's name. This action is ministerial or editorial in nature.

DATES: This rule is effective March 30, 2017.

FOR FURTHER INFORMATION CONTACT: Jennifer Thomas, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2094.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381(m)) requires that FDA establish regulations requiring that those persons importing articles of food or offering articles of food for import into the United States submit certain information about imported foods before the products' arrival in the United States. We have established the regulations at title 21, Code of Federal Regulations (CFR) part 1, subpart I (21 CFR 1.276 to 1.285). Section 801(m) of the FD&C Act also provides that an article of food imported or offered for import is subject to refusal of admission into the United States if adequate prior notice has not been provided to FDA. Our regulations in 21 CFR part 1, subpart I, include information on when to submit prior notice, how to submit prior notice, and what information is required in a prior notice.

II. Description of the Technical Amendments

We are making technical amendments in our prior notice regulations in part 1, subpart I (§§ 1.276 to 1.285), to:

- Reflect the change in an electronic data interchange system and its expanded capabilities;
- correct paragraph number designations in certain introductory text paragraphs; and
- revise the name of an FDA office receiving certain information.

The technical amendments are ministerial or editorial in nature and are not intended to modify any substantive requirements.

A. Revising an Electronic Data Interchange System and Recognizing Its Expanded Capabilities

Our current regulations, at §§ 1.279, 1.280, 1.281, and 1.282, refer to the ''Automated Broker Interface/Automated Commercial System (ABI/ACS)'' or ''Automated Broker Interface of the Automated Commercial System (ABI/ACS).'' We are amending these regulations to reflect the change of the electronic data interchange system from ''Automated Broker Interface/Automated Commercial System (ABI/ACS)'' or ''Automated Broker Interface of the Automated Commercial System (ABI/ACS)'' to ''Automated Broker Interface/Automated Commercial Environment/International Trade Data System (ABI/ACE/ITDS).'' In the **Federal Register** of May 16, 2016 (81 FR 30320), the Department of Homeland Security's U.S. Customs and Border Protection (CBP) issued a notice

announcing that the Automated Commercial Environment (ACE) will be the sole electronic data interchange (EDI) system authorized by the Commissioner of CBP for processing electronic entries and entry summaries associated with the entry types specified in the notice, for merchandise that is subject to our import requirements. The notice also announced that the Automated Commercial System (ACS) will no longer be a CBP-authorized EDI system for purposes of processing these electronic filings. Therefore, we are revising our regulations at §§ 1.279, 1.280, 1.281, and 1.282 by replacing all references to the ''Automated Broker Interface/Automated Commercial System (ABI/ACS)'' and ''Automated Broker Interface of the Automated Commercial System (ABI/ACS)'' with ''Automated Broker Interface/ Automated Commercial Environment/ International Trade Data System (ABI/ ACE/ITDS)'' to accurately identify the current EDI system. We note, however, that there is no change in the FDA Prior Notice System Interface (FDA PNSI).

Additionally, current § 1.280 states that, for purposes of submitting prior notice, prior notice for articles that have been refused under section 801(m)(1) of the FD&C Act and our regulations must be submitted through the FDA PNSI until such time as we and CBP issue a determination that ACS or its successor system can accommodate such transactions. In addition, current § 1.281 describes what information must be provided in the prior notice and states that, until such time as we and CBP issue a determination that ACS can accommodate such transactions, the tracking number may not be submitted in lieu of other certain information if the prior notice is submitted via ABI/ACS. Furthermore, if an article of food is arriving by express consignment operator or carrier, our current regulations state that the tracking number can only be submitted in certain circumstances when neither the submitter nor transmitter is the express consignment operator or carrier, and the prior notice is submitted via the FDA PNSI. We are revising the regulations to remove these limitations because the new ACE EDI system can accommodate such transactions. These faster, streamlined, and automated processes allow traders to submit tracking numbers much more easily. Therefore, we are removing the limitation that the tracking number may not be submitted in lieu of certain other information throughout the prior notice regulations.

Furthermore, with the tracking number, we can learn the information we need to make entry determinations, such as port, date and time of arrival, airway bill, bill of lading, and vessel name and voyage or flight number. Removing the condition that the transmitter or submitter cannot be the operator or carrier gives submitters more options for providing the information we require. Accordingly, the technical amendment provides greater flexibility to industry while also allowing us to screen imported food articles adequately.

These changes are deregulatory in nature because they lessen the burden imposed on traders without impairing our ability to ensure the safety of imported food. The expanded capabilities of the new ACE EDI system allow for additional flexibility in submitting certain information. Because of technical limitations of the former system, in certain cases the prior notice information could be submitted only via FDA PNSI because ACS could not accommodate such transactions. For example, ACS could not accept the tracking number in lieu of other certain information such as port, date and time of arrival, airway bill, bill of lading, vessel name, and voyage or flight number.

The new ACE EDI system can accommodate these transactions, which results in additional flexibility to industry. Some filers no longer have to use two systems to file prior notice information for the same food import line. In addition, FDA staff will be able to more efficiently process import entry submissions and more quickly make the initial import entry determination for food imports, in furtherance of our goal to ensure the safety of imported food.

B. Correcting Number Designations in Headings and Changing an FDA Office's Title

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) was signed into law on January 4, 2011. Section 304 of FSMA amended section 801(m)(1) of the FD&C Act to require that a person submitting prior notice of imported food, in addition to other information already required, report ''any country to which the article has been refused entry.'' On May 5, 2011, we issued an interim final rule (2011 IFR) (76 FR 25542) implementing section 304 of FSMA. Specifically, the 2011 IFR amended § 1.281 by adding a new requirement to paragraphs (a), (b), and (c) that any person submitting prior notice of imported food report the name of any country to which the article has been refused entry. However, the 2011 IFR neglected to make corresponding edits to change the paragraph number designations in the introductory text for paragraphs (a), (b), and (c) in § 1.281 to reflect the additional data element as added by the 2011 IFR and affirmed in a final rule published on May 30, 2013 (78 FR 32359). The technical amendment corrects those designations.

Furthermore, current § 1.285(i)(2) refers to the ''FDA Prior Notice Center.'' The office is now named the ''FDA Division of Food Defense Targeting,'' so we are amending § 1.285(i)(2) accordingly.

III. The Administrative Procedure Act

Publication of this document constitutes final action of these changes under the Administrative Procedure Act (APA) (5 U.S.C. 553). Under 5 U.S.C. 553(b)(3)(B) of the APA, an Agency may, for good cause, find (and incorporate the finding and a brief statement of reasons in the rules issued) that notice and public comment procedure on a rule is impracticable, unnecessary, or contrary to the public interest. We have determined that notice and public comment are unnecessary because these amendments only make technical or non-substantive, ministerial changes to reflect the change in an electronic data interchange system and its expanded capabilities, correct number designations in headings as a result of the FSMA amendments to prior notice, and amend the name of an FDA office. For these reasons we have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment is unnecessary.

In addition, we find good cause for these amendments to become effective on the date of publication of this action. The APA allows an effective date less than 30 days after publication as ''provided by the agency for good cause found and published with the rule'' (5 U.S.C. 553(d)(3)). A delayed effective date is unnecessary in this case because the amendments do not impose any new regulatory requirements on affected parties. As a result, affected parties do not need time to prepare before the rule takes effect. Therefore, we find good cause for this correction to become effective on the date of publication of this action.

IV. Paperwork Reduction Act of 1995

This final rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 1, subpart I, have been approved under OMB control number 0910–0520.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1 is amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 342, 343, 350c, 350d, 350e, 350j, 350k, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 373, 374, 379j–31, 381, 382, 384a, 384b, 384d, 387, 387a, 387c, 393; 42 U.S.C. 216, 241, 243, 262, 264, 271; Pub. L. 107–188, 116 Stat. 594, 668–69; Pub. L. 111–353, 124 Stat. 3885, 3889.

■ 2. Amend § 1.279 by revising paragraph (b)(1) to read as follows:

§ 1.279 When must prior notice be submitted to FDA?

* * * * *

(b) * * *

(1) If prior notice is submitted via the Automated Broker Interface/Automated Commercial Environment/International Trade Data System (ABI/ACE/ITDS), you may not submit prior notice more than 30-calendar days before the anticipated date of arrival.

* * * * *

■ 3. Amend § 1.280 by revising paragraphs (a)(1) and (2) and (b) to read as follows:

§ 1.280 How must you submit prior notice?

(a) * * *

(1) The U.S. Customs and Border Protection (CBP) Automated Broker Interface/Automated Commercial Environment/International Trade Data System (ABI/ACE/ITDS); or

(2) The FDA PNSI at *https://www.access.fda.gov/.* You must submit prior notice through the FDA Prior Notice System Interface (FDA PNSI) for articles of food imported or offered for import by international mail, and other transaction types that cannot be made through ABI/ACE/ITDS.

(b) If a customhouse broker's or self-filer's system is not working or if the ABI/ACE/ITDS interface is not working, prior notice must be submitted through the FDA PNSI.

* * * * *

■ 4. Amend § 1.281 by revising paragraphs (a) introductory text, (a)(11)(iv), (a)(17)(i) and (iii), (b) introductory text, (c) introductory text, (c)(11)(iii), and (c)(17)(i) and (iii) to read as follows:

§ 1.281 What information must be in a prior notice?

(a) *General.* For each article of food that is imported or offered for import into the United States, except by international mail, you must submit the information for the article that is required in paragraphs (a)(1) through (18) of this section:

* * * * *

(11) * * *

(iv) Notwithstanding paragraphs (a)(11) introductory text and (a)(11)(i) through (iii) of this section, if the article of food is arriving by express consignment operator or carrier, the express consignment operator or carrier tracking number may be submitted in lieu of the information required in paragraphs (a)(11) introductory text and (a)(11)(i) through (iii) of this section.

* * * * *

(17) * * *

(i) The Airway Bill number(s) or Bill of Lading number(s), as applicable. This information is not required for an article of food when carried by or otherwise accompanying an individual when entering the United States. If the article of food is arriving by express consignment operator or carrier, the express consignment operator or carrier tracking number may by submitted in lieu of the Airway Bill number(s) or Bill of Lading number(s), as applicable;

* * * * *

(iii) For food arriving by air carrier, the flight number. If the article of food is arriving by express consignment operator or carrier, the express consignment operator or carrier tracking number may be submitted in lieu of the flight number;

* * * * *

(b) *Articles arriving by international mail.* For each article of food that is imported or offered for import into the United States by international mail, you must submit the information for the article that is required in paragraphs (b)(1) through (12) of this section:

* * * * *

(c) *Refused articles.* If the article of food has been refused under section 801(m)(1) of the act and under this subpart, you must submit the information for the article that is required in paragraphs (c)(1) through (19) of this section. However, if the refusal is based on § 1.283(a)(1)(iii) (Untimely Prior Notice), you do not have to resubmit any information previously submitted unless it has changed or the article has been exported and the original prior notice was submitted through ABI/ACE/ITDS. If the refusal is based on § 1.283(a)(1)(ii), you should cancel the previous submission per § 1.282(b) and (c).

* * * * *

(11) * * *

(iii) Notwithstanding paragraphs (c)(11) introductory text and (c)(11)(i) and (ii) of this section, if the article of food arrived by express consignment operator or carrier, the express consignment operator or carrier tracking number may be submitted in lieu of the information required in paragraphs (c)(11) introductory text and (c)(11)(i) and (ii) of this section.

* * * * *

(17) * * *

(i) The Airway Bill number(s) or Bill of Lading number(s), as applicable; however, this information is not required for an article of food when carried by or otherwise accompanying an individual when entering the United States. If the article of food arrived by express consignment operator or carrier, the express consignment operator or carrier tracking number may be submitted in lieu of the Airway Bill number(s) or Bill of Lading number(s), as applicable;

* * * * *

(iii) For food that arrived by air carrier, the flight number. If the article of food arrived by express consignment operator or carrier, the express consignment operator or carrier tracking number may be submitted in lieu of the flight number;

* * * * *

■ 5. Amend § 1.282 by revising paragraph (c) to read as follows:

§ 1.282 What must you do if information changes after you have received confirmation of a prior notice from FDA?

* * * * *

(c) If you submitted the prior notice via ABI/ACE/ITDS, you should cancel the prior notice via ACE by requesting that CBP cancel the entry.

■ 6. Amend § 1.285 by revising the first sentence in paragraph (i)(2) to read as follows:

§ 1.285 What happens to food that is imported or offered for import from unregistered facilities that are required to register under subpart H of this part?

* * * * *

(i) * * *

(2) The FDA Division of Food Defense Targeting must be notified of the applicable registration number in writing.* * *

* * * * *

Dated: March 24, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–06201 Filed 3–29–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 148

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority

AGENCY: Department of the Treasury.

ACTION: Notification.

SUMMARY: On October 31, 2016, the Secretary of the Treasury, as Chairperson of the Financial Stability Oversight Council, published a final rule in consultation with the Federal Deposit Insurance Corporation (the ''FDIC'') to implement the qualified financial contract recordkeeping requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This notification provides the means by which records entities and top-tier financial companies may submit the required point of contact information.

DATES: March 30, 2017.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Director, Office of Capital Markets (202) 622–0157; Peter Nickoloff, Financial Economist, Office of Capital Markets, (202) 622–1692; Steven D. Laughton, Assistant General Counsel (Banking & Finance), (202) 622–8413; or Stephen T. Milligan, Attorney-Advisor, (202) 622–4051.

SUPPLEMENTARY INFORMATION: Section 148.3(a)(2) of the rule (*see* 81 FR 75624 (Oct. 31, 2016)) requires each records entity and top-tier financial company to provide a point of contact who is responsible for recordkeeping under the rule by written notice to its primary financial regulatory agency or agencies and the FDIC.[1] Each records entity and top-tier financial company is also required to provide written notice to its primary financial regulatory agency or agencies and the FDIC within 30 days of any change in its point of contact.

Records entities and top-tier financial companies may provide such point of contact information to each of the following primary financial regulatory agencies by email at the addresses listed below:

Board of Governors of the Federal Reserve System, *QFC-Record@frb.gov*

Commodity Futures Trading Commission, *qfccontact@cftc.gov*

Federal Deposit Insurance Corporation, *Part148QFC@fdic.gov*

Securities and Exchange Commission, *QFCContact@sec.gov*

Authority: 12 U.S.C. 5390(c)(8)(H).

Dated: March 27, 2017.

Monique Y.S. Rollins,

Acting Assistant Secretary for Financial Markets.

[FR Doc. 2017–06288 Filed 3–29–17; 8:45 am]

BILLING CODE P

[1] 31 CFR 148.3(a)(2).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0251

Drawbridge Operation Regulation; Barnegat Bay, Seaside Heights, NJ

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 S37 Bridge across the Barnegat Bay, mile 14.1, New Jersey Intracoastal Waterway, at Seaside Heights, NJ. This deviation is necessary to perform bridge maintenance and repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 8 p.m. on March 31, 2017, to 8 p.m. on April 21, 2017.

ADDRESSES: The docket for this deviation, [USCG–2017–0251] 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. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION: The New Jersey Department of Transportation, that owns and operates the S37 Bridge, has requested a temporary deviation from the current operating regulations to continue performing a maintenance and repair project on the bridge that commenced at 8 a.m. on December 1, 2016, and was scheduled to cease at 8 p.m. on March 31, 2017. The bridge is a bascule draw bridge and has a vertical clearance in the closed position of 30 feet above mean high water.

The current operating schedule as set out in 33 CFR 117.733(c) allows the bridge to remain in the closed-to-navigation position from 8 a.m. on December 1, 2016, until 8 p.m. on March 31, 2017. Under this temporary deviation, the bridge will continue to remain in the closed-to-navigation position from 8 p.m. on March 31, 2017, to 8 p.m. on April 21, 2017.

The Barnegat Bay on the New Jersey Intracoastal Waterway is used by a variety of vessels including small government and public vessels, small commercial vessels, and recreational 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 safely pass through the bridge in the closed position may do so at any time. The bridge will not 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 vessel operators can arrange their transit 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 24, 2017.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2017–06266 Filed 3–29–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0023]

RIN 1625–AA–08

Safety Zone; Charleston Race Week, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of the Charleston Harbor in Charleston, SC during the Charleston Race Week

from April 20, 2017 through April 23, 2017. Charleston Race Week is a series of sail boat races in the Charleston Harbor. The safety zone is necessary to ensure the safety of participants, spectators, and the general public during the event. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zones unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 9 a.m. to 5 p.m. from April 20, 2017 through April 23, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0023 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule call or email Lieutenant Commander John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because insufficient time remains to publish an NPRM and to receive public comments, as the Charleston Race Week event will occur before the rulemaking process would be completed. Because of the dangers posed by the proximity of the races to the navigable waters of the Charleston Harbor, the safety zone is necessary to provide for the safety of event participants, spectators, and vessels transiting the event area. For those reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

For the reason discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's authority to establish regulated safety zones and other limited access areas is 33 U.S.C. 1231. The purpose of the rule is to ensure the safety of the event participants, the general public, vessels and the navigable waters during Charleston Race Week.

IV. Discussion of the Rule

This rule establishes a safety zone on the waters of the Charleston Harbor in Charleston, South Carolina during Charleston Race Week. The races are scheduled to take place from 9 a.m. to 5 p.m. on April 20, 2017 through April 23, 2017. Approximately 250 sailboats are anticipated to participate in the races, and approximately 30 spectator vessels are expected to attend the event. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) Although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (2) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on ''small entities'' comprised of small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the waters of the Charleston Harbor. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0023 to read as follows:

§ 165.T07–0023 Safety Zone; Charleston Race Week, Charleston Harbor, Charleston, SC.

(a) *Location.* The rule consists of the following four race areas.

(1) *Race Area #1.* All waters encompassed within a 700 yard radius of position 32°46′10″ N., 79°55′15″ W.

(2) *Race Area #2.* All waters encompassed within a 700 yard radius of position 32°46′02″ N., 79°54′15″ W.

(3) *Race Area #3.* All waters encompassed within a 700 yard radius of position 32°45′55″ N., 79°53′39″ W.

(4) *Race Area #4.* All waters encompassed within a 600 yard radius of position 32°47′50″ N., 79°56′80″ W.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced daily from 9 a.m. until 5 p.m. from April 20 through April 23, 2017.

Dated: March 21, 2017.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2017–06261 Filed 3–29–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0261]

RIN 1625–AA87

Security Zone; USCGC MUNRO Commissioning Ceremony Elliott Bay; Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 300 yard temporary security zone in the navigable waters of Elliott Bay, Seattle, WA, around the U.S. Coast Guard Cutter MUNRO at Pier 91 within the Sector Puget Sound Captain of the Port Zone. The security zone is necessary to ensure the security of the USCGC MUNRO from sabotage or other subversive acts during its commissioning ceremony at Pier 91. The safety zone will prohibit any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or her Designated Representative.

DATES: This rule is effective from 6 a.m. until 6 p.m. on April 1, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0261 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Branch, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable as delayed promulgation may jeopardize the security of the commissioning ceremony.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the commissioning ceremony will occur on April 1, 2017, and this rule must be effective to ensure the security of this high profile event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1 which collectively authorizes the Coast Guard to establish security zones. The Captain of the Port, Puget Sound has determined that potential threats of sabotage and other subversive acts associated with the USCGC MUNRO commissioning ceremony on April 1, 2017, will be a security concern for anyone within a 300 yard radius of USCGC MUNRO at Pier 91 in Seattle, WA. This rule is needed to protect personnel and vessels in the navigable waters within the security zone while the commissioning ceremony takes place.

IV. Discussion of the Rule

This rule establishes a temporary security zone that will be enforced from 6 a.m. though 6 p.m. on April 1, 2017. The security zone will cover all navigable waters within 300 yards of USCGC MUNRO at Pier 91 in Seattle, WA. The duration of the zone is intended to protect personnel and vessels in these navigable waters while the commissioning ceremony takes place. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative while the zone is subject to enforcement. Vessels wishing to enter the security zone must request permission to do so from the Captain of the Port, Puget Sound by contacting the Joint Harbor Operations Center at 206–217–6001 or the on-scene patrol craft, if any, via VHF–FM Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the security zone. Vessel traffic will be able to safely transit around this security zone which will impact a small designated area of the Elliott Bay in Seattle, WA for 12 hours and during a time of year when vessel traffic is normally low. Public, commercial, and privately owned vessels impacted by the security zone may request Captain of the Port, Puget Sound or his Designated Representative permission to transit through the security zone by contacting the Joint Harbor Operation Center 206–217–6001 or the on-scene patrol craft on VHF Ch. 16. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant

economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting 12 hours that will prohibit entry within 300 yards of USCGC MUNRO at Pier 91 in Seattle, WA. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–0261 to read as follows:

§ 165.T13–0261 Security Zone; USCGC MUNRO Commissioning Ceremony Elliott Bay, Seattle, WA.

(a) *Location.* The following area is a security zone: All navigable waters of Elliott Bay within 300 yards of the USCGC MUNRO while moored at Pier 91.

(b) *Definitions.* The following definitions apply to this section:

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound (COTP) in the enforcement of the security zone identified in paragraph (a) of this section.

(c) *Regulations.* The general regulations governing security zones contained in § 165.33 apply to the security zone identified in paragraph (a) of this section.

(1) During the enforcement period, entry into, transit through, remaining within, or movement within this temporary zone is prohibited unless authorized by the Captain of the Port Puget Sound or her designated representative.

(2) To seek permission to enter the security zone contact the Captain of the Port or her designated representative via the Joint Harbor Operations Center at (206) 217–6001 or the on-scene patrol craft on VHF Ch 16 to obtain permission to do so.

(3) Vessel operators given permission to enter or operate in the security zone must comply with all directions given to them by the COTP or her designated representatives.

(4) The Coast Guard may be assisted by other federal, state, or local agencies in patrol and notification of this regulation.

(d) *Enforcement period.* This section will be enforced from 6 a.m. to 6 p.m. on April 1, 2017.

Dated: March 24, 2017.

L.A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2017–06267 Filed 3–29–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0836]

RIN 1625–AA00

Safety Zones; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adding, amending, and deleting several permanent safety zones located in the Captain of the Port San Francisco zone that are established to protect public safety during annual firework displays. These changes will update listed events to accurately reflect the firework display locations. This regulation prohibits the movement of vessels within the established firework display areas unless authorized by the Captain of the Port (COTP) San Francisco or a designated representative.

DATES: This rule is effective May 1, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0836 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Christina Ramirez, U.S. Coast Guard Sector San Francisco; telephone 415–399–2001, email *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On January 18, 2017 we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; San Francisco, CA, in the **Federal Register** (83 FR 5482). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the amended fireworks safety zones. We received no adverse comments on the NPRM nor did we receive a request for public meeting. A public meeting was not held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port San Francisco (COTP) has determined that potential hazards associated with the current outdated fireworks events, if not updated, pose safety concerns for event crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway. One of the published annual fireworks events that requires safety zones does not currently reflect the accurate location of the respective display sites. Three annual fireworks events that require safety zones are not published in 33 CFR 165.1191 and one published fireworks event has not occurred since 2009. Safety zones which accurately reflect the location of each event are necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway from the hazards associated with firework displays. The effect of these proposed safety zones will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. Except for the persons or vessels authorized by the COTP San Francisco or a designated representative, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks displays to ensure the safety of participants, spectators, and transiting vessels.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no adverse comments on our NPRM published on January 18, 2017. We received one comment supporting the Coast Guard's efforts to safeguard vessels. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule amends Table 1 in § 1191 to update one event to reflect the current event location, delete one event fireworks event which has not occurred since 2009, and permanently publish three annual events. These events are listed numerically in Table 1 of this section: Respectively items (9), (2), and the addition of (28), (29), and (30).

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day of each safety zone. Vessel traffic would be able to safely transit around each safety zone which would impact a small designated area of the COTP San Francisco zone for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Local Notice to Mariner and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zones lasting less than 1 hour that would prohibit entry within a radial distance of no more than 1,000 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.1191, in Table 1 to § 165.1191, remove and reserve item 2, revise item 9, and add items 28, 29, and 30 to read as follows:

§ 165.1191 Northern California and Lake Tahoe Area Annual Fireworks Events.

* * * * *

Table 1 to § 165.1191

* * * * *

*	*	*	*	*	*	*

2. [Reserved]

*	*	*	*	*	*	*

9. Fourth of July Fireworks, City of Richmond

Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	A barge located in Richmond Harbor in approximate position 37°54′40″ N., 122°21′05″ W., Richmond, CA.

Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 560-foot radius upon commencement of the fireworks display.

* * * * * * *

28. Execpro Services Fourth of July Fireworks

Sponsor	Execpro Services Inc.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	Off-shore from Incline Village, NV.
Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.

29. Monte Foundation Fireworks, Lake Tahoe

Sponsor	Monte Foundation.
Event Description	Fireworks Display.
Date	Week of Labor Day.
Location	Carnelian Bay, Lake Tahoe, CA.
Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.

30. Sausalito Lighted Boat Parade Fireworks

Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	A Saturday or Sunday in December.
Location	Off-shore from Sausalito Point, Sausalito, CA.
Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.

Dated: March 9, 2017.

Anthony J. Ceraolo,

Captain, U.S. Coast Guard, Captain of the Port of San Francisco.

[FR Doc. 2017–06287 Filed 3–29–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Gulf of Mexico, Apalachicola Bay, East Bay, St. Andrew Bay and St. Andrew Sound at Tyndall Air Force Base, Florida; Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its regulations by revising an existing restricted area regulation and establishing a new restricted area along portions of the Tyndall Air Force Base (AFB) facility shoreline that will be activated on a temporary basis. The duration of temporary restricted area activations will be limited to those periods where it is warranted or required by specific and credible security threats and will be inactive at all other times. The restricted area will be partitioned using 23 pairs of coordinates to facilitate quick geographic recognition. Tyndall AFB is surrounded on three sides by water with approximately 129 miles of unprotected coastline. This includes several areas where the lack of security or lack of restriction on access to these areas leaves Tyndall AFB personnel and resources vulnerable to security threats. This amendment is necessary to implement an enhanced threat security plan for Tyndall AFB which will allow temporary activation of one or more portions of the restricted area as necessary to provide the appropriate level of security required to address the specific and credible threat triggering the need for activation.

DATES: Effective: May 1, 2017.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Ed Sarfert, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 850–439–9533.

SUPPLEMENTARY INFORMATION:

Executive Summary

External reviews of security at Tyndall AFB identified the lack of jurisdiction to respond to threats from the waterways as a major weakness. Tyndall AFB does not currently have the authority to restrict access to the shoreline of Tyndall AFB if needed to respond to a security threat. The purpose of this regulatory action is to establish a restricted area in the waters surrounding portions of Tyndall AFB that will only be activated on a temporary basis in response to specific and credible security threats. Additionally this amendment provides an administrative correction to the existing regulation at 33 CFR 334.660.

The Corps' authority to establish the restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the regulations at 33 CFR part 334 by adding § 334.665 and revising § 334.660. Adding § 334.665 will establish a restricted area in the waters surrounding Tyndall AFB. This amendment will allow the Installation Commander, Tyndall AFB to temporarily restrict the passage of persons, watercraft, and vessels in waters contiguous to this facility when a specific and credible security threat is identified, providing greater security for personnel and equipment during those

periods. The administrative correction at 33 CFR 334.660(b)(3) will clarify who is responsible for enforcing the provisions of § 334.660.

A proposed rule was published in the **Federal Register** on May 9, 2013 (78 FR 27126). One hundred seventy-one comments were submitted in response to that proposed rule. As a result of the comments received in response to the May 9, 2013, proposed rule, substantial revisions were made to the proposed restricted area to address the concerns of the commenters. A revised proposed rule was published in the September 14, 2015, issue of the **Federal Register** (80 FR 55052). The *regulations.gov* docket number for these proposed rules is COE–2013–0030. In response to the publication of the second proposed rule, forty six (46) comments were received. Many of the comments expressed concern about loss of use of waterways and beaches, particularly around Shell Island and Crooked Island. Many commenters also stated their belief that the restricted areas would not be activated temporarily in response to elevated security threats, but would be made permanent. Several commenters stated that the regulation should expire in five years. One commenter objected to the rule because they do not believe there is a threat.

The Corps determined that due to the temporary nature of the restrictions, and the removal of the most popular areas used for recreational water sports from the originally proposed restricted area, the restricted area will have no more than minimal detrimental impact on the continued utilization of the overall waterway by the public. The impact will be further mitigated because the restrictions will be limited to those specific areas necessary to address security threats. Restrictions will only be activated when security threats are identified that dictate a need for the restrictions, and after the security threats are no longer present, the restrictions will be lifted to allow the public to use the waterway. Given the existing security environment, it is not expected that all threats will be eliminated within five years. In consideration of this, and since restrictions will be only temporarily activated due to specific and credible threats, resulting in no more than minimal detrimental impact on the continued public utilization of the overall waterway, an expiration provision is not warranted. The restricted area does not affect Shell Island, and only covers limited portions of Crooked Island.

Many commenters expressed concern about harassment by United States Air Force (USAF) personnel, and the belief that federal control and police powers do not extend into these waters. Other commenters stated that Tyndall AFB was using this rule to increase its control over these waters and the public. Some commenters said that the United States Coast Guard (USCG) has authority in these waters, and that Tyndall AFB should rely on the USCG or local boaters to observe the area and provide security. One commenter stated that Tyndall AFB personnel will impact seagrass beds while patrolling, and should be held to the same standards for seagrass impacts as the public.

The River and Harbor Act of 1917 (33 U.S.C. 1) provides the Corps with the authority to issue regulations that govern the use, administration, and navigation of the navigable waters of the United States that are necessary for the protection of life and property. United States Air Force personnel do not have authority to enforce federal, state or local laws on the water. This rule does not change that. Law enforcement actions by USAF personnel related to implementation of this rule will be in the form of issuance of a trespassing ticket if an individual violated the regulation and refused to leave; any further action will be referred to the USCG. Impacts to seagrass that might occur during patrols by USAF personnel are outside the scope of this rule. The purpose of this rule is to establish a restricted area to protect Tyndall AFB personnel and resources from security threats.

Several commenters expressed concern that small businesses, particularly those associated with the boating industry, would be adversely impacted. Some commenters also stated that Executive Order 12866 requires an economic impact statement and Office of Management and Budget review of the proposed rule. Another commenter stated that Executive Order 13422 has similar requirements and applies here as well.

The Corps has complied with the requirements of the Regulatory Flexibility Act. As discussed below, the Corps has determined that the rule will not have a significant economic impact on a substantial number of small entities. The Corps does not anticipate any small entities will be significantly impacted by the rule because the restricted areas will only be activated based on specific local or national intelligence information, the geographic scope of the activation will be limited to providing the level of security required in response to specific and credible threats, and the duration of any activation will be limited to those periods where it is warranted by such threats. In addition, the removal from the proposed restricted area of the most popular areas for recreational water sports—Shell Island and portions of Crooked Island—further supports the determination that the rule will have no more than minimal detrimental impact on small entities. The provisions of Executive Orders 12866 and 13422 do not apply because this rule is issued with respect to a military function of the Department of Defense (see section 3(d)(2) of Executive Order 12866).

Many commenters stated that rather than create a restricted area over water, Tyndall AFB should enhance its security on land, using methods such as smaller perimeters, cameras, sensors, fencing, and expanded foot and vehicle patrols. Several commenters expressed opposition to language referencing the restrictions being necessary to protect the public from potentially hazardous conditions that may develop as a result of military use of the area.

Tyndall AFB has approximately 129 miles of coastline, portions of which are difficult for security personnel to access from land and require a marine patrol to monitor. While activation of temporary restrictions will not create significant costs for Tyndall AFB, the alternative security measures suggested were found by Tyndall AFB to incur significant costs. Since any activation of the restricted area will be only temporary, and only those portions of the restricted area required in response to a specific and credible threat will be activated, the rule ensures no more than minimal impacts on the public use of the overall waterway. The language regarding hazardous conditions and military use is not part of § 334.665 itself, but was included in the Procedural Requirements section of the notice as part of the Corps' description of how it reviewed the proposed rule under the Regulatory Flexibility Act. The term ''hazardous conditions and military use'' was intended only to relate to the modifications of the restricted area provisions in § 334.660 for the existing drone recovery area. Since those existing restricted area provisions in § 334.660 are only being administratively modified in terms of the enforcement provision, we have removed the statement in the Regulatory Flexibility Act section referencing ''hazardous conditions and military use.''

One commenter expressed concern about the restricted area extending 500 yards from the shoreline and its effects on fishing. Another commenter stated that additional buoys and markers in the water would be unappealing and/or

disregarded by boaters. A commenter asked if oysters from manmade beds in nearshore areas of East Bay would now belong to Tyndall AFB. One commenter said that this rulemaking requires a consistency determination under the Coastal Zone Management Act.

The restricted area will only be activated when security threats are identified that dictate a need for the restrictions, and after the security threats are no longer present, the restrictions will be lifted to allow the public to use the waterway, including for fishing. If activated, the restricted area will encompass the area up to 500 feet waterward of the shoreline, not 500 yards. No buoys or markers are authorized by this rule. This rule will not alter who may harvest oysters from East Bay. In a letter dated May 17, 2016, the Florida Department of Environmental Protection stated that the proposed rule is consistent with the Florida Coastal Management Program.

Two commenters stated that the Corps should complete an Environmental Impact Statement (EIS) for this rule. One commenter stated that language in the rule about contiguous inland waterways could be viewed as applying to large areas of water outside of the restricted area, and should be changed or deleted.

An EIS is required by the National Environmental Policy Act (NEPA) for certain federal actions that are determined to ''significantly affect the quality of the human environment.'' An EIS is not required if the federal agency prepares an environmental assessment and determines that the proposed federal action will not have a significant impact on the quality of the human environment. The Corps completed an environmental assessment for this rule and determined the rule will not significantly affect the quality of the human environment, and will have no more than minimal adverse impact on the public's use of the waterway. The rule clearly describes the waters that are part of the restricted area, including providing coordinates and measurements. The language used in the rule states the restricted area ''shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area described and includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall Air Force Base (AFB)''. The restricted area is limited to the navigable waters identified in the rule text, and does not extend to areas of navigable waters outside of the designated area.

Some commenters stated that the procedures for notifying the public about restricted area activation would not be effective, and that there was no procedure for early deactivation. One commenter said that one portion of the restricted area should be renamed to correspond with the United States Geological Survey Geographic Names Information System.

In response to these comments received and at the Corps' request, Tyndall AFB agreed to expand its restricted area notification procedures for both activation and early deactivation, and modify the name of the pair of coordinates originally entitled Little Cedar Lake to Little Cedar Bayou for clarity and consistency.

Procedural Requirements

a. *Review Under Executive Orders 12866 and 13771.* The rule is issued with respect to military and national security functions of the Department of Defense and the provisions of Executive Orders 12866 and 13771 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). Tyndall AFB has approximately 129 miles of unprotected shoreline, including several areas where the lack of security or restriction on access leaves Tyndall AFB personnel and resources vulnerable to security threats. Therefore, the restricted area regulation is necessary to implement an enhanced threat security plan for Tyndall AFB which will allow for the temporary activation of one or more portions of the restricted area as necessary to provide the appropriate level of security required to address the specific and credible threats that are identified by Tyndall AFB. When the restricted area is activated, small entities can continue to use the navigable waters surrounding Tyndall AFB that are outside of the restricted area. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* This regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared. It may be reviewed at the district office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* This regulation does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this regulation.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.660(b)(3) to read as follows:

§ 334.660 Gulf of Mexico and Apalachicola Bay south of Apalachicola, Fla., Drone Recovery Area, Tyndall Air Force Base, Fla.

* * * * *

(b) * * *

(3) The federal regulations in this section shall be enforced by the Installation Commander, Tyndall Air Force Base, Florida, and such other agencies as he/she may designate.

■ 3. Add § 334.665 to read as follows:

§ 334.665 East Bay, St. Andrew Bay and St. Andrew Sound, enhanced threat restricted area, Tyndall Air Force Base, Florida.

(a) *The area.* (1) The coordinates provided herein are approximations obtained using a commercial mapping program which utilizes simple cylindrical projection with a WGS84 datum for its imagery base and imagery dated February 15 and May 3, 2014.

(2) Each portion of the temporary restricted area described in paragraphs (a)(4)(i) through (xxiii) of this section shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area described and includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall Air Force Base (AFB).

(3) Because of the dynamic nature of these geographic features near barrier islands, the coordinate points provided may not reflect the current situation regarding the location of a point at the mean high water line or 500 feet waterward of the mean high water line. Even if the landform has shifted through erosion or accretion, the intent of the area description will be enforced from the existing point at the mean high water line that is closest to the shoreline point provided herein out to a point located 500 feet waterward of the mean high water line.

(4) The restricted area will be partitioned using 23 pairs of coordinates to facilitate quick geographic recognition. The first point in each pair of coordinates is located on the shoreline, and the second point is a point 500 feet waterward of the shoreline. From the first point in each pair of coordinates, a line meanders irregularly following the shoreline and connects to the first point in the next pair of coordinates. From the second point in each pair of coordinates, a line beginning 500 feet waterward of the shoreline meanders irregularly following the shoreline at a distance of 500 feet waterward of the shoreline and connects to the second point in the next pair of coordinates. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by lines connecting each of the following pairs of coordinates:

(i) *Farmdale Bayou:* 30°1.156′ N., 85°26.915′ W. to 30°1.238′ N., 85°26.915′ W.

(ii) *Baker Bayou:* 30°1.325′ N., 85°29.008′ W. to 30°1.402′ N., 85°28.977′ W.

(iii) *Blind Alligator Bayou:* 30°2.094′ N., 85°29.933′ W. to 30°2.151′ N., 85°29.864′ W.

(iv) *Little Oyster Bay Point:* 30°3.071′ N., 85°30.629′ W. to 30°3.133′ N., 85°30.568′ W.

(v) *Goose Point South:* 30°3.764′ N., 85°31.874′ W. to 30°3.719′ N., 85°31.795′ W.

(vi) *Goose Point North:* 30°4.599′ N., 85°31.577′ W. to 30°4.650′ N., 85°31.503′ W.

(vii) *Little Cedar Bayou:* 30°4.974′ N., 85°33.476′ W. to 30°5.024′ N., 85°33.401′ W.

(viii) *Chatters on Bayou:* 30°5.729′ N., 85°34.632′ W. to 30°5.811′ N., 85°34.625′ W.

(ix) *Fred Bayou:* 30°5.992′ N., 85°35.296′ W. to 30°6.071′ N., 85°35.325′ W.

(x) *Pearl Bayou:* 30°6.039′ N., 85°36.651′ W. to 30°6.043′ N., 85°36.557′ W.

(xi) *Military Point:* 30°7.394′ N., 85°37.153′ W. to 30°7.459′ N., 85°37.096′ W.

(xii) *Freshwater Bayou:* 30°7.425′ N., 85°38.655′ W. to 30°7.473′ N., 85°38.578′ W.

(xiii) *Smack Bayou:* 30°7.826′ N., 85°39.654′ W. to 30°7.838′ N., 85°39.560′ W.

(xiv) *Redfish Point:* 30°8.521′ N., 85°40.147′ W. to 30°8.598′ N., 85°40.113′ W.

(xv) *Davis Point:* 30°7.348′ N., 85°41.224′ W. to 30°7.364′ N., 85°41.317′ W.

(xvi) *Tyndall Marina:* 30°5.827′ N., 85°39.125′ W. to 30°5.762′ N., 85°39.184′ W.

(xvii) *Heritage Bayou:* 30°3.683′ N., 85°35.823′ W. to 30°3.743′ N., 85°35.887′ W.

(xviii) *NCO Beach North:* 30°4.209′ N., 85°37.430′ W. to 30°4.272′ N., 85°37.368′ W. The restricted Area will end on the west side of the land bridge that extends into Shell Island. The Restricted Area resumes on the east side of the land bridge that extends into St. Andrew Sound.

(xix) *St. Andrew Sound west:* 30°1.327′ N., 85°33.756′ W. to 30°1.377′ N., 85°33.681′ W.

(xx) *St. Andrew Sound northwest:* 30°1.921′ N., 85°33.244′ W. to 30°1.869′ N., 85°33.317′ W.

(xxi) *St. Andrew Sound northeast:* 30°0.514′ N., 85°31.558′ W. to 30°0.452′ N., 85°31.619′ W.

(xxii) *Wild Goose Lagoon:* 29°59.395′ N., 85°30.178′ W. to 29°59.319′ N., 85°30.216′ W.

(xxiii) *Crooked Island North:* 29°59.003′ N., 85°30.396′ W. to 29°59.082′ N., 85°30.371′ W.

(b) *The regulations.* (1) Unless one or more portions of the restricted area identified in paragraphs (a)(4)(i) through (xxiii) of this section is activated, all persons, vessels and other craft are permitted access to all of the navigable waters described in paragraph (a) of this section.

(2) During times when the restricted area defined in paragraphs (a)(4)(i) through (xxiii) of this section is not active, U.S. Air Force boat patrols may operate in the waters adjacent to Tyndall AFB's shoreline to observe the shoreline in order to identify any threats to the installation or personnel. U.S. Air Force personnel will not have any authority to enforce federal, state, or local laws on the water.

(3) Due to the nature of security threats, restricted area activation may occur with little advance notice. Activation will be based on local or national intelligence information related to threats against military installations and/or resources common to Tyndall AFB in concert with evaluations conducted by the Tyndall AFB Threat Working Group and upon direction of the Installation Commander, Tyndall AFB. The Installation Commander activates only those portions of the restricted area identified in paragraphs (a)(4)(i) through (xxiii) of this section that are necessary to provide the level of security required in response to the specific and credible threat(s) triggering the activation. The duration of activation for any portion(s) of the restricted area defined in paragraph (a) of this section, singularly or in combination, will be limited to those periods where it is warranted or required by security threats. Activated portions of the restricted area will be reevaluated every 48 hours to determine if the threat(s) triggering the activation or related threats warrant continued activation. The activated portion(s) of the restricted area expire if no reevaluation occurs or if the Installation Commander determines that activation is no longer warranted.

(4) Public notification of a temporary waterway restricted area activation by the Installation Commander will be made by the 325 Fighter Wing Public Affairs office using all available mediums (marine VHF broadcasts [channels 13 and 16], local notices to mariners, local news media releases, social media postings on both the Tyndall official Web page [*www.tyndall.af.mil*] and Facebook [*www.facebook.com/325FWTyndall*], radio beepers through locally broadcasting stations, and the Tyndall Straight Talk [recorded telephone line 1–478–222–0011]). These mediums will be updated should the waterway restriction be extended beyond the initial 48 hour activation and/or terminated upon direction of the Installation Commander.

(5) During times when the Installation Commander activates any portion(s) of the temporary restricted area defined in paragraph (a) of this section all entry, transit, drifting, anchoring or attaching any object to the submerged sea-bottom within the activated portion(s) of the restricted area is not allowed without the written permission of the Installation Commander, Tyndall AFB, Florida or his/her authorized representative. Previously affixed mooring balls established to support watercraft during intense weather conditions (*i.e.,* tropical storms, hurricanes, etc.) may remain within the activated portion(s) of the restricted area, however watercraft should not be anchored to the mooring balls without the permission of the Installation

Commander, Tyndall AFB, Florida or his/her authorized representative.

(c) *Enforcement.* The regulations in this section shall be enforced by the Installation Commander, Tyndall AFB and/or such persons or agencies as he/she may designate.

Dated: March 27, 2017.

Susan Whittington,

Acting Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2017–06296 Filed 3–29–17; 8:45 am]

BILLING CODE 3720–58–P

Proposed Rules

Federal Register
Vol. 82, No. 60
Thursday, March 30, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1651

Designation of Beneficiary

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to amend its death benefits regulations to modify the requirements necessary in order for a designation of beneficiary form to be valid.

DATES: Submit comments on or before May 1, 2017.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov* at Docket ID number FRTIB–2017–0003. Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Megan G. Grumbine, Federal Retirement Thrift Investment Board, 77 K Street NE., Suite 1000, Washington, DC 20002.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

FOR FURTHER INFORMATION CONTACT: Austen Townsend at (202) 864–8647.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees, members of the uniformed services, and spouse beneficiaries. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Designation of Beneficiary Validity Requirements

The Agency proposes to amend its regulations to modify the requirements necessary in order for a designation of beneficiary form to be valid. The Agency's guiding statute provides that a designation of beneficiary form need only be signed, witnessed, and received by the Agency on or before the participant's date of death in order to be valid. See 5 U.S.C. 8424(d). More detailed validity requirements are set forth in the Agency's regulations at 5 CFR 1651.3(c). Section 1651.3(c) currently requires a TSP beneficiary designation form to be witnessed by two people and also requires each page of the form to be dated by the participant and both witnesses. The Agency proposes to amend section 1651.3(c) to require that all pages of a TSP beneficiary designation form be signed and dated by the participant and only one witness.

The proposed amendment would reduce the number of witnesses required. The other validity requirements, including the requirement that the same witness sign and date all pages of the beneficiary designation form, remain unchanged.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal civilian employees and spouse beneficiaries who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the Agency proposes to amend 5 CFR chapter VI as follows:

PART 1651—DEATH BENEFITS

■ 1. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 2. Amend § 1651.3 by revising paragraph (c)(3) to read as follows:

§ 1651.3 Designation of beneficiary.

* * * * *

(c) * * *

(3) Be signed and properly dated by the participant and signed and properly dated by one witness;

(i) The participant must either sign the form in the presence of the witness or acknowledge his or her signature on the form to the witness;

(ii) All submitted and attached pages of the form must be signed and dated by the participant;

(iii) All submitted and attached pages of the form must be signed and dated by the same witness;

* * * * *

[FR Doc. 2017–06304 Filed 3–29–17; 8:45 am]

BILLING CODE 6760–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, and 51

[NRC–2011–0087]

RIN 3150–AI96

Non-Power Production or Utilization Facility License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern the license renewal process for non-power reactors, testing facilities, and other production or utilization facilities, licensed under the authority of Section 103, Section 104a, or Section 104c of the Atomic Energy Act of 1954, as amended (AEA), that are not nuclear power reactors. In this proposed rule, the NRC collectively refers to these facilities as non-power production or utilization facilities (NPUFs). The NRC is proposing to: Eliminate license terms for licenses issued under the authority of Sections 104a or 104c of the AEA, other than for testing facilities; define the license renewal process for licenses issued to testing facilities or under the authority of Section 103 of the AEA; require all NPUF licensees to submit final safety analysis report (FSAR) updates to the NRC every 5 years; and provide an accident dose criterion of 1 rem (0.01 Sievert (Sv)) total effective dose equivalent (TEDE) for NPUFs other than testing facilities. The proposed rule also includes other changes, as described in Section III, ''*Discussion*,'' of this document. The NRC is issuing concurrently draft Regulatory Guide (DG–2006), ''Preparation of Updated Final Safety Analysis Reports for Non-power Production or Utilization Facilities,'' for review and comment. The NRC anticipates the proposed rule and associated draft implementing guidance would result in reduced burden on both licensees and the NRC, and would create a more responsive and efficient regulatory framework that will continue to protect public health and safety, promote the common defense and security, and protect the environment. During the public comment period, the NRC plans to hold a public meeting to promote a full understanding of the proposed rule and facilitate the public's ability to submit comments on the proposed rule.

DATES: Submit comments by June 13, 2017. Submit comments specific to the information collections aspects of this proposed rule by May 1, 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 (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0087. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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

FOR FURTHER INFORMATION CONTACT: Duane Hardesty, Office of Nuclear Reactor Regulation, telephone: 301–415–3724, email: *Duane.Hardesty@nrc.gov*; and Robert Beall, Office of Nuclear Reactor Regulation, telephone: 301–415–3874, email: *Robert.Beall@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Need for the Regulatory Action

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations related to the license renewal process for non-power reactors, testing facilities, and other production or utilization facilities, licensed under the authority of Section 103, Section 104a, or Section 104c of the Atomic Energy Act of 1954, as amended, that are not nuclear power reactors. In this proposed rule, the NRC collectively refers to these facilities as non-power production or utilization facilities (NPUFs). To establish a more efficient, effective, and focused regulatory framework, the NRC proposes revisions to parts 2, 50, and 51 of title 10 of the *Code of Federal Regulations* (10 CFR).

B. Major Provisions

In addition to administrative changes and clarifications, the proposed rule includes the following major changes:

- Creates a definition for ''non-power production or utilization facility,'' or ''NPUF;''
- Eliminates license terms for facilities, other than testing facilities, licensed under 10 CFR 50.21(a) or (c);
- Defines the license renewal process for testing facilities licensed under § 50.21(c) and NPUFs licensed under 10 CFR 50.22;
- Requires all NPUF licensees to submit final safety analysis report updates to the NRC every 5 years;
- Amends the current timely renewal provision under 10 CFR 2.109, allowing facilities to continue operating under an existing license past its expiration date if the facility submits a license renewal application at least 2 years (currently 30 days) before the current license expiration date;
- Provides an accident dose criterion of 1 rem (0.01 Sievert) total effective dose equivalent for NPUFs other than testing facilities;
- Extends the applicability of 10 CFR 50.59 to NPUFs regardless of their decommissioning status;
- Clarifies an applicant's requirements for meeting the existing provisions of 10 CFR 51.45 for submitting an environmental report; and
- Eliminates the requirement for NPUFs to submit financial qualification information with license renewal applications under 10 CFR 50.33(f)(2).

C. Costs and Benefits

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of the proposed rule and the draft implementing guidance, as well as qualitative factors to be considered in the NRC's rulemaking decision. The analysis concluded that the proposed rule would result in net savings to licensees and the NRC (*i.e.,* be cost beneficial). The analysis examined the benefits and costs of the proposed rule requirements and the draft implementing guidance relative to the baseline for the current license renewal process (*i.e.,* the no action alternative). Relative to the no action baseline, the NRC estimates that total net benefits to

NPUFs (*i.e.,* cost savings minus costs) would be $3.8 million ($1.5 million using a 7 percent discount rate and $2.5 million using a 3 percent discount rate) over a 20-year period. The average NPUF would incur net benefits ranging from approximately $54,000 to $167,000 over a 20-year period. The NRC would incur total net benefits of $9.4 million ($3.8 million using a 7 percent discount rate and $6.4 million using a 3 percent discount rate) over a 20-year period.

The draft regulatory analysis also considered, in a qualitative fashion, additional benefits of the proposed rule and the draft implementing guidance associated with regulatory efficiency, protection of public health and safety, promotion of the common defense and security, and protection of the environment.

The draft regulatory analysis concluded that the proposed rule and the draft implementing guidance are justified because of the cost savings incurred by both licensees and the NRC while public health and safety is maintained. For a detailed discussion of the methodology and complete results, see Section VII, ''*Regulatory Analysis*,'' of this document.

Table of Contents:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2011–0087 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–2011–0087.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in Section XVI, ''*Availability of Documents*,'' of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2011–0087 in your comment submission.

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

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

II. Background

Sections 103 (for facilities used for commercial or industrial purposes) and 104a and c (for facilities used for medical therapy and useful for research and development activities, respectively) of the AEA establish the NRC's authority to license NPUFs. The section of the AEA that provides licensing authority for the NRC corresponds directly to the class of license issued to a facility (*i.e.,* Section 104a of the AEA authorizes the issuance of a ''class 104a'' license). Sections 104a and c of the AEA require that the Commission impose only the minimum amount of regulation needed to promote the common defense and security, protect the health and safety of the public, and permit, under Section 104a, the widest amount of effective medical therapy possible and, under Section 104c, the conduct of widespread and diverse research and development.

The NRC regulates 36 NPUFs, of which 31 are currently operating. The other five facilities are in the process of decommissioning (*i.e.,* removing a facility or site safely from service and reducing residual radioactivity to a level that permits release of the site for unrestricted use or use under restricted conditions, and termination of the license). Most NPUFs are located at universities or colleges throughout the United States. The NRC regulates one operating testing facility.

A. License Terms

The AEA dictates an initial license term of no more than 40 years for class 103 facilities, which the NRC licenses under § 50.22 of title 10 of the *Code of Federal Regulations* (10 CFR), but the AEA does not specify license terms for class 104a or c facilities, which are licensed under § 50.21(a) or (c). The regulation that implements this statutory authority, § 50.51(a), currently specifies that the NRC may grant an initial license for NPUFs for no longer than a 40-year license term. If the NRC initially issues a license for a shorter period, then it may renew the license by amendment for a maximum aggregate period not to exceed 40 years. An NPUF license is usually renewed for a term of 20 years. If the requested renewal would extend the license beyond 40 years from the date of issuance, the original license may not be amended. Rather, the NRC issues a superseding renewed license.

Any application for license renewal or a superseding renewed license must include an FSAR describing: (1) Changes to the facility or facility operations resulting from new or amended regulatory requirements, and (2) changes and effects of changes to the facility or procedures and new experiments. The FSAR must include the elements specified in § 50.34 and should be augmented by the guidance of NUREG–1537, Part 1, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Format and Content.'' The NRC reviews NPUF initial and renewal license applications according to NUREG–1537, Part 2, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Standard Review Plan and Acceptance Criteria.''

As a license term nears its end, a licensee must submit an application in order to continue operations. Per 10 CFR 2.109(a), referred to as the ''timely

renewal provision,'' if, at least 30 days before the expiration of an existing license, the licensee files an application for a renewal or for a new license for the authorized activity, the existing license will not be deemed to have expired until the application has been finally determined.

B. Environmental Analysis

Part of the license renewal process involves the NRC's environmental analysis of the license renewal action. The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), requires all Federal agencies to evaluate the impacts of proposed major actions on the human environment. The NRC complies with NEPA through regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' The regulations in 10 CFR part 51 implement Section 102(2) of NEPA in a manner that is consistent with the NRC's domestic licensing and related regulatory authority under the AEA, the Energy Reorganization Act of 1974, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978. This reflects the Commission's announced policy as cited in § 51.10(a) to voluntarily take account of the 1978 Council on Environmental Quality final regulations for implementing NEPA, ''National Environmental Policy Act—Regulations,'' subject to certain conditions. For various licensing actions specified under 10 CFR part 51, applicants are required to submit environmental documentation in the form of an environmental report, or a supplement to an environmental report, as applicable, as part of license applications. This documentation assists the NRC in performing its independent environmental review of the potential environmental impacts of the licensing action in support of meeting the NRC's obligations under NEPA and the NRC's regulations for implementing NEPA under 10 CFR part 51. For all licensing actions, as specified in 10 CFR part 51, the NRC must prepare either an environmental impact statement or an environmental assessment, as appropriate, pursuant to §§ 51.20 or 51.21.

C. Ongoing Oversight Activities

In the period of time between license applications, NPUFs are required under § 50.59(d)(1) and (2) to maintain records of changes in the facility, changes in procedures, and tests and experiments. For changes, experiments, or tests not requiring a license amendment, § 50.59 requires licensees to maintain written evaluations that provide the bases of the determinations that the change, test, or experiment does not require a license amendment. Licensees currently submit a report to the NRC annually summarizing all changes, tests, and experiments, but are not required to submit updated FSARs other than at the time of license renewal.

In addition, the NRC periodically inspects each operating NPUF using a graded approach that prioritizes higher-power facilities. The NRC completes an annual inspection of NPUFs licensed to operate at power levels of 2 megawatts thermal (MWt) or greater. For NPUFs operating under 2 MWt, the NRC completes an inspection once every 2 years. Inspections can include reviews of organizational structure, reactor operator qualifications, design and design control, radiation and environmental protection, maintenance and surveillance activities, transportation, material control and accounting, operational activities, review and audit functions, experiments, fuel handling, procedural controls, emergency preparedness, and security.

III. Discussion

The NRC is proposing to amend the NRC's regulations that govern the license renewal process for NPUFs. This proposed rulemaking would: (1) Create a definition for ''non-power production or utilization facility,'' or ''NPUF;'' (2) eliminate license terms for facilities, other than testing facilities, licensed under 10 CFR 50.21(a) or (c); (3) define the license renewal process for testing facilities licensed under § 50.21(c) and NPUFs licensed under 10 CFR 50.22; (4) require all NPUF licensees to submit FSAR updates to the NRC every 5 years; (5) amend the current timely renewal provision under 10 CFR 2.109, allowing facilities to continue operating under an existing license past its expiration date if the facility submits a license renewal application at least 2 years (currently 30 days) before the current license expiration date; (6) provide an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs other than testing facilities; (7) extend the applicability of 10 CFR 50.59 to NPUFs regardless of their decommissioning status; (8) clarify an applicant's requirements for meeting the existing provisions of 10 CFR 51.45; and (9) eliminate the requirement to submit financial qualification information with license renewal applications under 10 CFR 50.33(f)(2). This section describes the need for improvements in the current license renewal process and the changes the NRC proposes to make to the license renewal process to address these needs.

A. Need for Improvement in the License Renewal Process

In 2008, the NRC identified a need to identify and implement efficiencies in the NPUF license renewal process to streamline the process while ensuring that adequate protection of public health and safety is maintained. This need for improvement in the reliability and efficiency of the process was primarily driven by four issues:

1. Historic NRC Staffing and Emergent Issues

Non-power production or utilization facilities were some of the first reactors licensed by the Atomic Energy Commission (AEC) and the first reactors to face license renewal. Most of these reactors were initially licensed in the late 1950s and 1960s for terms from 10 to 40 years. The AEC started renewing these licenses in the 1960s. License renewal was primarily an administrative activity until 1976, when the NRC decided to conduct a technical review for license renewal equivalent to initial licensing. The licenses with initial 20-year terms were due for renewal during this timeframe. As the NRC started developing methods for conducting these technical reviews, an accident occurred at the Three Mile Island (TMI) nuclear power plant.

The NRC's focus on post-TMI activities resulted in a suspension of NPUF license renewal activities for several years. After license renewal activities were restarted, the NRC issued a number of renewals in a short period of time primarily by relying on generic evaluations. These were 20-year renewals that expired starting in the late 1990s. Original 40-year licenses also started expiring in the late 1990s. These two groups of renewals coming due in a short period of time created a new surge of license renewal applications.

In response to the security initiatives identified following the terrorist attacks of September 11, 2001, the NRC redirected its staff from processing the license renewal applications that were received in the late 1990s to addressing security items. In addition, the NRC was focused on implementing 10 CFR 50.64 to convert NPUF licensees to the use of low-enriched uranium.

2. Limited Licensee Resources

Many NPUF licensees have limited staff resources available for licensing. The number of NPUF staff available for licensing can range from one part-time employee for some low-power facilities to four or five people for higher-power

facilities. The NPUF staff that perform the licensing function typically do so in addition to their normal organizational responsibilities, which often results in delays (particularly in responding to the NRC's requests for additional information (RAI)) in the license renewal process.

3. Inconsistent Existing License Infrastructure

The NPUFs licensed under § 50.21(a) or (c) primarily comprise college and university sites. Staff turnover and limited staffing resources at an NPUF often contribute to a lack of historical knowledge of the development of the licensee's FSAR and changes to the FSAR. During the most recent round of license renewals, the NRC found that some of the submitted FSARs did not adequately reflect the current licensing basis for the respective licensees. Because the only required FSAR submission comes at license renewal, which can be at 20-year or greater intervals, submitted FSARs often contain varying levels of completeness and accuracy. Consequently, the NRC must issue RAIs to obtain missing information, seek clarifications and corrections, and document the current licensing bases.

4. Regulatory Requirements and Broad Scope of the Renewal Process

For power reactors, license renewal reviews have a defined scope, primarily focused on aging management, as described in 10 CFR part 54. For NPUFs, there are no explicit requirements on the scope of issues to be addressed during license renewal. Therefore, the scope of review for license renewal is the same as that for an original license.

In addition, in response to Commission direction in the Staff Requirements Memorandum (SRM) to SECY–91–061, ''Separation of Non-Reactor and Non-Power Reactor Licensing Activities from Power Reactor Licensing Activities in 10 CFR part 50,'' the NRC developed licensing guidance for the first time since many NPUF applicants were originally licensed. In that guidance (NUREG–1537, Parts 1 and 2), the NRC provides detailed descriptions of the scope, content, and format of FSARs and the NRC's process for reviewing initial license applications and license renewal applications. However, at the time of the first license renewals using NUREG–1537, some license renewal applications had varying levels of consistency with NUREG–1537. These licensees did not propose an acceptable alternative to the guidance.

NRC Response to These Issues

Once a backlog of NPUF license renewal applications developed and persisted, the Commission and other stakeholders voiced concerns not only about the backlog, but also about the burdensome nature of the process itself. The Commission issued SRM–M080317B, ''Briefing on State of NRC Technical Programs'' in April 2008, which directed the NRC staff to ''examine the license renewal process for non-power reactors and identify and implement efficiencies to streamline this process while ensuring that adequate protection of public health and safety are maintained.''

In October 2008, the NRC staff provided the Commission with plans to improve the review process for NPUF license renewal applications in SECY–08–0161, ''Review of Research and Test Reactor License Renewal Applications.'' In SECY–08–0161, the NRC staff discussed stakeholder feedback on the current process, including ways it could be improved and the options the NRC staff was considering for improving the review process. The NRC staff provided a detailed description of five options for streamlining the NPUF license renewal process:

- The ''alternate safety review approach'' would limit the review of license renewal applications to changes to the facility since the previous license review occurred, compliance with the current regulations, and the inspection process.
- The ''graded approach'' would base the areas of review on the relative risk associated with the facility applying for a renewed license. The graded approach would ensure safe operation by properly identifying the inherent risk associated with the facility and ensuring those risks are minimized.
- The ''generic analysis approach'' would require the NRC to review and approve a generic reactor design similar to the NRC topical report process. The NRC would rely on the previously approved generic analysis and would not reanalyze those items for each licensee.
- The ''generic siting analysis approach'' would require the NRC to develop a generic communication that contains information related to each of the licensee sites. The licensees could then reference this generic communication in their license renewal submittals.
- The ''extended license term approach'' would permit extended or indefinite terms for NPUF licenses. The NRC staff described this approach in SECY–08–0161:

In order to permit an extended term (including possibly an indefinite term), the NRC staff would have to explain why it is appropriate and, more importantly, demonstrate that there are no aging concerns. Environmental conditions such as temperature, pressure and radiation levels in most [research and test reactors (RTRs)] are not significant. With surveillance, maintenance and repair, RTRs can have indefinite lives. For a facility to be eligible for an extended license term, the NRC staff would complete a detailed renewal with a licensing basis reviewed against NUREG–1537. To maintain the licensing basis over time, the NRC staff would propose a license condition or regulation that requires licensees to revise their SARs on a periodic basis such as every 2 years. The inspection program would be enhanced to place additional focus on surveillance, maintenance and repair, and changes to the facility made under 10 CFR 50.59. The licensee would still be required to adhere to changes in the regulations.

The Commission issued SRM–SECY–08–0161, ''Review of Research and Test Reactor License Renewal Applications,'' in March 2009, which instructed the NRC staff to proceed with several actions. The Commission directed NRC staff to: (1) Immediately implement short-term program initiatives to address the backlog of license renewal applications; (2) work with the regulated community and other stakeholders to develop an interim streamlining process to focus the review on the most safety-significant aspects of the license renewal application; and (3) streamline the review process to ensure that it becomes more efficient and consistent, thereby reducing uncertainties in the process while ensuring compliance with regulatory requirements.

As part of its direction to develop the program initiatives, the Commission instructed the NRC staff to implement a graded approach commensurate with the risk posed by each facility, incorporate elements of the alternate safety review approach, and use risk insights from security assessments to inform the dose threshold. In addition, the Commission told the NRC staff to develop an interim staff guidance (ISG) document that employs the graded approach to streamline the license renewal application process.

Lastly, the Commission instructed the NRC staff to submit a long-term plan for an enhanced NPUF license renewal process. The Commission directed that the plan include development of a basis for redefining the scope of the process as well as a recommendation regarding

the need for rulemaking and guidance development.

The NRC staff responded to Commission direction by implementing short-term actions to address the license renewal application backlog and developing the ''Interim Staff Guidance on Streamlined Review Process for License Renewal for Research Reactors,'' hereafter referred to as the ISG. The ISG called for employing a graded approach to streamline the license renewal application process. Since October 2009, the NRC has reviewed license renewal applications according to the streamlined review process presented in the ISG. The ISG identified the three most safety-significant sections of an FSAR: reactor design and operation, accident analysis, and technical specifications. The NRC also has reviewed the licensees' radiation protection and waste management programs, and compliance with financial requirements. The ISG divided facilities into two groups: (1) Those facilities with licensed power of less than 2 MWt, which would undergo a limited review focusing on the safety-significant aspects, considering the decisions and precedents set by past NRC reviews; and (2) those facilities with licensed power of 2 MWt and greater, which would undergo a full review using NUREG–1537, Part 2. The process outlined in the ISG facilitated the NRC's review of license renewal applications and enabled the NRC to review applications in a more timely manner.

In addition, the NRC staff issued SECY–09–0095, ''Long-Term Plan for Enhancing the Research and Test Reactor License Renewal Process and Status of the Development and Use of the Interim Staff Guidance,'' in June 2009 to provide the Commission with a long-term plan for enhancing the NPUF license renewal process. In the long-term plan, the NRC staff proposed to develop a draft regulatory basis to support proceeding with rulemaking to streamline and enhance the NPUF license renewal process. The Commission issued SRM–M090811, ''Briefing on Research and Test Reactor (RTR) Challenges,'' in August 2009, which directed NRC staff to accelerate the rulemaking to establish a more efficient, effective, and focused regulatory framework.

In August 2012, the NRC staff completed the ''Regulatory Basis to Support Proceeding with Rulemaking to Streamline and Enhance the Research and Test Reactor (RTR) License Renewal Process,'' hereafter referred to as the regulatory basis.[1]

The regulatory basis analyzed the technical, legal, and policy issues; impacts on public health, safety, and security; impacts on licensees; impacts on the NRC; stakeholder feedback; as well as other considerations, and concluded that a rulemaking was warranted. In developing the regulatory basis for rulemaking, the NRC staff considered lessons learned as a result of implementation of the streamlined review process outlined in the ISG. A public meeting was held on August 7, 2014, to discuss the regulatory basis and rulemaking options. The NRC held another public meeting on October 7, 2015, to afford stakeholders the opportunity to provide feedback and comment on preliminary proposed rule concepts. The participants provided comments and questions to the NRC that focused on the potential impacts of eliminating license terms, the scope of reviews under the new process, and how this new change in regulation would work compared to the current license renewal process. The NRC considered those comments in developing this proposed rule.

B. Proposed Changes

The proposed amendments are intended to enhance the effectiveness and efficiency of the NPUF license renewal process, consistent with the AEA's criterion for imposing minimum regulation on facilities of these types. This proposed rule would:

1. Create a definition for ''non-power production or utilization facility,'' or ''NPUF.''

The proposed rule would address inconsistencies in definitions and terminology associated with NPUFs in §§ 50.2 and 50.22 and 10 CFR part 170.3, which result in challenges in determining the applicability of the regulations. In an October 2014 direct final rule, ''Definition of a Utilization Facility,'' the NRC amended its regulations to add SHINE Medical Technologies, Inc.'s (SHINE) proposed accelerator-driven subcritical operating assemblies to the NRC's definition of a ''utilization facility'' in § 50.2. The existing definitions for non-power facilities (*e.g.,* non-power reactor, research reactor, testing facility) do not adequately cover new entities like SHINE or other medical radioisotope irradiation and processing facilities. The NRC is proposing to add a specific definition for ''non-power production or utilization facility'' to § 50.2 to establish a term that is flexible enough to capture all non-power facilities licensed under § 50.22 or § 50.21(a) or (c). This action will ensure clarity and consistency for the applicability of the associated regulations for NPUFs. The proposed rule also would make conforming changes in other sections to refer to this new definition.

2. Eliminate license terms for facilities, other than testing facilities, licensed under 10 CFR 50.21(a) or (c).

The AEA does not establish license terms for Section 104a or c facilities. These licenses, however, are subject to § 50.51(a), which states that a license ''will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from date of issuance.'' The NRC currently issues licenses under § 50.21(a) or (c) for a term of 20 years. The NRC intends to reduce the burden on licensees associated with license terms by requiring periodic submittals of updated FSARs instead of periodic license renewal applications.

Currently, license renewal offers both the NRC and the public the opportunity to re-evaluate the licensing basis of the NPUF. The purpose of the license renewal is to assess the likelihood of continued safe operation of the facility to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment and ensuring the common defense and security. For several reasons that are unique to NPUFs, the NRC believes that this objective can be achieved through other forms of regulatory oversight. The NRC can continue to protect public health and safety, promote the common defense and security, and protect the environment through regular, existing oversight activities and the proposed addition of requirements for periodic FSAR submittals. This approach also would be consistent with the NRC's overall program to make licensing more efficient and effective and would implement and reflect lessons learned from decades of processing license renewal applications. The NRC has reached this conclusion based on the following three considerations.

First, NPUFs licensed under § 50.21(a) or (c), other than testing facilities, operate at low power levels, temperatures, and pressures, and have a small inventory of fission products in

[1] At the time of publication of the regulatory basis, the rulemaking title was the ''Non-Power Reactor (NPR) License Renewal Rulemaking.'' During the development of the proposed rule, the scope of the rulemaking expanded to include recent license applicants (*e.g.,* medical radioisotope irradiation and processing facilities) that are not reactors. In order to encompass all affected entities, the NRC has changed the title of the rulemaking to the ''Non-power Production or Utilization Facility License Renewal Rulemaking.''

the fuel, as compared to power reactors, therefore presenting a lower potential radiological risk to the environment and the public. Additionally, the consequences of the maximum hypothetical accidents (MHAs) for these facilities fall below the standards in 10 CFR part 20 for protecting the health and safety of the public.

Twenty-seven [2] of the 31 currently licensed facilities' cores are submerged in a tank or pool of water. These volumes of water, ranging from 5,000 to more than 100,000 gallons, provide a built-in heat sink for decay heat. Twenty-five of these 27 licensed facilities are not required to have emergency core cooling systems (ECCS) because analysis has shown that air cooling is sufficient to remove decay heat if the water was not present. These NPUFs do not have significant decay heat, even after extended maximum licensed power operation, to be a risk for overheating, failure of a fission product barrier, or posing a threat to public health and safety, even under a loss of coolant accident where water levels drop below the core. Additionally, many of the facilities monitor for leaks in the form of routine inspections, track and trend water inventory, and perform surveillances on installed pool level instrumentation and sensors. Licensees perform analyses for radioisotope identification of primary and, if applicable, secondary coolant by sampling the water periodically. Many facilities sample weekly for gross radioactive material content, which is also used to establish trends to quickly identify fuel or heat exchanger failure. Most of these licensees analyze, in their FSARs, pool and heat exchanger failures and the potential consequences for the safety of the reactor, workers, and public. In general, the radioisotope concentrations in pool or tank water at NPUFs are within the effluent concentration limits specified in Appendix B to 10 CFR part 20, and thus are not radiologically significant.

Only two of the NPUFs licensed under § 50.21(a) or (c), other than the one testing facility, are required by their safety analyses to have an ECCS. For these NPUFs,[3] the ECCS is only needed to direct flow into the top of the tank or pool to provide cooling for a limited period of time after reactor shutdown. This period of time is dependent on the recent operational history of the reactor, which determines the decay heat present at reactor shutdown. After this relatively brief time, air cooling is adequate to remove decay heat even without the ECCS. Additionally, performance of the ECCS is ensured through required surveillance and testing on the system at these facilities. Operation of the facility is not permitted if the ECCS has not been verified operational prior to reactor startup or if the system is deemed non-operational during reactor operation. In the unlikely event that the ECCS is not available after an operational history that would require ECCS, core damage will not occur if the core is uncovered as long as a small amount of cooling flow is directed to the core, which is available from multiple sources.

Second, these facilities' simple design and operation yield a limited scope of aging-related concerns. The NRC has found no significant aging issues that need evaluation at the time of license renewal because the NRC currently imposes aging-related surveillance requirements on NPUFs via technical specifications, as needed. Aging related issues are specifically addressed in the standard review plan and acceptance criteria used for evaluating license renewal applications (*i.e.,* NUREG–1537, Part 2). Parts 1 and 2 of NUREG–1537 document lessons learned and known aging issues from prior reviews. Since NUREG–1537 was published in 1996, NRC reviews and assessments have not revealed any additional issues or need to update the NUREG. Specifically, based on operating experience over the past 60 years and review of license renewal applications over the past 40 years, and as documented in NUREG–1537, Parts 1 and 2, the NRC has determined that for NPUFs, there are two main areas related to aging that need surveillance because of potential safety concerns: (1) Fuel cladding and (2) instrumentation and control features.

With regard to fuel cladding, the NRC currently requires NPUFs to perform periodic fuel inspections. Through years of operational experience, the NRC has found that fuel failures either do not occur or do not release significant amounts of fission products and are quickly detected by existing monitoring systems and surveillances. If fuel failures are detected, licensees are able to take the facility out of service without delay and remove any failed assemblies from service.

With regard to instrumentation and control, the NRC has found that failures in this area result in automatic facility shutdown. Failures reveal themselves to the licensee and do not prevent safe shutdown. Over the past 60 years of operation of these facilities, the potential occurrence of age-related degradation has been successfully mitigated through inspection, surveillance, monitoring, trending, recordkeeping, replacement, and refurbishment. In addition, licensees are required to report preventive and corrective maintenance activities in their annual reports, which are reviewed by the NRC. This allows the NRC to identify new aging issues if they occur. Therefore, the NRC has concluded that existing requirements and facility design and operational features would address concerns over aging-related issues during a non-expiring license term.

Third, the design bases of these facilities evolve slowly over time. The NRC receives approximately five license amendment requests from all NPUF licensees combined each year. Further, on average, each of these licensees reports only five § 50.59 evaluations per year for changes to its facility that do not require prior NRC approval. Lastly, changes to regulations that would impact the licensing bases of power reactor facility operations rarely apply to NPUFs.

Given these technical considerations, the elimination of license terms for NPUFs licensed under § 50.21(a) or (c), other than testing facilities, combined with the proposed addition of requirements for periodic FSAR submittals, should have a positive effect on safety. Ending license renewal for these licensees would allow agency resources to be shifted to enhance oversight of these facilities through increased interactions with licensees related to ongoing oversight activities, such as conducting routine inspection activities and reviewing annual reports and updated FSARs. The NRC would enhance ongoing safe operations of licensed facilities, regardless of license duration, by requiring facilities to submit FSAR updates every 5 years (see discussion on proposed § 50.71(e) in Section III.B.4, ''*Require all NPUF licensees to submit FSAR updates to the NRC every 5 years*,'' of this document). Recurring FSAR reviews by the NRC would provide for maintenance of the facility's licensing basis and provide reasonable assurance that a facility will continue to operate without undue risk to public health and safety or to the environment and without compromising the facility's security posture. Should the NRC identify potential issues with the facility's continued safe operation in

[2] The three Aerojet-General Nucleonics (AGN) reactors (University of New Mexico (Docket No. 50–252), Idaho State University (Docket No. 50–284), and Texas A&M University (Docket No. 50–59)), each rated at 5-watts, and the University of Florida Argonaut reactor (Docket No. 50–83), rated at 100 kilowatts, are not considered tank or pool reactors.

[3] The two facilities are Massachusetts Institute of Technology (MIT) (Docket No. 50–20) and the University of California-Davis (Docket No. 50–607).

its reviews of FSAR updates, the Commission can undertake regulatory actions specified in § 2.202 to modify, suspend, or revoke a license. In addition, the public would remain informed about facility operations through the publicly available FSAR submittals and would continue to have opportunities for participation through licensing actions and the § 2.206 petition process. By eliminating license terms and replacing them with required periodic FSAR update submittals coupled with existing oversight processes, the NRC would reduce the burden on facilities licensed under § 50.21(a) or (c), other than testing facilities, which is consistent with the AEA and supports the NRC's efforts to make licensing more efficient and effective.

As described in Section V, ''*Section-by-Section Analysis*,'' of this document, the proposed rule language does not specifically address the timing of initial FSAR updates for existing NPUF licensees. The NRC intends to issue orders following the publication of the final rule to define how the proposed revisions would impact current licensees. The NRC considered incorporating these requirements into its regulations but determined that orders would be a more efficient and effective approach. This is because: (1) Invoking the initial FSAR submittal requirements for currently operating NPUFs would be a one-time requirement that would result in obsolete rule text after implementation; (2) a regulatory requirement would have compelled licensees to request and NRC to issue a license amendment to remove existing license terms; and (3) to facilitate licensee and NRC workload management, the initial FSAR submittals need to be staggered, and issuing orders allows the agency to assign licensees an appropriate implementation schedule to achieve this goal.

Specifically, the orders would remove license terms from each license as of the effective date of the final rule. The facilities would be grouped by whether they have undergone license renewal using NUREG–1537, Part 2 and the ISG. In addition, the orders would dictate when the licensee's initial FSAR update would be due to the NRC. The NRC would issue these orders for the purposes of staggering initial and ongoing FSAR updates. For that purpose, licensees would be placed in three groups based on the following:

(1) Group 1 licensees would each be required to submit an updated FSAR 1 year following the effective date of the final rule. This group would consist of licensees that completed the license renewal process using the ISG. The NRC would require these licensees to submit an updated FSAR first because, with a recent license renewal, the FSARs should require minimal updates.

(2) Group 2 licensees would each be required to submit an updated FSAR 2 years following the effective date of the final rule. This group would consist of licenses that last completed license renewal prior to the issuance of the ISG (*i.e.,* license renewal was reviewed per NUREG–1537, Part 2). The NRC would allow these licensees more time to submit an updated FSAR than Group 1 licensees because more time has passed since Group 2's most recent license renewals, so additional time may be needed to update their FSARs.

(3) Group 3 would consist of the remaining NPUF licensees, each of which would need to submit a license renewal application consistent with the format and content guidance in NUREG–1537, Part 1. The NRC would review the application using NUREG–1537, Part 2, and the ISG, as appropriate. If the NRC were to conclude that a licensee meets the standard for issuing a renewed license, then the licensee would receive a non-expiring renewed license.

The proposed rule also would make conforming changes to requirements for facilities that are decommissioning by revising § 50.82(b) and (c). These provisions address license termination applications and collection periods for shortfalls in decommissioning funding for NPUFs. The proposed rule would clarify that NPUFs licensed under § 50.22 and testing facilities licensed under § 50.21(c) are the only NPUFs with license terms, which the NRC uses to determine when an application for license termination is needed. The NPUFs licensed under § 50.21(a) or (c) would need to submit an application for license termination within 2 years following permanent cessation of operations, as is currently required.

3. Define the license renewal process for testing facilities and NPUFs licensed under 10 CFR 50.22.

For NPUF licenses issued under § 50.22 and testing facilities licensed under § 50.21(c), the NRC proposes a set of regulations explicitly defining the license renewal process in proposed § 50.135 that would consolidate in one section existing regulatory requirements (*i.e.,* requirements regarding written communications, application filing, application contents, and the issuance of renewed licenses) for current and future licensees. The proposed rule would not impose new regulations on these facilities. The NRC also would make a conforming change to § 50.8 to reflect the approved information collection requirement of proposed § 50.135.

Section 103 of the AEA establishes a license term of no more than 40 years for § 50.22 facilities. Although the AEA does not establish a fixed license term for testing facilities, these facilities are currently subject to additional license renewal requirements (*e.g.,* siting subject to 10 CFR part 100, Advisory Committee on Reactor Safeguards [ACRS] review and environmental impact statements) due to higher power levels or other safety-significant design features as compared to other class 104a or c licensees. Therefore, the NRC is proposing that licensees under § 50.22 and testing facilities licensed under § 50.21(c) would continue to prepare a complete license renewal application.

The NRC is proposing to make renewed operating licenses for these facilities effective 30 days after the date of issuance, replacing the previous operating license. The 30 days is intended to allow the facility to make any necessary and conforming changes to the facility processes and procedures to the extent that they are required by the applicable conditions of the renewed license. If administrative or judicial appeal affects the renewed license, then the previous operating license would be reinstated unless its term has expired and the facility has failed to submit a license renewal application in a timely manner according to proposed § 50.135(c)(2).

4. Require all NPUF licensees to submit FSAR updates to the NRC every 5 years.

Under the current license renewal process, the NRC found that licensees were not always able to provide documentation describing the details of their licensing basis, including their design basis calculations, in license renewal applications. Some licensees had difficulty documenting the necessary updates to licensing bases when they were called upon to do so between initial licensing and license renewal. Consequently, the license renewal application review process was overly burdensome for both licensees and the NRC because the NRC had incomplete information regarding changes to design and operational characteristics of the facility. From a safety perspective, an updated FSAR is important for the NRC's inspection program and for effective licensee operator training and examination.

The proposed rule would require all NPUF licensees to submit FSAR updates to the NRC every 5 years. By requiring periodic submittals of FSAR updates,

the NRC anticipates that licensees will document changes in licensing bases as they occur, which would maintain the continuity of knowledge both for the licensee and the NRC and the understanding of changes and effects of changes on the facility. The NRC anticipates that these changes would result in minimal additional burden on licensees and the NRC, largely because licensees are currently required by § 50.59 to keep FSARs up to date. The proposed rule would impose a new requirement for licensees to submit an updated FSAR to the NRC according to proposed § 50.71(e).

The proposed rule also would correct an existing grammatical error in footnote 1 to § 50.71(e). Currently the footnote states, ''Effects of changes includes appropriate revisions of descriptions in the FSAR such that the FSAR (as updated) is complete and accurate.'' The proposed rule would change ''includes'' to ''include'' so that the plural subject is followed by a plural verb.

5. Amend the current timely renewal provision under 10 CFR 2.109, allowing facilities to continue operating under an existing license past its expiration date if the facility submits a license renewal application at least 2 years before the current license expiration date.

The requirements in § 2.101(a) allow the NRC to determine the acceptability of an application for review by the NRC. However, the current provision in § 2.109 allows an NPUF licensee to submit its license renewal application as late as 30 days before the expiration of the existing license. Historical precedent indicates that 30 days is not a sufficient period of time for the NRC to adequately assess the sufficiency of a license renewal application for review. As a result, the NRC has accepted license renewal applications and addressed their deficiencies through the license renewal process, largely through submitting RAIs to the licensee to supplement the application. This approach increases the burden of the license renewal process on both licensees and the NRC.

To address this issue, the NRC is proposing revisions to the timely renewal provision for NPUFs licensed under § 50.22 and testing facilities licensed under § 50.21(c) to establish a length of time adequate for the NRC to review the sufficiency of a license renewal application. Specifically, revisions to § 2.109 would amend the current timely renewal provision, allowing NPUFs licensed under § 50.22 and testing facilities licensed under § 50.21(c) to continue operating under an existing license past its expiration date if the facility submits a sufficient license renewal application at least 2 years before the current license expiration date. In such cases, the existing license would not be deemed to have expired until the application has been finally determined by the NRC, as indicated in § 2.109. The proposed revision would ensure that the NRC has adequate time to review the sufficiency of license renewal applications while the facility continues to operate under the terms of its current license. The NRC also is proposing to eliminate this provision for facilities, other than testing facilities, licensed under § 50.21(a) or (c), as these facilities will no longer have license expiration dates.

6. Provide an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs other than testing facilities.

The standards in 10 CFR part 20 for protection against ionizing radiation provide a limit on the maximum yearly radiation dose a member of the public can receive from the operation of any NRC-licensed facility. Licensees are required to maintain programs and facility design features to ensure that these limits are met. In addition to the dose limits in 10 CFR part 20, accident dose criteria are also applied to determine the acceptability of the licensed facility. The accident dose criteria are not dose limits; they inform a licensee's accident analyses and the development of successive safety measures (*i.e.,* defense-in-depth) so that in the unlikely event of an accident, no acute radiation-related harm will result to any member of the public. Currently, the accident dose criterion for NPUFs other than testing facilities is the 10 CFR part 20 dose limit to a member of the public. For testing facilities, accident dose criteria are found in 10 CFR part 100.

Since January 1, 1994, for NPUF licensees (other than testing facilities) applying for initial or renewed licensees, the NRC applies the accident dose criterion by comparing the results from the initial or renewed license applicant's accident analyses with the standards in 10 CFR part 20. Prior to that date, the NRC had generally found acceptable accident doses that were less than 0.5 rem (0.005 Sv) whole body and 3 rem (0.03 Sv) thyroid for members of the public. On January 1, 1994, the NRC amended 10 CFR part 20 to lower the dose limit to a member of the public to 0.1 rem (0.001 Sv) TEDE.

The NRC has determined that the public dose limit of 0.1 rem (0.001 Sv) TEDE is unduly restrictive to be applied as accident dose criteria for NPUFs, other than those NPUFs subject to 10 CFR part 100.[4] However, the NRC considers the accident dose criteria in 10 CFR part 100 (25 rem whole body and 300 rem to the thyroid) applicable to accident consequences for power reactors, which have greater potential consequences resulting from an accident, to be too high for NPUFs other than testing facilities. For these reasons, the NRC is proposing to amend its regulations in § 50.34 to add an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs not subject to 10 CFR part 100.

The accident dose criterion of 1 rem (0.01 Sv) TEDE is based on the Environmental Protection Agency's (EPA) Protection Action Guides (PAGs), which were published in EPA 400–R–92–001, ''Manual of Protective Action Guides and Protective Actions for Nuclear Incidents.'' The EPA PAGs are dose guidelines to support decisions that trigger protective actions such as staying indoors or evacuating to protect the public during a radiological incident. The PAG is defined as the projected dose to an individual from a release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended. Three principles considered in the development of the EPA PAGs include: (1) Prevent acute effects; (2) balance protection with other important factors and ensure that actions result in more benefit than harm; and (3) reduce risk of chronic effects. In the early phase (*i.e.,* the beginning of the nuclear incident, which may last hours to days), the EPA PAG that recommends the protective action of sheltering-in-place or evacuation of the public to avoid inhalation of gases or particulates in an atmospheric plume and to minimize external radiation exposures, is 1 rem (0.01 Sv) to 5 rem (0.05 Sv). So, if the projected dose to an individual from an incident is less than 1 rem (0.01 Sv), then no protective action for the public is recommended. In light of this understanding of the early phase EPA PAG, the NRC's proposed accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs, other than testing facilities would provide reasonable assurance of adequate protection of the public from unnecessary exposure to radiation.

7. Extend the applicability of 10 CFR 50.59 to NPUFs regardless of their decommissioning status.

Section 50.59(b) of the Commission's regulations does not apply § 50.59 to

[4] The NRC Atomic Safety and Licensing Appeal Board stated that the standards in 10 CFR part 20 are unduly restrictive as accident dose criteria for research reactors (Trustees of Columbia University in the City of New York, ALAB–50, 4 AEC 849, 854–855 (May 18, 1972)).

NPUFs whose licenses have been amended to reflect permanent cessation of operations and that no longer have fuel on site (*e.g.,* they have returned all of their fuel to the U.S. Department of Energy [DOE]). The current language states that § 50.59 is applicable to licensees ''whose license has been amended to allow possession of nuclear fuel, but not operation of the facility.'' Therefore, § 50.59 is no longer applicable to NPUF licensees that no longer possess nuclear fuel. For these licensees, the NRC adds license conditions identical to those of § 50.59 to allow the licensee to make changes in its facility or changes in its procedures that would not otherwise require obtaining a license amendment pursuant to § 50.90. Because most NPUFs promptly return their fuel to the DOE after permanent shutdown, in contrast to decommissioning power reactors, these licensees must request the addition of the license conditions. This imposes an administrative burden on the licensees and the NRC. This burden would be eliminated with the proposed regulatory change to revise the wording of § 50.59(b) to extend the applicability of § 50.59 to NPUFs regardless of their decommissioning status.

8. Clarify an applicant's requirements for meeting the existing provisions of 10 CFR 51.45.

The NRC is required to prepare either an environmental impact statement or environmental assessment, as appropriate, for all licensing actions pursuant to 10 CFR part 51. For most types of licenses, 10 CFR part 51 specifies that an applicant must submit environmental documentation in the form of an environmental report, or a supplement to a previously submitted environmental report, to assist the NRC's review. However, the NRC does not currently have explicit requirements under 10 CFR part 51 with respect to the nature of the environmental documentation that must accompany applications for initial licenses and renewed licenses for NPUFs. This fact was recently highlighted in association with the NRC's review of a construction permit application for a new NPUF to be licensed under the authority of Section 103 of the AEA.

The proposed rule would add a new section to 10 CFR part 51 to clarify NPUF environmental reporting requirements. Proposed § 51.56 would clarify an applicant's existing requirements for meeting the provisions of § 51.45. This change would improve consistency throughout 10 CFR part 51 with respect to environmental report submissions required from applicants for licensing actions. The NRC also would make a conforming change to 10 CFR 51.17 to reflect the approved information collection requirement of proposed 10 CFR 51.56.

9. Eliminate the requirement for NPUFs to submit financial qualification information with license renewal applications under 10 CFR 50.33(f)(2).

The proposed rule would eliminate license renewal financial qualification requirements for NPUFs. Currently, § 50.33(f) requires NPUF license applicants to provide information sufficient to demonstrate their financial qualifications to carry out the activities for which the license is sought. Because the regulatory requirements for the content of an application for a renewed NPUF license are the same as those for an original license, NPUF licensees requesting license renewal must submit the same financial information that is required in an application for an initial license. In addition, the NRC has found that the financial qualification information does not have a significant impact on the NRC's determination on the license renewal application. The elimination of NPUF license renewal financial qualification requirements reduces the burden associated with license renewal applications while still enabling the NRC to obtain the information necessary to conduct its review of license renewal applications.

Similar to the current proposal for NPUFs, the 2004 rulemaking, ''Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor,'' discontinued financial qualification reviews for power reactors at the license renewal stage except in very limited circumstances. The Commission stated that ''[t]he NRC believes that its primary tool for evaluating and ensuring safe operations at nuclear power reactors is through its inspection and enforcement programs . . . .'' Further, the Commission stated that ''[t]he NRC has not found a consistent correlation between licensees' poor financial health and poor safety performance. If a licensee postpones inspections and repairs that are subject to NRC oversight, the NRC has the authority to shut down the reactor or take other appropriate action if there is a safety issue.''

At NPUF sites, the NRC's inspection and enforcement programs serve as important tools for evaluating licensee performance and ensuring safe operations. The NRC performs routine NPUF program inspections and special and reactive inspections. In addition, the NRC manages the NPUF operator license examination program. The NRC also manages the review of NPUF emergency and security plans and develops and implements policy and guidance concerning the NPUF licensing program. These programs provide, in part, the NRC's safety oversight of these licensees.

The elimination of financial qualification requirements for power reactor licensees at the time of license renewal supports the NRC's basis for eliminating NPUF financial qualification requirements at the time of license renewal. The NRC is not aware of any connection between an NPUF's financial qualifications at license renewal and safe operation of the facility. Moreover, because NPUFs have significantly smaller fission product inventory and potential for radiological consequences than do power reactors, the NPUF financial qualification reviews appear to be of less value in ensuring safety than reviews previously required of power reactors.

IV. Specific Requests for Comments

The NRC is seeking public comment on the proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

- As discussed in Section III, ''*Discussion*,'' of this document, the NRC is proposing that license terms for NPUFs, other than testing facilities, licensed under 10 CFR 50.21(a) or (c) would be removed from existing licenses via order. Are there any unintended consequences associated with removing license terms in this manner? Provide the basis for your answer.
- Proposed § 50.71 would require all NPUFs to submit an update to the FSAR originally submitted with the facility's license application every 5 years. The NRC staff plans to specify the first submittal date in orders issued to each facility. Should the NRC specify the date by which each facility or category of facility must submit its first updated FSAR in the rule language instead of using site-specific orders? Are there any unintended consequences of establishing the first submittal dates through orders? Please provide the basis for your answer.
- Proposed § 50.135 outlines the license renewal process for facilities licensed under § 50.22 and testing facilities licensed under § 50.21(c). Should any elements of the process be removed from or added to the NRC proposal? Please provide specific examples.
- The NPUFs licensed under § 50.22 are those facilities that are used for industrial or commercial purposes. For

example, a facility used primarily for the production and sale of radioisotopes other than for use in research and development would be considered a commercial production or utilization facility and therefore would be licensed under § 50.22. Currently, license applications for such NPUFs pass through additional steps in the licensing process (*e.g.,* mandatory public hearings). These additional steps are required even though many such facilities have the same inherent low risk profile as low-power NPUFs licensed under § 50.21(a) or (c) which are not required to proceed through these additional steps. Are these additional steps necessary for all NPUFs licensed under § 50.22, or would it be more efficient and effective to differentiate low-power NPUFs licensed under § 50.22 from high-power NPUFs licensed under § 50.22? Elaborate on requirements that could be tailored for low-power, low-risk NPUFs licensed under § 50.22, including recommended criteria (*e.g.,* power level or other measure) for establishing reduced requirements.

- As discussed in Section III, ''*Discussion*,'' of this document, the NRC is proposing that license terms would not expire for NPUFs, other than testing facilities, licensed under § 50.21(a) or (c), whereas testing facilities would continue to have fixed license terms that would require periodic license renewal. While the AEA does not establish a fixed license term for testing facilities, these facilities are currently subject to additional regulatory requirements due to higher power levels (*e.g.,* mandatory public hearings, ACRS review, and preparation of environmental impact statements). Is a fixed license term necessary for testing facilities licensed under § 50.21(c) or would it be more efficient and effective to also grant testing facilities non-expiring licenses? Provide the basis for revising NRC requirements to account for the higher risk of testing facilities licensed under § 50.21(c) relative to other NPUFs licensed under § 50.21(a) or (c), including recommended criteria for establishing eligibility for a non-expiring license.
- For NPUFs licensed under § 50.22 and testing facilities licensed under § 50.21(c), does the revision to the timely renewal provision from 30 days to 2 years provide an undue burden on licensees? If so, in addition to your response, please provide information supporting an alternate provision for timely renewal.
- The NRC is considering requiring each NPUF licensee, other than testing facilities, to demonstrate in its accident analysis that an individual located in the unrestricted area following the onset of a postulated accidental release of licensed material, including consideration of experiments, would not receive a dose in excess of 1 rem (0.01 Sv) TEDE for the duration of the accident. Is the accident dose criterion 1 rem (0.01 Sv) TEDE in proposed § 50.34(a)(1)(ii)(D)(*2*) appropriate for NPUFs, other than testing facilities? If not, what accident dose criterion is appropriate? Please provide the basis for your answer.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes proposed by this rulemaking.

Proposed § 2.109 Effect of Timely Renewal Application

The NRC is proposing to revise 10 CFR 2.109(a) to exclude NPUFs from the 30-day timely renewal provision because 30 days does not provide the NRC with adequate time to assess license renewal applications.

In addition to this exception from the 30-day timely renewal provision, the NRC is proposing to add a new subparagraph defining a new timely renewal provision for NPUFs with license terms (*i.e.,* facilities licensed under 10 CFR 50.22 and testing facilities licensed under § 50.21(c)). The NRC is proposing to add paragraph (e) to § 2.109 to require an NPUF with a license term to submit a license renewal application at least 2 years prior to license expiration. This will permit adequate time for the NRC to determine the acceptability of the application before expiration of the license term.

Proposed § 50.2 Definitions

The proposed rule would add a definition to § 50.2 for a ''non-power production or utilization facility,'' or ''NPUF.'' An NPUF would be defined as a non-power reactor, testing facility, or other production or utilization facility, licensed under the authority of Section 103, Section 104a, or Section 104c of the AEA that is not a nuclear power reactor or fuel reprocessing plant.

Proposed § 50.8 Information Collection Requirements: OMB Approval

The NRC is proposing to revise § 50.8(b) to include proposed § 50.135 as an approved information collection requirement in 10 CFR part 50. This is a conforming change to existing regulations to account for the new information collection requirement.

Proposed § 50.33 Contents of Applications; General Information

The NRC is proposing to revise § 50.33(f)(2) to remove the requirement for NPUFs to submit with license renewal applications the same financial information that is required for initial license applications. These NPUFs (*i.e.,* facilities licensed under § 50.22 and testing facilities) would not be required to submit any financial information with license renewal applications.

Proposed § 50.34 Contents of Applications; Technical Information

The NRC is proposing to revise § 50.34(a)(1)(ii)(D) to clarify the section's applicability to NPUFs licensed under § 50.22 or § 50.21(a) or (c). Paragraph (a)(1)(ii)(D) would be modified to create § 50.34(a)(1)(ii)(D)(*1*) and (*2*) to clearly distinguish these requirements between applicants for power reactor construction permits and applicants for NPUF construction permits. Section 50.34(a)(1)(ii)(D)(*1*) would describe the requirements applicable to power reactor construction permit applicants. The proposed rule would not change the existing requirements for these applicants.

Proposed § 50.34(a)(1)(ii)(D)(*2*) would specify an accident dose criterion for NPUFs, other than testing facilities subject to 10 CFR part 100. The proposed regulation would set an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs other than testing facilities.

Proposed § 50.51 Continuation of License

The NRC is proposing to revise § 50.51(a) to exempt from license terms NPUFs, other than testing facilities, licensed under § 50.21(a) or (c). Testing facilities and NPUFs licensed under § 50.22 would continue to have fixed license terms and undergo license renewal as described in proposed § 50.135. The NRC is proposing to add § 50.51(c) to clarify that NPUFs, other than testing facilities, licensed under § 50.21(a) or (c) after the effective date of the final rule, would have non-expiring license terms. The implementing change to applicable existing NPUF licensees would be instituted by order to remove license terms.

Proposed § 50.59 Changes, Tests and Experiments

The NRC is proposing to revise paragraph (b) of § 50.59 to extend the section's applicability to NPUFs that have permanently ceased operations and that no longer have fuel on site (*e.g.,*

have returned all of their fuel to the DOE).

Proposed § 50.71 Maintenance of Records, Making of Reports

The NRC is proposing to revise paragraph (e) of § 50.71 to require NPUFs to submit an update to the FSAR originally submitted with the facility's license application, as is currently required for nuclear power reactor licensees and applicants for a combined license under 10 CFR part 52. Updates should reflect the changes and effects of changes to the facility's design basis and licensing basis, including any information documented in annual reports, § 50.59 evaluations, license amendments, and other submittals to the NRC since the previous FSAR update submittal. The NRC also is proposing to revise footnote 1 in paragraph (e) of § 50.71 to change the word ''includes'' to ''include'' to correct an existing grammatical error.

In addition to extending the applicability of the requirements specified in § 50.71(e), the proposed rule would establish supporting requirements in § 50.71(e)(3) and (e)(4). The NRC is proposing to revise paragraph (e)(3)(i) of § 50.71 to make explicit the applicability of the FSAR requirements therein to only power reactor licensees. This change would not modify the underlying requirements in § 50.71 that currently apply to power reactor licensees.

The NRC also would add § 50.71(e)(3)(iv) to set forth FSAR requirements similar to those in proposed § 50.71(e)(3)(i) specifically for NPUFs. The NRC is proposing to require NPUFs licensed after the effective date of the final rule to submit initial FSAR revisions within 5 years of the date of issuance of the operating license. Each revision would reflect all changes made to the FSAR up to a maximum of 6 months prior to the date of filing the revision.

The NRC is proposing to restructure and revise paragraph (e)(4) of § 50.71. New paragraph (e)(4)(i) would make explicit that the FSAR update requirements therein apply to nuclear power reactor licensees only. This administrative change would not modify the underlying requirements of existing § 50.71(e)(4) that currently apply to power reactor licensees. In addition, the NRC would add § 50.71(e)(4)(ii) to establish similar FSAR update requirements for NPUFs. Specifically, the NRC is proposing to require NPUF licensees to file subsequent FSAR updates at intervals not to exceed 5 years. Each update must reflect all changes made to the FSAR up to a maximum of 6 months prior to the date of filing the update. The orders described under Section III.B, ''*Proposed Changes*,'' of this document would also establish the requirement for currently licensed NPUFs to submit recurring FSAR updates on a 5-year periodicity.

Proposed § 50.82 Termination of License

The NRC is proposing to revise paragraph (b) of § 50.82 to replace the term ''non-power reactor licensees'' with ''non-power production or utilization facility licensees'' in order to ensure that all NPUFs are subject to the relevant termination and decommissioning regulations.

The NRC is proposing to revise paragraph (b)(1) of § 50.82 to clarify that only NPUFs holding a license issued under § 50.22 and testing facilities licensed under § 50.21(c) would need to submit an application for license termination.

The NRC is proposing to revise paragraph (c) of § 50.82 to clarify when the collection period for shortfalls in funding would be determined. Currently, § 50.82(c) refers to a facility ceasing operation before the expiration of its license. Under the proposed rule, licenses for NPUFs, other than testing facilities, licensed under § 50.21(a) or (c) would not expire. Therefore, for NPUFs, other than testing facilities, licensed under § 50.21(a) or (c), the NRC proposes to revise § 50.82(c) to remove references to the expiration of the license. The requirements for all other licensees (*i.e.,* the holders of a license issued under § 50.22—including power reactor licenses—and testing facilities) have been renumbered, but the underlying requirements remain unchanged.

Proposed § 50.135 License Renewal for Non-Power Production or Utilization Facilities Licensed Under § 50.22 and Testing Facility Licensees

The NRC is proposing to add § 50.135 to 10 CFR part 50 to clearly define the license renewal process for NPUFs licensed under § 50.22 and testing facilities licensed under § 50.21(c). This section would consolidate existing regulatory requirements related to the NPUF license renewal process in one section and would not modify the underlying requirements that currently apply to NPUFs seeking license renewal.

Proposed § 50.135(a) would specify the section's applicability to NPUFs licensed under § 50.22 and testing facilities licensed under § 50.21(c).

Proposed § 50.135(b) would require that all applications, correspondence, reports, and other written communications be filed in accordance with § 50.4.

Proposed § 50.135(c)(1) would require license renewal applications be prepared in accordance with subpart A of 10 CFR part 2 and all applicable sections of 10 CFR part 50. Proposed § 50.135(c)(2) would allow licensees to submit applications for license renewal up to 10 years before the expiration of the current operating license.

Proposed § 50.135(d)(1) would require licensees to provide the information specified in §§ 50.33, 50.34, and 50.36, as applicable, in license renewal applications. Proposed § 50.135(d)(2) would require applications to include conforming changes to the standard indemnity agreement under 10 CFR part 140. Proposed § 50.135(d)(3) would require licensees to submit a supplement to the environmental report with the license renewal application, consistent with the requirements of proposed § 51.56.

Proposed § 50.135(e) would specify the terms of renewed operating licenses. Proposed paragraph (e)(1) would require that the renewed license would be for the same facility class as the previous license. Proposed paragraph (e)(2) would establish the terms of a renewed license. Renewed licenses would be issued for a fixed period of time, which would be the sum of the remaining amount of time on the current operating license plus the additional amount of time beyond the current operating license expiration (not to exceed 30 years) that the licensee requests in its renewal application. Terms would not exceed 40 years in total. Proposed paragraph (e)(3) would make a renewed license effective 30 days after the date of issuance, replacing the previous operating license. Proposed paragraph (e)(4) would specify that a renewed license may be subsequently renewed following the requirements in § 50.135 and elsewhere in 10 CFR part 50.

Proposed § 51.17 Information Collection Requirements; OMB Approval

The NRC is proposing to revise § 51.17(b) to include proposed § 51.56 as an approved information collection requirement in 10 CFR part 51. This is a conforming change to existing regulations to account for the new information collection requirement.

Proposed § 51.45 Environmental Report

The NRC is proposing to revise § 51.45(a) to add a cross reference to

proposed new § 51.56. This is a conforming change to existing regulations to clarify the environmental report requirements for NPUFs.

Proposed § 51.56 Environmental Report—Non-Power Production or Utilization Facility Licenses

The NRC is proposing to add a new section, § 51.56, to clarify existing requirements for the submittal and content of environmental reports by applicants seeking a permit to construct, or a license to operate, an NPUF, or to renew an existing license as otherwise prescribed by § 50.135 of this proposed rule. This section would clarify existing regulatory requirements related to environmental reports and would not modify the underlying requirements that currently apply to NPUFs.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of NPUFs. The companies, universities, and government agencies that own and operate these facilities do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation and the draft implementing guidance. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The draft regulatory analysis is available as indicated in Section XVI, ''*Availability of Documents*,'' of this document. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

VIII. Backfitting

The NRC's backfitting provisions for reactors are found in 10 CFR 50.109. The regulatory basis for § 50.109 was expressed solely in terms of nuclear power reactors. For example, the NRC's Advanced Notice of Proposed Rulemaking, Policy Statement, Proposed Rule, and Final Rule for § 50.109 each had the same title: ''Revision of Backfitting Process for Power Reactors.'' As a result, the NRC has not applied § 50.109 to research reactors, testing facilities, and other non-power facilities licensed under 10 CFR part 50 (*e.g.,* ''Final Rule; Limiting the Use of Highly Enriched Uranium in Domestically Licensed Research and Test Reactors''; ''Final Rule; Clarification of Physical Protection Requirements at Fixed Sites''). In a 2012 final rule concerning non-power reactors, the NRC stated, ''The NRC has determined that the backfit provisions in § 50.109 do not apply to test, research, or training reactors because the rulemaking record for § 50.109 indicates that the Commission intended to apply this provision to only power reactors, and NRC practice has been consistent with this rulemaking record'' (''Final Rule; Requirements for Fingerprint-Based Criminal History Records Checks for Individuals Seeking Unescorted Access to Non-Power Reactors'').

Under proposed § 50.2, ''NPUFs'' would include non-power reactors, testing facilities, or other non-power production or utilization facilities licensed in accordance with §§ 50.21(a) or (c) (Section 104a or c of the AEA) or § 50.22 (Section 103 of the AEA). Because the term ''NPUFs'' would include licensees that are excluded from the scope of § 50.109, NPUFs would not fall within the scope of § 50.109. Because § 50.109 does not apply to NPUFs, and this proposed rule would apply exclusively to NPUFs, the NRC did not apply § 50.109 to this proposed rule.

Although NPUF licensees are not protected by § 50.109, for those NPUFs licensed under the authority of Section 104 of the AEA, the Commission is directed to impose the minimum amount of regulation on the licensee consistent with its obligations under the AEA to promote the common defense and security, protect the health and safety of the public, and permit the conduct of widespread and diverse research and development and the widest amount of effective medical therapy possible.

IX. Cumulative Effects of Regulation

The NRC is following its Cumulative Effects of Regulation (CER) process by engaging extensively with external stakeholders throughout this rulemaking and related regulatory activities. Public involvement has included: (1) A request for comment on a preliminary draft regulatory basis document on June 29, 2012, and (2) three public meetings (held on September 13, 2011; December 19, 2011; and March 27, 2012) that supported the development of the draft regulatory basis document. During the development of the proposed rule language, the NRC held two public meetings with stakeholders on August 7, 2014 and October 7, 2015 and will be issuing the draft implementing guidance with the proposed rule to support more informed external stakeholder feedback. Section XIV, ''*Availability of Guidance,*'' of this document describes how the public can access the draft implementing guidance for which the NRC seeks external stakeholder feedback.

Finally, the NRC is requesting CER feedback on the following questions:

1. In light of any current or projected CER challenges, does the proposed rule's effective date provide sufficient time to implement the new proposed requirements, including changes to programs, procedures, and facilities?

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (*e.g.,* orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule's requirements?

4. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

5. Please comment on the NRC's cost and benefit estimates in the draft regulatory analysis that supports the proposed rule. The draft regulatory analysis is available as indicated in Section XVI, ''*Availability of Documents,*'' of this document.

X. Plain Writing

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

XI. Environmental Assessment and Proposed Finding of No Significant Environmental Impact

The Commission has determined under NEPA and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly

affecting the quality of the human environment. Consequently, an environmental impact statement is not required. The basis of this determination reads as follows: The proposed rule to eliminate license terms for NPUFs, other than testing facilities, licensed under § 50.21(a) or (c) would result in no additional radiological or non-radiological impacts because of existing surveillance and oversight and the minimal consequences of MHAs for these facilities. In addition, the implementation of the proposed rulemaking would not affect the NEPA environmental review requirements of new facilities and facilities applying for license renewal. The NRC concludes that this proposed rule would not cause any additional radiological or non-radiological impacts on the human environment.

The determination of this environmental assessment (EA) is that there will be no significant effect on the quality of the human environment from this action. Public stakeholders should note, however, that comments on any aspect of the EA may be submitted to the NRC. The EA is available as indicated in Section XVI, ''*Availability of Documents,*'' of this document. The NRC has sent a copy of the EA and this proposed rule to every State Liaison Officer and has requested comments.

XII. Paperwork Reduction Act

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget (OMB) for approval of the information collections.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR part 50, Non-power Production or Utilization Facility License Renewal, Proposed Rule.

The form number if applicable: Not applicable.

How often the collection is required or requested: Once and annually.

Who will be required or asked to respond: NPUF licensees.

An estimate of the number of annual responses: 58 (27 reporting responses + 31 recordkeepers).

The estimated number of annual respondents: 31.

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: 1,551.

Abstract: The proposed rule would result in incremental changes in recordkeeping and reporting burden relative to existing rules by eliminating license terms for class 104a or c NPUFs, other than testing facilities, and defining the license renewal process for class 103 NPUFs and testing facilities; and requiring the periodic submittal of updates to the FSAR. The NRC anticipates that, overall, the proposed rule would result in reduced burden on licensees and the NRC, and would create a more responsive and efficient licensing process that would continue to protect public health and safety, promote the common defense and security, and protect the environment.

Currently, NPUF licensees are not required to submit to the NRC updated FSARs. During the recent round of license renewals, the NRC found that some FSARs submitted with license renewal applications often did not reflect a facility's current licensing basis. The lack of ongoing FSAR updates added burden to the license renewal process for NPUF licensees and the NRC in order to re-establish each facility's licensing basis. Periodic submittals of updates to FSARs would create a mechanism for incorporating design and operational changes into the licensing basis as they occur. As a result, NPUFs would routinely update their licensing bases and the NRC would be made aware of changes to the licensing bases more frequently.

The NRC has determined that the proposed information collection requirements are necessary to ensure that: (1) Licensee procedures are up-to-date and are consistent with the NRC's requirements, (2) licensing bases are not lost over time, and (3) the NRC is made aware of changes to facilities more frequently.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden of the proposed 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 proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML17068A077 or may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. You may obtain information and comment submissions related to the OMB clearance package by searching on *http://www.regulations.gov* under Docket ID NRC–2011–0087.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the previously stated issues, by the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0087.
- *Mail comments to:* Information Services Branch, Office of the Chief Information Officer, Mail Stop: T–2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150–AI96), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–3621, email: *oira_submission@omb.eop.gov.*

Submit comments by May 1, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XIII. Criminal Penalties

For the purposes of Section 223 of the AEA, the NRC is issuing this proposed rule that would amend 10 CFR 2.109, 50.2, 50.33, 50.34, 50.51, 50.59, 50.71, 50.82, and 51.45 and create 10 CFR 50.135 and 51.56 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

XIV. Availability of Guidance

The NRC is issuing DG–2006, ''Preparation of Updated Final Safety Analysis Reports for Non-power Production or Utilization Facilities,'' in accordance with 10 CFR 50.71(e), for the implementation of the proposed requirements in this rulemaking. The DG is available as indicated in Section XVI, ''*Availability of Documents,*'' of this document. You may obtain information and comment submissions related to the DG by searching on *http://*

www.regulations.gov under Docket ID NRC–2011–0087.

The draft implementing guidance defines multiple terms found in 10 CFR part 50 and other documents relevant to the preparation of FSARs, including aging; aging management; change; design bases; effects of changes; facility; FSAR (as updated); historical information; licensing basis; NPUFs; obsolete information, and safety related items. The NRC recognizes that changes to facilities may be necessary during the course of operations due to facilities' dynamic designs and operations; however, licensees must justify and implement any changes to the design basis and licensing basis in accordance with NRC regulations. The updated FSAR provides the NRC with the most current design and licensing bases for a licensee and provides the general public with a description of the facility and its operation. Section 50.34 and NUREG–1537, Part 1 provide the scope and format of an updated FSAR. Content should include changes to the facility or its operations resulting from new or amended regulatory requirements as well as changes and the effects of changes to the facility, its procedures, or experiments. The NRC Facility Project Manager reserves the right to conduct an inspection related to changes reported in the updated FSAR.

You may submit comments on the DG by the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0087. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.*

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

XV. Public Meeting

The NRC will conduct a public meeting on the proposed rule for the purpose of describing the proposed rule to the public and answering questions from the public to assist the public in providing informed comments on the proposed rule during the comment period.

The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting Web site at least 10 calendar days before the meeting. In addition, the NRC will post the meeting notice on *Regulations.gov* under NRC–2011–0087. Stakeholders should monitor the NRC's public meeting Web site for information about the public meeting at: *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

XVI. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./Web link/ **Federal Register** citation
SECY–16–0048, ''Proposed Rulemaking: Non-Power Production or Utilization Facility License Renewal''.	ML16019A048.
SRM–SECY–16–0048, ''Proposed Rulemaking: Non-Power Production or Utilization Facility License Renewal''.	ML17045A543.
NUREG–1537, Part 1, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Format and Content''.	ML042430055.
NUREG–1537, Part 2, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Standard Review Plan and Acceptance Criteria''.	ML042430048.
Interim Staff Guidance on Streamlined Review Process for License Renewal for Research Reactors.	ML091420066.
Non-Power Reactor License Renewal: Preliminary Draft Regulatory Basis; Request for Comment.	77 FR 38742; June 29, 2012.
Regulatory Basis to Support Proceeding with Rulemaking to Streamline and Enhance the Research and Test Reactor (RTR) License Renewal Process.	ML12240A677.
Federal Register Notice: Final Regulatory Basis for Rulemaking to Streamline Non-Power Reactor License Renewal; Notice of Availability of Documents.	ML12250A658.
SECY–08–0161, ''Review of Research and Test Reactor License Renewal Applications''	ML082550140.
SRM–SECY–08–0161, ''Review of Research and Test Reactor License Renewal Applications''	ML090850159.
SRM–M080317B, ''Briefing on State of NRC Technical Programs''	ML080940439.
SECY–09–0095, ''Long-Term Plan for Enhancing the Research and Test Reactor License Renewal Process and Status of the Development and Use of the Interim Staff Guidance''.	ML092150717.
SRM–SECY–91–061, ''Separation of Non-Reactor and Non-Power Reactor Licensing Activities from Power Reactor Licensing Activities in 10 CFR Part 50''.	ML010050021.
SRM–M090811, ''Briefing on Research and Test Reactor (RTR) Challenges''	ML092380046.
Draft Regulatory Guide DG–2006, ''Preparation of Updated Final Safety Analysis Reports for Non-Power Production or Utilization Facilities''.	ML17068A041.
Draft Regulatory and Backfit Analysis	ML17068A038.
EPA 400–R–92–001, ''Manual of Protective Action Guides and Protective Actions for Nuclear Incidents''.	*http://www2.epa.gov/sites/production/files/2014-11/documents/00000173.pdf.*
Summary of August 7, 2014 Public Meeting to Discuss the Rulemaking for Streamlining Non-power Reactor License Renewal.	ML15322A400.
Summary of October 7, 2015 Public Meeting to Discuss the Rulemaking for Streamlining Non-Power Reactor License Renewal.	ML15307A002.
Summary of September 13, 2011 Public Meeting to Discuss Streamlining Non-Power Reactor License Renewal.	ML112710285.
Summary of December 19, 2011 Public Meeting to Discuss the Regulatory Basis for Streamlining Non-Power Reactor License Renewal and Emergency Preparedness.	ML113630166.
Summary of March 27, 2012 Public Meeting: Briefing on License Renewal for Research and Test Reactors.	ML120930333.
Draft OMB Supporting Statement	ML17068A077.
Draft Environmental Assessment	ML17068A035.
Final Rule; Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor.	69 FR 4439; January 30, 2004.

Document	ADAMS accession No./Web link/ **Federal Register** citation
Final Rule; 10 CFR Part 50—Licensing of Production and Utilization Facilities	33 FR 9704; July 4, 1968.
Final Rule; Elimination of Review of Financial Qualifications of Electric Utilities in Licensing Hearings for Nuclear Power Plants.	47 FR 13750; March 31, 1982.
Final Rule; Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Reviews and Hearings for Nuclear Power Plants.	49 FR 35747; September 12, 1984.
Final Regulations; National Environmental Policy Act—Regulations	43 FR 55978; November 29, 1978.
Direct Final Rule; Definition of a Utilization Facility	79 FR 62329; October 17, 2014.
Advanced Notice of Proposed Rulemaking; Revision of Backfitting Process for Power Reactors	48 FR 44217; September 28, 1983.
Policy Statement; Revision of Backfitting Process for Power Reactors	48 FR 44173; September 28, 1983.
Proposed Rule; Revision of Backfitting Process for Power Reactors	49 FR 47034; November 30, 1984.
Final Rule; Revision of Backfitting Process for Power Reactors	50 FR 38097; September 20, 1985.
Final Rule; Limiting the Use of Highly Enriched Uranium in Domestically Licensed Research and Test Reactors.	51 FR 6514; March 27, 1986.
Final Rule; Clarification of Physical Protection Requirements at Fixed Sites	58 FR 13699; March 15, 1993.
Final Rule; Requirements for Fingerprint-Based Criminal History Record Checks for Individuals Seeking Unescorted Access to Non-Power Reactors.	77 FR 27561, 27572; May 11, 2012.
Plain Language in Government Writing	63 FR 31885; June 10, 1998.

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2011–0087. 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–2011–0087); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information; Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Classified information, Criminal penalties, Education, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 2, 50, and 51:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

■ 2. In § 2.109, revise paragraph (a) and add paragraph (e) to read as follows:

§ 2.109 Effect of timely renewal application.

(a) Except for the renewal of an operating license for a nuclear power plant under 10 CFR 50.21(b) or 50.22, a non-power production or utilization facility, an early site permit under subpart A of part 52 of this chapter, a manufacturing license under subpart F of part 52 of this chapter, or a combined license under subpart C of part 52 of this chapter, if at least 30 days before the expiration of an existing license authorizing any activity of a continuing nature, the licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.

* * * * *

(e) If the licensee of a non-power production or utilization facility licensed under 10 CFR 50.22, or testing facility, files a sufficient application for renewal at least 2 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 3. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 4. In § 50.2, add, in alphabetical order, the definition for *non-power production or utilization facility* to read as follows:

§ 50.2 Definitions.

* * * * *

Non-power production or utilization facility means a non-power reactor, testing facility, or other production or utilization facility, licensed under § 50.21(a), § 50.21(c), or § 50.22, that is

not a nuclear power reactor or fuel reprocessing plant.

* * * * *

■ 5. In § 50.8, revise paragraph (b) to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.61a, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.69, 50.70, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, 50.135, 50.150, and appendices A, B, E, G, H, I, J, K, M, N, O, Q, R, and S to this part.

* * * * *

■ 6. In § 50.33, revise paragraph (f)(2) to read as follows:

§ 50.33 Contents of applications; general information.

* * * * *

(f) * * *

(2) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first 5 years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs. An applicant seeking to renew or extend the term of an operating license need not submit the financial information that is required in an application for an initial license.

* * * * *

■ 7. In § 50.34, revise paragraph (a)(1)(ii)(D) to read as follows:

§ 50.34 Contents of applications; technical information.

(a) * * *

(1) * * *

(ii) * * *

(D) The safety features that are to be engineered into the facility and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur. Special attention must be directed to design features intended to mitigate the radiological consequences of accidents.

(*1*) In performing this assessment for a nuclear power reactor, an applicant shall assume a fission product release [6] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

(*i*) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem [7] total effective dose equivalent (TEDE).

(*ii*) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE.

(*2*) All holders of operating licenses issued to non-power production or utilization facilities, and applicants for renewed licenses for non-power production or utilization facilities under § 50.135 of this chapter not subject to 10 CFR part 100, shall provide an evaluation of the applicable radiological consequences in the facility safety analysis report that demonstrates with reasonable assurance that any individual located in the unrestricted area following the onset of a postulated accidental release of licensed material, including consideration of experiments, would not receive a radiation dose in excess of 1 rem (0.01 Sv) TEDE for the duration of the accident.

* * * * *

■ 8. In § 50.51, revise paragraph (a) and add paragraph (c) to read as follows:

§ 50.51 Continuation of license.

(a) Except as noted in § 50.51(c), each license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from date of issuance. Where the operation of a facility is involved, the Commission will issue the license for the term requested by the applicant or for the estimated useful life of the facility if the Commission determines that the estimated useful life is less than the term requested. Where construction of a facility is involved, the Commission may specify in the construction permit the period for which the license will be issued if approved pursuant to § 50.56. Licenses may be renewed by the Commission upon the expiration of the period. Renewal of operating licenses for nuclear power plants is governed by 10 CFR part 54. Application for termination of license is to be made pursuant to § 50.82.

* * * * *

(c) Each non-power production or utilization facility license, other than a testing facility license, issued under § 50.21(a) or (c) after [EFFECTIVE DATE OF FINAL RULE] will be issued with no fixed license term.

■ 9. In § 50.59, revise paragraph (b) to read as follows:

§ 50.59 Changes, tests and experiments.

* * * * *

(b) This section applies to each holder of an operating license issued under this part or a combined license issued under part 52 of this chapter, including the holder of a license authorizing operation of a nuclear power reactor that has submitted the certification of permanent cessation of operations required under § 50.82(a)(1) or § 50.110, or a reactor licensee whose license has been amended to allow possession of nuclear fuel but not operation of the facility, or a non-power production or utilization facility that has permanently ceased operations.

* * * * *

■ 10. In § 50.71, revise paragraph (e) introductory text and paragraph (e)(3)(i), add paragraph (e)(3)(iv), and revise paragraph (e)(4) to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(e) Each person licensed to operate a nuclear power reactor, or non-power production or utilization facility, under

[6] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

[7] A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, in order to assure that such designs provide assurance of low risk of public exposure to radiation, in the event of such accidents.

the provisions of § 50.21 or § 50.22, and each applicant for a combined license under part 52 of this chapter, shall update periodically, as provided in paragraphs (e)(3) and (4) of this section, the final safety analysis report (FSAR) originally submitted as part of the application for the license, to assure that the information included in the report contains the latest information developed. This submittal shall contain all the changes necessary to reflect information and analyses submitted to the Commission by the applicant or licensee or prepared by the applicant or licensee pursuant to Commission requirement since the submittal of the original FSAR, or as appropriate, the last update to the FSAR under this section. The submittal shall include the effects [1] of all changes made in the facility or procedures as described in the FSAR; all safety analyses and evaluations performed by the applicant or licensee either in support of approved license amendments or in support of conclusions that changes did not require a license amendment in accordance with § 50.59(c)(2) or, in the case of a license that references a certified design, in accordance with § 52.98(c) of this chapter; and all analyses of new safety issues performed by or on behalf of the applicant or licensee at Commission request. The updated information shall be appropriately located within the update to the FSAR.

* * * * *

(3)(i) For nuclear power reactor licensees, a revision of the original FSAR containing those original pages that are still applicable plus new replacement pages shall be filed within 24 months of either July 22, 1980, or the date of issuance of the operating license, whichever is later, and shall bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the revision.

* * * * *

(iv) For non-power production or utilization facility licenses issued after [EFFECTIVE DATE OF FINAL RULE], a revision of the original FSAR must be filed within 5 years of the date of issuance of the operating license. The revision must bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the revision.

(4)(i) For nuclear power reactor licensees, subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The revisions must reflect all changes up to a maximum of 6 months prior to the date of filing. For nuclear power reactor facilities that have submitted the certifications required by § 50.82(a)(1), subsequent revisions must be filed every 24 months.

(ii) Non-power production or utilization facility licensees shall file subsequent FSAR updates at intervals not to exceed 5 years. Each update must reflect all changes made to the FSAR up to a maximum of 6 months prior to the date of filing the update.

* * * * *

■ 11. In § 50.82, revise paragraph (b) introductory text and paragraphs (b)(1) and (c) to read as follows:

§ 50.82 Termination of license.

* * * * *

(b) For non-power production or utilization facility licensees—

(1) A licensee that permanently ceases operations must make application for license termination within 2 years following permanent cessation of operations, and for testing facilities licensed under § 50.21(c) or holders of a license issued under § 50.22, in no case later than 1 year prior to expiration of the operating license. Each application for termination of a license must be accompanied or preceded by a proposed decommissioning plan. The contents of the decommissioning plan are specified in paragraph (b)(4) of this section.

* * * * *

(c) The collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each holder of the following licenses:

(1) A non-power production or utilization facility license issued under § 50.21(a) or § 50.21(c), other than a testing facility, that has permanently ceased operations.

(2) A license issued under § 50.21(b) or § 50.22, or a testing facility, that has permanently ceased operation before the expiration of its license.

■ 12. Add § 50.135 to read as follows:

§ 50.135 License renewal for non-power production or utilization facilities licenses issued under § 50.22 and testing facility licensees.

(a) *Applicability.* The requirements in this section apply to applicants for renewed non-power production or utilization facility operating licenses issued under § 50.22 and to applicants for renewed testing facility operating licenses issued under § 50.21(c).

(b) *Written communications.* All applications, correspondence, reports, and other written communications must be filed in accordance with applicable portions of § 50.4.

(c) *Filing of application.* (1) The filing of an application for a renewed license must be in accordance with subpart A of 10 CFR part 2 and all applicable sections of this part.

(2) An application for a renewed license may not be submitted to the Commission earlier than 10 years before the expiration of the operating license currently in effect.

(d) *Contents of application.* (1) Each application must provide the information specified in §§ 50.33, 50.34, and 50.36, as applicable.

(2) Each application must include conforming changes to the standard indemnity agreement, under 10 CFR part 140 to account for the expiration term of the proposed renewed license.

(3) Contents of application—environmental information. Each application must include a supplement to the environmental report that complies with the requirements of 10 CFR 51.56.

(e) *Issuance of a renewed license.* (1) A renewed license will be of the class for which the operating license currently in effect was issued.

(2) A renewed license will be issued for a fixed period of time, which is the sum of the additional amount of time beyond the expiration of the operating license (not to exceed 30 years) that is requested in a renewal application plus the remaining number of years on the operating license currently in effect. The term of any renewed license may not exceed 40 years.

(3) A renewed license will become effective 30 days after its issuance, thereby superseding the operating license previously in effect. If a renewed license is subsequently set aside upon further administrative or judicial appeal, the operating license previously in effect will be reinstated unless its term has expired and the renewal application was not filed in a timely manner.

(4) A renewed license may be subsequently renewed in accordance with all applicable requirements.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 13. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C.

[1] Effects of changes include appropriate revisions of descriptions in the FSAR such that the FSAR (as updated) is complete and accurate.

4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

■ 14. In § 51.17, revise paragraph (b) to read as follows:

§ 51.17 Information collection requirements; OMB approval.

* * * * *

(b) The approved information collection requirements in this part appear in §§ 51.6, 51.16, 51.41, 51.45, 51.49, 51.50, 51.51, 51.52, 51.53, 51.54, 51.55, 51.56, 51.58, 51.60, 51.61, 51.62, 51.66, 51.68, and 51.69.

■ 15. In § 51.45, revise paragraph (a) to read as follows:

§ 51.45 Environmental report.

(a) *General.* As required by §§ 51.50, 51.53, 51.54, 51.55, 51.56, 51.60, 51.61, 51.62, or 51.68, as appropriate, each applicant or petitioner for rulemaking shall submit with its application or petition for rulemaking one signed original of a separate document entitled ''Applicant's'' or ''Petitioner's Environmental Report,'' as appropriate. An applicant or petitioner for rulemaking may submit a supplement to an environmental report at any time.

* * * * *

■ 16. Add § 51.56 to read as follows:

§ 51.56 Environmental report—non-power production or utilization facility licenses.

Each applicant for a non-power production or utilization facility license or other form of permission, or renewal of a non-power production or utilization facility license or other form of permission issued pursuant to §§ 50.21(a) or (c) or § 50.22 of this chapter shall submit a separate document, entitled ''Applicant's Environmental Report'' or ''Supplement to Applicant's Environmental Report,'' as appropriate, with its application to: ATTN: Document Control Desk, Director, Office of Nuclear Reactor Regulation. The environmental report or supplement shall contain the information specified in § 51.45. If the application is for a renewal of a license or other form of permission for which the applicant has previously submitted an environmental report, the supplement, to the extent applicable, shall include an analysis of any environmental impacts resulting from operational experience or a change in operations, and an analysis of any environmental impacts that may result from proposed decommissioning activities. The supplement may incorporate by reference the previously submitted environmental report, or portions thereof.

Dated at Rockville, Maryland, this 23rd day of March, 2017.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2017–06162 Filed 3–29–17; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0169]

RIN 1625–AA08

Special Local Regulation; Washburn Board Across the Bay, Lake Superior; Chequamegon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation on Lake Superior within Chequamegon Bay for the annual Washburn Board Across the Bay racing event. This annual event historically occurs within the last 2 weeks of July and lasts for 1 day. This action is necessary to safeguard the participants and spectators on the water in a portion of Chequamegon Bay between Washburn, WI and Ashland, WI. This regulation would functionally restrict all vessel speeds while within a designated no-wake zone, unless otherwise specifically authorized by the Captain of the Port (COTP) Duluth or a designated representative. The area forming the subject of this permanent special local regulation is described below. We invite your comments on this notice of proposed rulemaking (NPRM).

DATES: Comments and related material must be received by the Coast Guard on or before May 1, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–USCG–2017–0169 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 proposed rulemaking, call or email Lieutenant Junior Grade John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218–725–3818, email *John.V.Mack@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port, Duluth
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

This annual event will consist of a series of races of varying lengths that utilize stand up paddleboards, sea kayaks, and canoes and will take place in Lake Superior within Chequamegon Bay between Washburn, WI and Ashland, WI. Due to the race course spanning across the entire bay it is anticipated that a significant number of recreational and commercial vessels attempting to transit across the course would pose a significant safety hazard to race participants and safety observers.

The Captain of the Port, Duluth, believes a permanent special local regulation for Chequamegon Bay is needed to restrict the speed of vessels through the use of a no-wake zone within Chequamegon Bay before, during, and after the scheduled event to safeguard persons and vessels during the races. The statutory basis for this rulemaking is 33 U.S.C. 1233, which give the Coast Guard, under a delegation from the Department of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act.

III. Discussion of Proposed Rule

This proposed rule would create a permanent special local regulation in Chequamegon Bay for the annual Washburn Board Across the Bay racing event that historically takes place in the third or fourth week of July. The no-wake zone would be enforced on all vessels entering into 100 yards of either side of an imaginary line beginning in Washburn, WI at position 46°36′52″ N., 090°54′24″ W.; thence southwest to position 46°38′44″ N., 090°54′50″ W.; thence southeast to position 46°37′02″ N., 090°50′20″ W.; and ending southwest at position 46°36′12″ N., 090°51′51″ W. All vessels transiting through the no-wake zone would be required to travel at an appropriate rate of speed that does not create a wake except as may be permitted by the COTP or a designated representative. The precise times and date of enforcement for this special local regulation will be determined annually.

The Captain of the Port, Duluth, would use all appropriate means to notify the public when the special local

regulation in this proposed rule will be enforced. Such means may include publication in the **Federal Register** a Notice of Enforcement, Broadcast Notice to Mariners, and Local Notice to Mariners. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-year of the Special Local Regulation. Vessel traffic will be able to safely transit through the no-wake zone which will be 200 yards wide and will impact only a small designated area of Lake Superior in Chequamegon Bay between Washburn, WI and Ashland, WI during a time of year when commercial vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit through the no-wake zone may be small entities, for the reasons stated in section V.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a no-wake zone being enforced for no more than 5 hours along a prescribed route between Washburn & Ashland, Wisconsin. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. 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 NPRM 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.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposed to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.0169 to read as follows:

§ 100.0169 Special Local Regulation; Washburn Board Across the Bay, Lake Superior; Chequamegon Bay, WI.

(a) *Location.* All waters of Chequamegon Bay within 100 yards of either side of an imaginary line beginning in Washburn, WI at position 46°36′52″ N., 090°54′24″ W.; thence southwest to position 46°38′44″ N., 090°54′50″ W.; thence southeast to position 46°37′02″ N., 090°50′20″ W.; and ending southwest at position 46°36′12″ N., 090°51′51″ W.

(b) *Effective period.* This annual event historically occurs within the third or fourth week of July. The Captain of the Port Duluth, will establish enforcement dates that will be announced by Notice of Enforcement, Local Notice to Mariners, Broadcast Notice to Mariners, on-scene designated representatives, or other forms of outreach.

(c) *Regulations.* Vessels transiting within the regulated area shall travel at a no-wake speed except as may be permitted by the Captain of the Port Duluth or a designated on-scene representative. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

(d) *Penalties.* Vessels or persons violating this rule may be subject to the penalties set forth in 33 U.S.C. 1233.

Dated: March 23, 2017.

E.E. Williams,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2017–06262 Filed 3–29–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0170]

RIN 1625–AA08

Special Local Regulation; Breakers to Bridge Paddle Festival, Lake Superior; Keweenaw Waterway, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation on Lake Superior within the Keweenaw Waterway for the annual Breakers to Bridge Paddle Festival. This annual event historically occurs within the first 2 weeks of September and lasts for 1 day. This action is necessary to safeguard the participants and spectators on the water in a portion of the Keweenaw Waterway between the North Entry and the Portage Lake Lift Bridge located in Houghton, MI. This regulation would functionally restrict all vessel speeds while within a designated no-wake zone, unless otherwise specifically authorized by the Captain of the Port (COTP) Duluth or a designated representative. The area forming the subject of this permanent special local regulation is described below. We invite your comments on this notice of proposed rulemaking (NPRM).

DATES: Comments and related material must be received by the Coast Guard on or before May 1, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0170 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 proposed rulemaking, call or email Lieutenant Junior Grade John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218–725–3818, email *John.V.Mack@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port, Duluth
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

This annual event will consist of a series of races and non-competitive events of varying lengths that utilize stand up paddleboards, kayaks, and canoes that take place entirely within the Keweenaw Waterway between the North Entry and the Portage Lake Lift Bridge located in Houghton, MI. Due to the race course spanning a significant portion of the Keweenaw Waterway it is anticipated that a significant number of recreational and commercial vessels attempting to transit near the paddle craft would pose a significant safety hazard to event participants and safety observers.

The Captain of the Port, Duluth, believes a special local regulation for

the Keweenaw Waterway restricting the speed of vessels through the use of a no-wake zone before, during, and after the scheduled event is needed to safeguard persons and vessels during the races. The statutory basis for this rulemaking is 33 U.S.C. 1233, which give the Coast Guard, under a delegation from the Department of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act.

III. Discussion of Proposed Rule

This proposed rule would create a permanent special local regulation in the Keweenaw Waterway for the annual Breakers to Bridge Paddle Festival that historically takes place in the within the first two weeks of September. The no-wake zone would be enforced on all vessels entering a portion of the Keweenaw Waterway beginning at the North Entry at position 47°14′03″ N., 088°37′53″ W.; and ending at the Portage Lake Lift Bridge at position 47°07′25″ N., 088°34′26″ W. All vessels transiting through the no-wake zone would be required to travel at an appropriate rate of speed that does not create a wake except as may be permitted by the COTP or a designated representative. The precise times and date of enforcement for this special local regulation would be determined annually.

The Captain of the Port, Duluth, will use all appropriate means to notify the public when the special local regulation in this proposed rule will be enforced. Such means may include publication in the **Federal Register** a Notice of Enforcement, Broadcast Notice to Mariners, and Local Notice to Mariners. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this proposed rule is not a significant regulatory action, this rulemaking is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-year of the Special Local Regulation. Vessel traffic will be able to safely transit through the no-wake zone which will impact only a portion of the Keweenaw Waterway between the North Entry and the Portage Lake Lift Bridge located in Houghton, MI during a time of year when commercial vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit through the no-wake zone may be small entities, for the reasons stated in section V.A above, this proposed rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a no-wake zone being enforced for no more than 5 hours along a prescribed route between Washburn & Ashland, Wisconsin. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. 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 NPRM 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.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.0170 to read as follows:

§ 100.0170 Special Local Regulation; Breakers to Bridge Paddle Festival, Lake Superior; Keweenaw Waterway, MI.

(a) *Location.* All waters of the Keweenaw Waterway beginning at the North Entry at position 47°14′03″ N., 088°37′53″ W.; and ending at the Portage Lake Lift Bridge at position 47°07′25″ N., 088°34′26″ W.

(b) *Effective period.* This annual event historically occurs within the first or second week of September. The Captain of the Port Duluth, will establish enforcement dates that will be announced by Notice of Enforcement, Local Notice to Mariners, Broadcast Notice to Mariners, on-scene designated representatives, or other means of outreach.

(c) *Regulations.* Vessels transiting within the regulated area shall travel at a no-wake speed except as may be permitted by the Captain of the Port Duluth or a designated on-scene representative. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

(d) *Penalties.* Vessels or persons violating this rule may be subject to the penalties set forth in 33 U.S.C. 1233.

Dated: March 23, 2017.

E.E. Williams,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2017–06233 Filed 3–29–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0012]

RIN 1625–AA08

Special Local Regulation; Cumberland River, Mile 189.0 to 193.0; Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation for all waters of the Cumberland River beginning at mile marker 189.0 and ending at mile marker 193.0 from 11 a.m. until 6 p.m. on May 13, 4 a.m. until 6 p.m. on May 14, and 4 a.m. until 3 p.m. on May 15, 2017. This proposed special regulation is necessary to provide safety for the participants in the ''ACRA Henley'' marine event. This proposed rulemaking would prohibit persons and vessels from being in the special local regulated area unless authorized by the Captain of the Port Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 1, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0012 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 proposed rulemaking, call or email Petty Officer Ashley Schad, MSD Nashville, Nashville, TN, at 615–736–5421 or at *Ashley.M.Schad@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On September 1, 2016, Vanderbilt Rowing notified the Coast Guard that it will be conducting a rowing race from 11 a.m. until 6 p.m. on May 13, 4 a.m. until 6 p.m. on May 14, and 4 a.m. until 3 p.m. on May 15, 2017. The event will consist of at least 125 participants on various sized rowing shells on the Cumberland River. The Captain of the Port Ohio Valley (COTP) has determined that additional safety measures are necessary to protect participants, spectators, and waterway users during this event. Therefore, the Coast Guard proposes to establish a special local regulation on specified waters of the Cumberland River. This proposed regulation would be in effect from 11 a.m. until 6 p.m. on May 13, 4 a.m. until 6 p.m. on May 14, and 4 a.m. until 3 p.m. on May 15, 2017.

The purpose of this rulemaking is to ensure the safety of vessels and participants of the navigable waters before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations under 33 CFR 100.

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulated area from 11 a.m. until 6 p.m. on May 13, 4 a.m. until 6 p.m. on May 14, and 4 a.m. until 3 p.m. on May 15, 2017 for all waters of the Cumberland River beginning at mile marker 189.0 and ending at mile marker 193.0. The duration of the special local regulated area is intended to ensure the safety of vessels, participants, and these navigable waters before, during, and after the scheduled event. No vessel or person would be permitted to enter the special local regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulated area.

This proposed special local regulation restricts transit on the Cumberland River from mile 189.0 to 193.0, for 32 hours over three days. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of this special local regulation so that they may plan accordingly for this short restriction on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulated area may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulated area that would prohibit entry to unauthorized vessels. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. 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 NPRM 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.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERWAYS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T08–0012 to read as follows:

§ 100.35T08–0012 Special Local Regulation; Cumberland River Mile 189.0 to Mile 193.0; Nashville, TN.

(a) *Location.* All waters of the Cumberland River beginning at mile marker 189.0 and ending at mile marker 193.0 at Nashville, TN.

(b) *Enforcement periods.* This section will be enforced from 11 a.m. until 6 p.m. on May 13, 4 a.m. until 6 p.m. on May 14, and 4 a.m. until 3 p.m. on May 15, 2017. The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for this special local regulation.

(c) *Special Local Regulations.* (1) In accordance with the general regulations in § 100.801 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

Dated: March 13, 2017.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2017–06278 Filed 3–29–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0011]

RIN 1625–AA00

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend and update its list of recurring safety zone regulations that take place in the Coast Guard Sector Ohio Valley area. This informs the public of regularly scheduled events that require additional safety measures through establishing a safety zone. Through this the current list of recurring safety zones is proposed to be updated with revisions, additional events, and removal of events that no longer take place. When these safety zones are enforced, vessel traffic is restricted from the specified areas. Additionally, this proposed rulemaking project reduces administrative costs involved in producing separate proposed rules for each individual recurring safety zone and serves to provide notice of the known recurring safety zones throughout the year. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 1, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0011 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 on this proposed rule, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *James.C.Robinson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Ohio Valley
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port Ohio Valley (COTP) proposes to amend 33 CFR 165.801 to update our regulations for annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones with respect to those in Sector Ohio Valley

The current list of annual and recurring safety zones occurring in Sector Ohio Valley's is published under 33 CFR 165.801 in Table no. 1 for annual safety zones in the COTP Ohio Valley zone. The most recent list was created June 14, 2016 through the rulemaking 81 FR 38595.

The Coast Guard proposed to amend and update the safety zone regulations under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within Sector Ohio Valley's AOR. These events include air shows, fireworks displays, and other marine related events requiring a limited access area restricting vessel traffic for safety purposes. The current list in 33 CFR 165.801 needs to be amended to provide new information on existing safety zones, and to include new safety zones expected to recur annually or biannually, and to remove safety zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone creates unnecessary administrative costs and burdens. This single proposed rulemaking will considerably reduce administrative overhead and provide the public with notice through publication in the **Federal Register** of the upcoming recurring safety zone regulations.

The Coast Guard encourages the public to participate in this proposed rulemaking through the comment process so that any necessary changes can be identified and implemented in a timely and efficient manner. The Coast Guard will address all public comments accordingly, whether through response, additional revision to the regulation, or otherwise. Additionally, these recurring events are provided to the public through local avenues and planned by the local communities.

III. Discussion of the Proposed Rule

Part 165 of 33 CFR contains regulations establishing limited access areas to restrict vessel traffic for the safety of persons and property. Section 165.801 establishes recurring safety zones to restrict vessel transit into and through specified areas to protect spectators, mariners, and other persons and property from potential hazards presented during certain events taking place in Sector Ohio Valley's AOR. This section requires amendment from time to time to properly reflect the recurring safety zone regulations in Sector Ohio Valley's AOR. This proposed rule amends and updates § 165.801 by revising the current table for Sector Ohio Valley.

Additionally, this proposed rule adds 5 new recurring safety zones and removes 1 safety zone as follows:

Five added under the revised table for Sector Ohio Valley.

Date	Event/sponsor	Ohio Valley location	Regulated area
1 day—During the first two weeks of July.	City of Maysville Fireworks	Maysville, KY	Ohio River, Mile 408–409 (Kentucky).
1 day—Saturday before Memorial Day	Venture Outdoors/Venture Outdoors Festival.	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25; Monongahela River, Mile 0.0–0.25 (Pennsylvania).
1 day—Third Saturday in July	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA	Ohio River, Mile 7.0–9.0 (Pennsylvania).
1 day—July 4th	Wellsburg 4th of July Committee/ Wellsburg 4th of July Freedom Celebration.	Wellsburg, WV	Ohio River, Mile 73.5–74.5 (West Virginia).
1 day—During the first week of July	Newburgh Fireworks Display	Newburgh, IN	Ohio River, Mile 777.3–778.3 (Indiana).

This proposed rule removes the following safety zone regulation from § 165.801:

Date	Event/sponsor	Ohio Valley location	Regulated area
1 day—Last weekend in August	Swiss Wine Festival/Swiss Wine Festival Fireworks Show.	Ghent, KY	Ohio River, Mile 537 (Kentucky).

The effect of this proposed rule would be to restrict general navigation in the safety zone during the events. Vessels intending to transit the designated waterway through the safety zone will only be allowed to transit the area when COTP, or a designated representative, has deemed it safe to do so or at the completion of the event. The proposed annually recurring safety zones are necessary to provide for the safety of life on navigable waters during the events.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Regulatory Costs'' (February 2, 2017). A regulatory analysis (RA) follows. E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this proposed rule to be minimal, therefore a full regulatory evaluation is unnecessary. This proposed rule establishes safety zones limiting access to certain areas under 33 CFR 165 within Sector Ohio Valley's AOR. The effect of this proposed rulemaking will not be significant because these safety zones are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and, thus, will be able to plan operations around the safety zones in advance Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these safety zones. Vessel traffic may request permission from the COTP or a designated representative to enter the restricted area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded under section 2.B.2, figure 2–1, paragraph 34(g) of the Instruction because it involves the establishment of safety zones. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. 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, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM 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.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the U.S. Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.801, revise the first table to read as follows:

§ 165.801 Annual Fireworks displays and other events in the Eighth Coast Guard District recurring safety zones.

* * * * *

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
1. Multiple days—April through November.	Pittsburgh Pirates/Pittsburgh Pirates Fireworks	Pittsburgh, PA	Allegheny River, Mile 0.2–0.9 (Pennsylvania).
2. Multiple days—April through November.	Cincinnati Reds/Cincinnati Reds Season Fireworks	Cincinnati, OH	Ohio River, Mile 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
3. 2 days—Third Friday and Saturday in April.	Thunder Over Louisville/Thunder Over Louisville	Louisville, KY	Ohio River, Mile 602.0–606.0 (Kentucky).
4. Last Sunday in May	Friends of Ironton	Ironton, OH	Ohio River, Mile 326.7–327.7 (Ohio).
5. 1 day—A Saturday in July.	Paducah Parks and Recreation Department/Cross River Swim.	Paducah, KY	Ohio River, Mile 934.0–936.0 (Kentucky).
6. 1 day—First or second weekend in June.	Bellaire All-American Days	Bellaire, OH	Ohio River, Mile 93.5–94.5 (Ohio).
7. 2 days—Second weekend of June.	Rice's Landing Riverfest	Rices Landing, PA	Monongahela River, Mile 68.0–68.8 (Pennsylvania).
8. 1 day—First Sunday in June.	West Virginia Symphony Orchestra/Symphony Sunday.	Charleston, WV	Kanawha River, Mile 59.5–60.5 (West Virginia).
9. 1 day—Saturday before 4th of July.	Riverfest Inc./Saint Albans Riverfest	St. Albans, WV	Kanawha River, Mile 46.3–47.3 (West Virginia).
10. 1 day—4th July	Greenup City	Greenup, KY	Ohio River, Mile 335.2–336.2 (Kentucky).
11. 1 day—4th July	Middleport Community Association	Middleport, OH	Ohio River, Mile 251.5–252.5 (Ohio).
12. 1 day—4th July	People for the Point Party in the Park	South Point, OH	Ohio River, Mile 317–318 (Ohio).
13. 1 day—Last weekend in June or first weekend in July.	Riverview Park Independence Festival	Louisville, KY	Ohio River, Mile 618.5–619.5 (Kentucky).
14. 1 day—Third or fourth week in July.	Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks.	Wheeling, WV	Ohio River, Mile 90.0–90.5 (West Virginia).
15. 1 day—4th or 5th of July.	City of Cape Girardeau July 4th Fireworks Show on the River.	Cape Girardeau, MO	Upper Mississippi River, Mile 50.0–52.0.
16. 1 day—Third or fourth of July.	Harrah's Casino/Metropolis Fireworks	Metropolis, IL	Ohio River, Mile 942.0–945.0 (Illinois).
17. 1 day—During the first week of July.	Louisville Bats Baseball Club/Louisville Bats Firework Show.	Louisville, KY	Ohio River, Mile 603.0–604.0 (Kentucky).
18. 1 day—July 4th	Waterfront Independence Festival/Louisville Orchestra Waterfront 4th.	Louisville, KY	Ohio River, Mile 603.0–604.0 (Kentucky).
19. 1 day—During the first week of July.	Celebration of the American Spirit Fireworks/All American 4th of July.	Owensboro, KY	Ohio River, Mile 755.0–759.0 (Kentucky).
20. 1 day—During the first week of July.	Riverfront Independence Festival Fireworks	New Albany, IN	Ohio River, Mile 602.0–603.5 (Indiana).
21. 1 day—July 4th	Shoals Radio Group/Spirit of Freedom Fireworks	Florence, AL	Tennessee River, Mile 255.0–257.0 (Alabama).
22. 1 day—Saturday before July 4th.	Town of Cumberland City/Lighting up the Cumberlands Fireworks.	Cumberland City, TN	Cumberland River, Mile 103.0–105.0 (Tennessee).
23. 1 day—July 4th	Knoxville office of Special Events/Knoxville July 4th Fireworks.	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).
24. 1 day—July 4th	NCVC/Music City July 4th	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
25. 1 day—Saturday before July 4th, or Saturday after July 4th.	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Mile 450.0–450.5 (Tennessee).
26. 1 day—Second Saturday in July.	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Mile 468.2–469.2 (Kentucky and Ohio).
27. 1 day—Sunday before Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 469.2–470.5 (Kentucky and Ohio) and Licking River Mile 0.0–3.0 (Kentucky).
28. 1 day—July 4th	Summer Motions Inc./Summer Motion	Ashland, KY	Ohio River, Mile 322.1–323.1 (Kentucky).
29. 1 day—Last weekend in June or First weekend in July.	City of Point Pleasant/Point Pleasant Sternwheel Fireworks.	Point Pleasant, WV	Ohio River, Mile 265.2–266.2, Kanawha River Mile 0.0–0.5 (West Virginia).
30. 1 day—July 3rd or 4th	City of Charleston/City of Charleston Independence Day Celebration.	Charleston, WV	Kanawha River, Mile 58.1–59.1 (West Virginia).
31. 1 day—July 4th	Civic Forum/Civic Forum 4th of July Celebration	Portsmouth, OH	Ohio River, Mile 355.5–356.5 (Ohio).
32. 1 day—Second Saturday in August.	Guyasuta Days Festival/Borough of Sharpsburg	Pittsburgh, PA	Allegheny River, Mile 005.5–006.0 (Pennsylvania).
33. 1 day— Second or third week of August.	Pittsburgh Foundation/Bob O'Connor Cookie Cruise	Pittsburgh, PA	Ohio River, Mile 0.0–0.5 (Pennsylvania).
34. 1 day—Second full week of August.	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Mile 0.8–1.0 (Pennsylvania).
35. 1 day—Third week of August.	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Mile 25.2–25.8 (Pennsylvania).
36. 1 day—December 31	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh.	Pittsburgh, PA	Allegheny River Mile, 0.5–1.0 (Pennsylvania).
37. 1 day—Friday before Thanksgiving.	Pittsburgh Downtown Partnership/Light Up Night	Pittsburgh, PA	Allegheny River, Mile 0.0–1.0 (Pennsylvania).
38. Multiple days—April through November.	Pittsburgh Riverhounds/Riverhounds Fireworks	Pittsburgh, PA	Monongahela River, Mile 0.22–0.77 (Pennsylvania).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
39. 3 days—Second or third weekend in June.	Hadi Shrine/Evansville Freedom Festival Air Show ..	Evansville, IN	Ohio River, Miles 791.0–795.0 (Indiana).
40. 1 day—Second or third Saturday in June, the last day of the Riverbend Festival.	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN	Tennessee River, Mile 463.5–464.5 (Tennessee).
41. 2 days—Second Friday and Saturday in June.	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 469.6–470.0 (Kentucky and Ohio).
42. 1 day—Last Saturday in June.	City of Aurora/Aurora Firecracker Festival	Aurora, IN	Ohio River Mile, 496.7; 1400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
43. 1 day—second weekend in June.	City of St. Albans/St. Albans Town Fair	St. Albans, WV	Kanawha River, Mile 46.3–47.3 (West Virginia).
44. 1 day—Last week of June or first week of July.	PUSH Beaver County/Beaver County Boom	Beaver, PA	Ohio River, Mile 25.2–25.6 (Pennsylvania).
45. 1 day—4th of July (Rain date—July 5th).	Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration.	Monongahela, PA	Monongahela River, Mile 032.0–033.0 (Pennsylvania).
46. 1 day—Saturday Third or Fourth full week of July (Rain date—following Sunday).	Oakmont Yacht Club/Oakmont Yacht Club Fireworks	Oakmont, PA	Allegheny River, Mile 12.0–12.5 (Pennsylvania).
47. 1 day—Week of July 4th.	Three Rivers Regatta Fireworks/EQT 4th of July Celebration.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
48. 1 day—3rd or 4th of July.	City of Paducah, KY	Paducah, KY	Ohio River, Mile 934.0–936.0; Tennessee River, mile 0.0–1.0 (Kentucky).
49. 1 day—3rd or 4th of July.	City of Hickman, KY	Hickman, KY	Lower Mississippi River, Mile 921.0–923.0 (Kentucky).
50. 1 day—During the first week of July.	Evansville Freedom Celebration/4th of July Fireworks.	Evansville, IN	Ohio River, Miles 791.0–795.0 (Indiana).
51. 1 day—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta	Madison, IN	Ohio River, Miles 555.0–560.0 (Indiana).
52. 1 day—July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks.	Newport, KY	Ohio River, Miles 469.6–470.2 (Kentucky and Ohio).
53. 2 days—second weekend in July.	Marietta Riverfront Roar/Marietta Riverfront Roar	Marietta, OH	Ohio River, Mile 171.6–172.6 (Ohio).
54. 1 day—1st weekend in July.	Gallia County Chamber of Commerce/Gallipolis River Recreation Festival.	Gallipolis, OH	Ohio River, Mile 269.5–270.5 (Ohio).
55. 1 day—July 4th	Kindred Communications/Dawg Dazzle	Huntington, WV	Ohio River, Mile 307.8–308.8 (West Virginia).
56. Multiple days-September through January.	University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks.	Pittsburgh, PA	Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1, Allegheny River mile 0.0–0.25 (Pennsylvania).
57. Sunday, Monday, or Thursday from August through February.	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1.
58. 3 days—Third week in September.	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV	Ohio River, Mile 90.2–90.7 (West Virginia).
59. 1 day—Second Saturday in September.	Ohio River Sternwheel Festival Committee fireworks	Marietta, OH	Ohio River, Mile 171.5–172.5 (Ohio).
60. 1 day—Second weekend of October.	Leukemia and Lymphoma Society/Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
61. 1 day—Saturday during the first week of October.	West Virginia Motor Car Festival	Charleston, WV	Kanawha River, Mile 58–59 (West Virginia).
62. 1 day—Friday before Thanksgiving.	Kittanning Light Up Night Firework Display	Kittanning, PA	Allegheny River, Mile 44.5–45.5 (Pennsylvania).
63. 1 day—First week in October.	Leukemia & Lymphoma Society/Light the Night	Pittsburgh, PA	Ohio River, Mile 0.0–0.4 (Pennsylvania).
64. 1 day—Friday before Thanksgiving.	Duquesne Light/Santa Spectacular	Pittsburgh, PA	Monongahela River, Mile 0.00–0.22, Allegheny River, Mile 0.00–0.25, and Ohio River, Mile 0.0–0.3 (Pennsylvania).
65. 1 day—During the first two weeks of July.	City of Maysville Fireworks	Maysville, KY	Ohio River, Mile 408–409 (Kentucky).
66. 1 day—Saturday before Memorial Day.	Venture Outdoors/Venture Outdoors Festival	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25; Monongahela River, Mile 0.0–0.25 (Pennsylvania).
67. 1 day—Third Saturday in July.	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA	Ohio River, Mile 7.0–9.0 (Pennsylvania).
68. 1 day—July 4th	Wellsburg 4th of July Committee/Wellsburg 4th of July Freedom Celebration.	Wellsburg, WV	Ohio River, Mile 73.5–74.5 (West Virginia).
69. 1 day—During the first week of July.	Newburgh Fireworks Display	Newburgh, IN	Ohio River, Mile 777.3–778.3 (Indiana).
70. 3 days—Third or Fourth weekend in April.	Henderson Tri-Fest/Henderson Breakfast Lions Club	Henderson, KY	Ohio River, Mile 803.5–804.5 (Kentucky).

Dated: March 23, 2017.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2017–06230 Filed 3–29–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2014–0604; FRL–9958–73–Region 1]

Air Plan Approval; VT; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) submissions from Vermont regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 fine particle matter ($PM_{2.5}$), 1997 ozone, 2006 $PM_{2.5}$, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). We also are proposing to approve two statutes and one Executive Order submitted by Vermont in support of its demonstration that the infrastructure requirements of the CAA have been met. In addition, we are conditionally approving certain elements of Vermont's submittals relating to prevention of significant deterioration (PSD) requirements. Last, we are proposing to update the classification for two of Vermont's air quality control regions for SO_2 based on recent air quality monitoring data collected by the state, which will grant the state an exemption from the infrastructure SIP contingency plan obligation for SO_2. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before May 1, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2014–0604, at *www.regulations.gov,* or via email to *arnold.anne@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Publicly available docket materials are available either electronically in *www.regulations.gov* or at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1684; *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What Vermont SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Vermont Department of Environmental

Conservation (VT DEC). The state submitted its infrastructure SIP for each NAAQS on the following dates: 1997 $PM_{2.5}$[1]—February 18, 2009; 1997 ozone—February 18, 2009; 2006 $PM_{2.5}$—May 21, 2010; 2008 Pb—July 29, 2014; 2008 ozone—November 2, 2015; 2010 NO_2—November 2, 2015; and 2010 SO_2—November 2, 2015.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2) and address the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Vermont that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS.'' This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that ''each such plan'' must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (''SSM'' emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final New Source Review (NSR) Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' *See* 79 FR 27241 at 27242–45.

III. What guidance is EPA using to evaluate these SIP submissions?

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states' development and EPA review of infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo provides additional guidance for certain elements regarding the 2006 $PM_{2.5}$ NAAQS, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

EPA is soliciting comment on our evaluation of Vermont's infrastructure SIP submissions in this notice of proposed rulemaking. In each of Vermont's submissions, a detailed list of Vermont Laws and, previously SIP-approved Air Quality Regulations, show precisely how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, as applicable. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often referred to as ''fine'' particles.

when nonattainment planning requirements are due.[2] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Vermont's infrastructure submittals for this element cite Vermont Statutes Annotated (V.S.A) and several Vermont Air Pollution Control Regulations (VT APCR) as follows: Vermont's 10 V.S.A. § 554, ''Powers,'' authorizes the Secretary of the Vermont Agency of Natural Resources (ANR) to ''[a]dopt, amend and repeal rules, implementing the provisions'' of Vermont's air pollution control laws set forth in 10 V.S.A. chapter 23. It also authorizes the Secretary to ''conduct studies, investigations and research relating to air contamination and air pollution'' and to ''[d]etermine by appropriate means the degree of air contamination and air pollution in the state and the several parts thereof.'' Ten V.S.A. § 556, ''Permits for the construction or modification of air contaminant sources,'' requires applicants to obtain permits for constructing or modifying air contaminant sources, and 10 V.S.A. § 558, ''Emission control requirements,'' authorizes the Secretary ''to establish emission control requirements . . . necessary to prevent, abate, or control air pollution.''

The Vermont submittals cite more than 20 specific rules that the state has adopted to control the emissions of Pb, SO_2, $PM_{2.5,}$ volatile organic compounds [3] (VOCs), and NO_X. A few, with their EPA approval citation [4] are listed here: § 5–201—Open Burning Prohibited (63 FR 19825; April 22,1998); § 5–251—Control of Nitrogen Oxides Emissions (81 FR 50342; August 1, 2016); § 5–252—Control of Sulfur Dioxide Emissions (81 FR 50342; August 1, 2016); § 5–253.5—Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities (81 FR 23164; April 20, 2016); § 5–253.14—Solvent Metal Cleaning (63 FR 19825; April 22, 1998); § 5–261—Control of Hazardous Air Contaminants (47 FR 6014; February 10, 1982); § 5–502—Major Stationary Sources and Major Modifications (81 FR 50342; August 1, 2016); § 5–702—Excessive Smoke Emissions from Motor Vehicles (45 FR 10775; February 19, 1980).

On July 25, 2014, VT DEC submitted a SIP revision that contained provisions that revise the state's Ambient Air Quality Standards for the criteria air pollutants. On August 1, 2016 (81 FR 50342), EPA approved the following sections within VT APCR Subchapter III, Ambient Air Quality Standards: Section 5–301, ''Scope,'' Section 5–302, ''Sulfur oxides (sulfur dioxide),'' Section 5–304, ''Particulate Matter $PM_{2.5}$,'' Section 5–306, ''Particulate Matter PM_{10},'' Section 5–307, ''Carbon Monoxide,'' Section 5–308, ''Ozone,'' Section 5–309, ''Nitrogen Dioxide,'' and Section 5–310, ''Lead.'' Because the state adopted these standards in 2014, Vermont's regulations do not contain an ambient air quality standard for ozone that is equivalent to the federal 2015 ozone standard. However, the ozone standard that EPA approved on August 1, 2016 is consistent with the 2008 federal ozone standard.

The VT regulations listed above were previously approved into the VT SIP by EPA. *See* 40 CFR 52.2370. In addition, VT DEC requests in its November 2, 2015 submittals that 10 V.S.A. § 554 be included in the SIP, which is discussed further below and EPA proposes to approve. Based upon EPA's review of the submittals, EPA proposes that Vermont meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 1997 $PM_{2.5,}$ 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

State law authorizes the Secretary of ANR, or her authorized representative, to ''conduct studies, investigations and research relating to air contamination and air pollution'' and to ''[d]etermine by appropriate means the degree of air contamination and air pollution in the state and the several parts thereof.'' *See* 10 V.S.A. § 554(8) and (9).[5] Vermont DEC, one of several departments within ANR, operates an air quality monitoring network, and EPA approved the state's 2016 Annual Air Monitoring Network Plan for $PM_{2.5,}$ Pb, ozone, $NO_{2,}$ and SO_2 on September 12, 2016.[6] Furthermore, VT DEC populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that VT DEC has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications. A discussion of greenhouse gas (GHG) emissions permitting and the ''Tailoring Rule'' [7] is

[2] *See, e.g.,* EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964, 67034 (Nov. 12, 2008).

[3] VOCs and NO_X contribute to the formation of ground-level ozone.

[4] The citations reference the most recent EPA approval of the stated rule, or of revisions to the rule. For example, § 5–252 was initially approved on February 4, 1977 (42 FR 6811), with various revisions being approved since then, with the most recent approval of revisions to the applicability section occurring on August 1, 2016 (81 FR 50342).

[5] As noted earlier, EPA proposes in this action to approve 10 V.S.A. § 554 into the SIP.

[6] *See* EPA approval letter located in the docket for this action.

[7] In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*See* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (*See* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb,

Continued

included within our evaluation of the PSD provisions of Vermont's submittals.

Sub-Element 1: Enforcement of SIP Measures

State law provides the Secretary of ANR with the authority to enforce air pollution control requirements, including 10 V.S.A. § 554, which EPA is proposing to approve into the SIP, and which authorizes the Secretary of ANR to ''[i]ssue orders as may be necessary to effectuate the purposes of [the state's air pollution control laws] and enforce the same by all appropriate administrative and judicial proceedings.'' In addition, Vermont's SIP-approved regulations VT APCR § 5–501, ''Review of Construction or Modification of Air Contaminant Sources,'' and VT APCR § 5–502, ''Major Stationary Sources and Major Modifications,'' establish requirements for permits to construct, modify or operate major air contaminant sources.

EPA proposes that Vermont has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 2: PSD Program for Major Sources and Major Modifications

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. Vermont DEC's EPA–approved PSD rules, contained at VT APCR Subchapters I, IV, and V, contain provisions that address applicable requirements for all regulated NSR pollutants, including GHGs.

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone. *See* 70 FR 71679, 71699–700. This requirement was codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat NO_X as a precursor to ozone provisions. These SIP revisions were to have been submitted to EPA by states by June 15, 2007. *See* 70 FR 71683.

Vermont has amended its VT APCR § 5–101 to include NO_X and VOC as precursor pollutants to ozone in defining a ''significant'' increase in actual emissions from a source of air contaminants. In a letter dated November 21, 2016, VT DEC committed to submit its revised regulation to EPA for approval into the Vermont SIP by no later than one year after the effective date of EPA's final action on the pending infrastructure SIPs (I–SIPs).

Therefore, we are proposing to conditionally approve the requirements of section 110(a)(2)(C), as obligated by the Phase 2 Rule, for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be SO_2 and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011. *See* 73 FR 28321 at 28341.[8]

On August 1, 2016, EPA approved revisions to Vermont's PSD program at VT APCR § 5–101 that identify SO_2 and NO_X as precursors to $PM_{2.5}$ and revise the state's regulatory definition of ''significant'' for $PM_{2.5}$ to mean 10 tpy or more of direct $PM_{2.5}$ emissions, 40 tpy or more of SO_2 emissions, or 40 tpy or more of NO_X emissions. (81 FR 50342). Consequently, EPA proposes that Vermont's SIP incorporates the necessary changes obligated by the 2008 NSR Rule with respect to provisions that explicitly identify precursors to $PM_{2.5}$.

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that

NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

[8] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council* v. *EPA,* No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Vermont's infrastructure SIP as to Elements C, D(i)(II), or J with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. *See* 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011. *See* 73 FR 28321 at 28341.

Vermont's SIP-approved PSD program defines ''$PM_{2.5}$ direct emissions'' and ''PM_{10} emissions'' to include ''gaseous emissions from a source or activity which condense to form particulate matter at ambient temperature.'' *See* VT APCR § 5–101. EPA approved these definitions into the SIP on August 1, 2016 (81 FR 50342). Consequently, we propose that the state's PSD program adequately accounts for the condensable fraction of $PM_{2.5}$ and $PM_{10.}$

Therefore, we are proposing that Vermont has met this set of requirements of section 110(a)(2)(C) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS regarding the requirements obligated by the 2008 NSR Rule.

On October 20, 2010 (75 FR 64864), EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments,'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. $PM_{2.5}$ increment values are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c). On September 14, 2016 (81 FR 63102), EPA approved Vermont's codification of these increments in Table 2 of the VT APCR.

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ of October 20, 2011 in the definition of ''minor source baseline date.'' These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance (SIL) of 0.3 micrograms per cubic meter ($\mu g/m^3$), annual average, for $PM_{2.5.}$ This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On August 1, 2016 (81 FR 50342) and September 14, 2016 (81 FR 63102), EPA approved revisions to the Vermont SIP that address certain aspects of EPA's 2010 NSR rule. However, the state has not defined a method for determining the amount of PSD increments available to a new or modified major source. In a letter dated November 21, 2016, VT DEC committed to revising its NSR regulations to address the methodology for determining available increment, and to submitting the revised regulations to EPA for approval into the Vermont SIP no later than one year after the effective date of EPA's final action on the I–SIPs.

Therefore, we are proposing to conditionally approve this part of sub-element 2 of section 110(a)(2)(C) relating to requirements for state NSR regulations outlined within our 2010 NSR regulation.

With respect to Elements (C) and (J), EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Vermont has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *See Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the Best Available Control Technology (BACT) requirement to GHG emissions from Step 1 or ''anyway'' sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

On August 19, 2015, EPA amended its PSD and title V regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated. EPA intends to further revise the PSD and title V regulations to fully implement the Supreme Court and D.C. Circuit rulings in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.

Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the additional planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's additional actions to revise its PSD program rules in response to the court decisions for purposes of infrastructure SIP submissions. Instead, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both the court decision, and the revisions to PSD regulations that EPA has completed at this time.

On October 5, 2012, EPA approved revisions to the Vermont SIP that modified Vermont's PSD program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Vermont's PSD permitting requirements for their GHG emissions (77 FR 49404). Therefore, EPA has determined that Vermont's SIP is sufficient to satisfy Elements (C), (D)(i)(II), and (J) with respect to GHGs. The Supreme Court decision and subsequent D.C. Circuit judgment do not prevent EPA's approval

of Vermont's infrastructure SIP as to the requirements of Elements (C), (as well as sub-elements (D)(i)(II), and (J)(iii)).

For the purposes of the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS infrastructure SIPs, EPA reiterates that NSR Reform is not in the scope of these actions.

In summary, we are proposing to conditionally approve Vermont's submittals for this sub-element with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants. EPA approved revisions to Vermont's minor NSR program on August 1, 2016 (81 FR 50342). Vermont and EPA rely on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs, VT APCR § 5–502, do not interfere with attainment and maintenance of the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

We are proposing to find that Vermont has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which states must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the four prongs discussed below, two of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)

Section 110(a)(2)(D)(i)(I) addresses any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in another state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Vermont's February 18, 2009 infrastructure SIP submission for the 1997 $PM_{2.5}$ and 1997 ozone NAAQS that is the subject of today's proposed rulemaking did not address prong 1 and 2 (also called ''transport elements''). Vermont did, however, make a subsequent submittal for this sub-element on April 15, 2009. EPA proposed approval of this submittal on December 15, 2016 (81 FR 90758). Therefore, we are not taking action on these elements for these two NAAQS in this notice.

Vermont's May 21, 2010 infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS addressed section 110(a)(2)(D)(i)(I). EPA proposed approval of this submittal as meeting the transport elements for the 2006 $PM_{2.5}$ NAAQS on December 15, 2016 (81 FR 90758).

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as $PM_{2.5}$ or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, although it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other state, EPA anticipates that this would be a rare situation, *e.g.,* sources emitting large quantities of Pb in close proximity to state boundaries. The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to Pb can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.

Vermont's infrastructure SIP submission for the 2008 Pb NAAQS states that Vermont has no lead sources that exceed the 0.5 ton/year monitoring threshold to identify lead emission sources which should be monitored. No single source of Pb, or group of sources, anywhere within the state emits enough Pb to cause ambient concentrations to approach the Pb NAAQS. Our review of the Pb emissions data from Vermont sources, which the state has entered into the EPA National Emissions Inventory (NEI) database, confirms this, and therefore, EPA agrees with Vermont and proposes that Vermont has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

Vermont's November 2, 2015 infrastructure SIP submission for the 2008 ozone NAAQS includes a demonstration that no source or sources within Vermont contribute significantly to non-attainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. EPA approved this infrastructure requirement for the 2008 ozone NAAQS on October 13, 2016 (81 FR 70631).

Vermont's infrastructure SIP submission for the 2010 NO_2 NAAQS addressed section 110(a)(2)(D)(i)(I). The submission notes that on January 20, 2012, EPA designated all areas of the country as ''unclassifiable/attainment'' for the 2010 NO_2 NAAQS because design values for the 2008–2010 period at all monitored sites met the NAAQS. Measurements from 2013–2015 indicate continued attainment of the 2010 NO_2 NAAQS in Vermont and throughout the country. The Vermont submittal notes that Vermont NO_X emissions are among the lowest of any state and have been declining for several decades, with total statewide NO_X emissions dropping from 37,744 tons in 2002 to 19,352 tons in 2011. Our review of NO_X emissions data from Vermont sources, which Vermont has entered into the EPA National Emissions Inventory (NEI) database, confirms this and, therefore, EPA agrees with Vermont and proposes that Vermont has met requirements related to section 110(a)(2)(D)(i)(I) for the 2010 NO_2 NAAQS.

Vermont's infrastructure SIP submission for the 2010 SO_2 NAAQS includes a demonstration that no source or sources within Vermont contribute significantly to non-attainment in, or interfere with maintenance by, any other state with respect to the 2010 SO_2

NAAQS. EPA will act on this infrastructure requirement for the 2010 SO_2 NAAQS in a separate action.

EPA is proposing to find that Vermont has met requirements for sub-element 1 of section 110(a)(2)(D)(i)(I) for the 2008 Pb and 2010 NO_2 NAAQS. EPA previously approved Vermont's submittals addressing this sub-element for the 2008 ozone NAAQS (81 FR 70631) and previously proposed approval of Vermont's submittal for this element for the 1997 $PM_{2.5}$, 1997 ozone, and 2006 $PM_{2.5}$ NAAQS, and will address Vermont's submittal for the 2010 SO_2 NAAQS in a subsequent notice.

Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to be in any other state's SIP under Part C of the Act to prevent significant deterioration of air quality. One way for a state to meet this requirement, specifically with respect to those in-state sources and pollutants that are subject to PSD permitting, is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. For in-state sources not subject to PSD, this requirement can be satisfied through a fully-approved nonattainment new source review (NNSR) program with respect to any previous NAAQS. EPA's latest approval of some revisions to Vermont's NNSR regulations was on August 1, 2016 (81 FR 50342).

To meet requirements of Prong 3, Vermont cites 10 V.S.A § 556, and VT APCR § 5–501, Review of Construction or Modification of Air Contaminant Sources, and VT APCR § 5–502, Major Stationary Sources and Major Modifications, which set forth requirements for permits to construct, modify or operate major air contaminant sources. Specifically, § 5–501 and § 5–502 provide for nonattainment and PSD permitting for major sources. As noted above in our discussion of Element C, Vermont's PSD program does not fully satisfy the requirements of EPA's PSD implementation rules. However, in a letter dated November 21, 2016, VT DEC committed to submit the required provisions for EPA approval into the Vermont SIP by no later than one year after the effective date of EPA's final action on the pending I–SIPs. Therefore, we are proposing to conditionally approve this sub-element for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS related to section 110(a)(2)(D)(i)(II) for the reasons discussed under Element C.

Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility. Vermont's Regional Haze SIP was approved by EPA on May 22, 2012 (77 FR 30212). Accordingly, EPA proposes that Vermont has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 relating to interstate pollution abatement.

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element. On August 1, 2016 (81 FR 50342), EPA approved revisions to VT APCR § 5–501, which includes a provision that satisfies the requirement for Vermont's EPA-approved PSD program to provide notice to neighboring states of a determination to issue a draft PSD permit. *See* VT APCR § 5–501(7)(c). Therefore, we propose to approve Vermont's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 1997 $PM_{2.5,}$ 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Vermont has no obligations under any other provision of section 126.

Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Vermont does not have any pending obligations under section 115 for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, or 2010 SO_2 NAAQS. Therefore, EPA is proposing that Vermont has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This sub-element, however, is inapplicable to this action, because Vermont does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law to Carry out its SIP, and Related Issues

Vermont, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Vermont cites 10 V.S.A. § 553, which designates ANR as the air pollution control agency of the state, and 10 V.S.A § 554, which provides the Secretary of ANR with the power to ''[a]dopt, amend and repeal rules, implementing the provisions'' of 10 V.S.A. Chapter 23, Air Pollution

Control, and to ''[a]ppoint and employ personnel and consultants as may be necessary for the administration of'' 10 V.S.A. Chapter 23. Section 554 also authorizes the Secretary of ANR to ''[a]ccept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purposes of carrying out any of the functions of'' 10 V.S.A. Chapter 23. Additionally, 3 V.S.A. § 2822 provides the Secretary of ANR with the authority to assess air permit and registration fees, which fund state air programs. In addition to Federal funding and permit and registration fees, Vermont notes that the Vermont Air Quality and Climate Division (AQCD) receives state funding to implement its air programs.[9]

EPA proposes that Vermont has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In Vermont, no board or body approves permits or enforcement orders; these are approved by the Secretary of Vermont ANR. Thus, with respect to this sub-element, Vermont is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest). Accordingly, Vermont indicated in its November 2, 2015 infrastructure SIP submittals for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS that it was submitting the Vermont Executive Code of Ethics, Executive Order 09–11, for incorporation into the SIP.[10] However, Exhibits A and B of Executive Order 09–11 were inadvertently omitted from the November 2, 2015 I–SIP submittal. To address this omission, VT DEC submitted these exhibits in a November 21, 2016 letter that provided additional information and clarification in support of its November 2015 I–SIP submittal.

The Vermont Executive Code of Ethics prohibits all Vermont Executive Branch appointees (including the ANR Secretary) from taking ''any action in any particular matter in which he or she has either a conflict of interest or the appearance of a conflict of interest, until such time as the conflict is resolved.'' Among other things, the code requires an appointee to ''take all reasonable steps to avoid any action or circumstances, whether or not specifically prohibited by this code, which might result in (1) [u]ndermining his or her independence or impartiality or action; (2) [t]aking official action on the basis of unfair considerations; (3) [g]iving preferential treatment to any private interest on the basis of unfair considerations; (4) [g]iving preferential treatment to any family member or member of the appointee's household; (5) [u]sing public office for the advancement of personal interest; (6) [u]sing public office to secure special privileges or exemptions; or (7) [a]ffecting adversely the confidence of the public in the integrity of state government.'' The code further requires that every appointee earning $30,000 or more per year, which includes the ANR Secretary, annually file with the Vermont Secretary of Civil and Military Affairs an ''Ethics Questionnaire'' identifying ''significant personal interests'' that ''might conflict with the best interests of the state.'' EPA is proposing to approve the Vermont Executive Code of Ethics, Vermont Executive Order 09–11, into the Vermont SIP. We are also proposing to remove § 52.2382(a)(5) from the Vermont SIP, which previously took no action on conflict-of-interest requirements.

EPA proposes that, with the inclusion of Executive Order 09–11 into the Vermont SIP, Vermont has met the applicable infrastructure SIP requirements for this sub-element for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Vermont's infrastructure submittals reference existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. In particular, VT APCR § 5–405, Required Air Monitoring, (45 FR 10775, Feb. 19, 1980), provides that ANR ''may require the owner or operator of any air contaminant source to install, use and maintain such monitoring equipment and records, establish and maintain such records, and make such periodic emission reports as [ANR] shall prescribe.'' Moreover, section 5–402, Written Reports When Requested (81 FR 50342; Aug. 1, 2016), authorizes ANR to ''require written reports from the person operating or responsible for any proposed or existing air contaminant source, which reports shall contain,'' among other things, information concerning the ''nature and amount and time periods or durations of emissions and such other information as may be relevant to the air pollution potential of the source. These reports shall also include the results of such source testing as may be required under Section 5–404 herein.'' Section 5–404, Methods for Sampling and Testing of Sources (45 FR 10775 Feb. 19, 1980) in turn authorizes ANR to ''require the owner or operator of [a] source to conduct tests to determine the quantity of particulate and/or gaseous matter being emitted'' and requires a source to allow access, should ANR have reason to believe that emission limits are being violated by the source, and allows ANR ''to conduct tests of [its] own to determine compliance.'' In addition, operators of sources that emit more than five tons of any and all air contaminants per year are required to register the source with the Secretary of ANR and to submit emissions data annually, pursuant to § 5–802, Requirement for Registration, and § 5–803, Registration Procedure (60 FR 2524 Jan. 10, 1995). Vermont also certifies that nothing in its

[9] VT ANR's authority to carry out the provisions of the SIP identified in 40 CFR 51.230 is discussed in the sections of this document assessing elements A, C, F, and G, as applicable.

[10] Vermont also referenced incorporation of the Vermont Executive Code of Ethics into the SIP in its July 29, 2014 infrastructure SIP submittal for the 2008 Pb NAAQS.

SIP would preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed. *See* 40 CFR 51.212(c).

Vermont's infrastructure SIP submittals for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS provide for correlation by VT DEC of emissions reports by sources with applicable emission limitations or standards, as required by CAA § 110(a)(2)(F)(iii). As explained in a letter from VT DEC dated November 21, 2016, and included in the docket for this action, Vermont receives emissions data through its annual registration program. Currently VT DEC analyzes a portion of these data manually to correlate a facility's actual emissions with permit conditions, NAAQS, and, if applicable, hazardous air contaminant action levels. VT DEC is in the process of setting up an integrated electronic database that will merge all air contaminant source information across permitting, compliance and registration programs, so that information concerning permit conditions, annual emissions data, and compliance data will be accessible in one location for a particular air contaminant source. VT DEC stated in its November 2016 letter that the database will be capable of correlating certain emissions data with permit conditions and other applicable standards electronically where feasible to allow VT DEC to complete this correlation more efficiently and accurately.

Regarding the section 110(a)(2)(F) requirement that the SIP provide for the public availability of emission reports, Vermont certified in its November 2, 2015 submittals for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS that the Vermont Public Records Act, 1 V.S.A. §§ 315–320, provides for the free and open examination of public records, including emissions reports. Vermont further noted that it was ''pursuing amendments to 10 V.S.A. § 563'' that ''will require [ANR] to make public all emissions and emissions monitoring data submitted to the Agency by owners and operators of air contaminant sources'' and that it expected these amendments to become law in 2016. When EPA approved Vermont's original SIP in 1972, the Agency found that Vermont did not ''have the authority to make emissions data available to the public since 10 V.S.A. section 363 [11] would require the data to be held confidential if a source certified that it related to production or sales figures, unique processes, or would tend to affect adversely the competitive position of the owner.'' *See* 40 CFR 52.2373(a). Accordingly, EPA found that Vermont's plan did not provide for public availability of emission data as required by 40 CFR 51.116(c). *See* 40 CFR 52.2374. Newly revised § 563, however, which became effective July 1, 2016, now provides that the ANR ''Secretary shall not withhold emissions data and emission monitoring data from public inspection or review'' and that the ANR ''Secretary shall keep confidential any record or other information furnished to or obtained by the Secretary concerning an air contaminant source, *other than emissions data and emission monitoring data,* that qualifies as a trade secret pursuant to 1 V.S.A. § 317(c)(9).'' (emphasis added). By letter dated November 21, 2016, Vermont submitted revised § 563 to EPA for inclusion in the SIP. Consequently, EPA is proposing to approve Vermont's submittals for this requirement of section 110(a)(2)(F) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2006 ozone, 2008 lead, 2010 NO_2, and 2010 SO_2 NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for state authority analogous to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' Section 303 further authorizes the Administrator to issue ''such orders as may be necessary to protect public health or welfare or the environment'' in the event that ''it is not practicable to assure prompt protection . . . by commencement of such civil action.''

We propose to find that Vermont's submittals and certain state statutes and regulations provide for authority comparable to that in section 303. Vermont's submittals cite 10 V.S.A. § 560, which authorizes the Secretary of ANR to order the immediate discontinuation of air emissions causing imminent danger to human health or safety. In addition, 10 V.S.A. § 554 authorizes the Secretary to enforce orders issued pursuant to § 560 ''by all appropriate administrative and judicial proceedings.'' The submittals also cite 10 V.S.A. § 8009, which authorizes the issuance of an emergency administrative order when a violation presents, or an activity will or is likely to result in, an immediate threat to the public health or an immediate threat of substantial harm to the environment. Newly adopted VT APCR § 5–407, which became effective December 15, 2016, prohibits any person from emitting such quantities of air contaminants that will result in a condition of air pollution. ''Air pollution'' is defined in § 5–101 as ''the presence in the outdoor atmosphere of one or more air contaminants in such quantities, and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, or property. Such effects may result from direct exposure to air contaminants, from deposition of air contaminants to other environmental media, or from alterations caused by air contaminants to the physical or chemical properties of the atmosphere.'' VT DEC interprets 10 V.S.A. § 8009 and VT APCR § 5–407 as allowing the Secretary to issue an emergency administrative order when air pollution is causing an imminent threat to public health, welfare, or the environment. Furthermore, an order issued pursuant to 10 V.S.A. § 8009 is presented to the Environmental Division of Vermont Superior Court and, if no hearing is requested, becomes a judicial order when signed by the Court. *See* 10 V.S.A. § 8008(d). If a hearing is requested, the order is reviewed by the court. *Id.* §§ 8009(d), 8012(b).

We propose to find that this combination of state statutory and regulatory provisions provides the Secretary with authority comparable to that given the Administrator in section 303 of the CAA. Therefore, we are proposing to approve the state's submittals with respect to this requirement of Section 110(a)(2)(G) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Section 110(a)(2)(G) also requires that, for any NAAQS, Vermont have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* The entire state of Vermont is classified as Priority

[11] Vermont also referenced incorporation of the Vermont Executive Code of Ethics into the SIP in its July 29, 2014 infrastructure SIP submittal for the 2008 Pb NAAQS.

III for ozone and NO_2 pursuant to 40 CFR 52.2371.

With regard to SO_2 and PM, however, two air quality control regions (''AQCR'') in Vermont—Champlain Valley Interstate and Vermont Intrastate—are classified as Priority II areas. However, EPA's last update to the priority classifications for Vermont occurred in 1980. *See* 45 FR 10782. Vermont indicated in its November 2, 2015, submittal for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS that it wishes to update its SO_2 priority classifications for both AQCRs, and that SO_2 concentrations in Vermont have been below Priority II area levels for more than 35 years. There are currently no SO_2 monitors in the Champlain Valley Interstate and Vermont Intrastate AQCRs. EPA has reviewed the SO_2 monitoring data that the state has certified, and agrees that the SO_2 levels are significantly below the threshold of a Priority I, IA, or II level.

Vermont SO_2 emissions are among the lowest of any state, with 2011 National Emission Inventory (NEI) point-source emissions totaling less than 500 tons from all Vermont point-sources combined. Ambient Vermont SO_2 concentrations at Vermont's highest concentration site have declined by 75 percent in the past 10 years, with a 2012–2014 1-hour design value of 13 parts per billion (ppb).[12] The only 1-hour SO_2 nonattainment area in a state adjacent to Vermont, in central New Hampshire, has recently experienced dramatic reductions in SO_2 emissions and ambient concentrations following the 2012 installation of a scrubber at the Merrimack Station in Bow, NH.

Therefore, we are proposing to revise Vermont's priority classification for the Champlain Valley Interstate and Vermont Intrastate areas from Priority II to Priority III for SO_2. Accordingly, a contingency plan for SO_2 is not required. *See* 40 CFR 51.152(c). As emission levels change, states are encouraged to periodically evaluate the priority classifications and propose changes to the classifications based on the three most recent years of air quality data. *See* 40 CFR 51.153.

We note that $PM_{2.5}$ and Pb are not explicitly included in the contingency plan requirements of 40 CFR subpart H. According to EPA's 2011 NEI, there are no Pb sources within Vermont that exceed EPA's reporting threshold of 0.5 tons per year. The largest source is reported to be 260 pounds per year (0.13 tons per year).

With respect to the 2006 $PM_{2.5}$ NAAQS, EPA's 2009 Memo recommends that states develop emergency episode plans for any area that has monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140 $\mu g/m^3$ since 2006. In its May 21, 2010, submittal, Vermont certified that the highest 24-hour $PM_{2.5}$ concentration recorded in the state in the previous three years was 36.7 $\mu g/m^3$. Furthermore, EPA's review of Vermont's certified air quality data in AQS indicates that the highest 24-hour $PM_{2.5}$ level since that time (*i.e.,* data through December 31, 2015) was 43.5 $\mu g/m^3$ $\mu g/m^3$, which occurred in 2015.

Although not expected, if Pb or $PM_{2.5}$ conditions were to change, Vermont does have general authority, as noted previously (*i.e.,* 10 V.S.A. § 560 and 10 V.S.A. § 8009), to order a source to cease operations if it is determined that emissions from the source pose an imminent danger to human health or safety or an immediate threat of substantial harm to the environment.

In addition, as stated in Vermont's infrastructure SIP submittals under the discussion of public notification (Element J), Vermont posts near real-time air quality data, air quality predictions and a record of historical data on the VT DEC Web site and distributes air quality alerts by email to a large number of parties, including the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. In addition, daily forecasted fine particle levels are also made available on the internet through the EPA AirNow and EnviroFlash systems. Information regarding these two systems is available on EPA's Web site at *www.airnow.gov.* Notices are sent out to EnviroFlash participants when levels are forecast to exceed the current 24-hour $PM_{2.5}$ standard.

EPA proposes that Vermont has met the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to contingency plans for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. We also are proposing to update the classifications for two of Vermont's air quality control regions from Priority II to Priority III for SO_2 based on recent air quality monitoring data collected by the state.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. To address this requirement, Vermont's infrastructure submittals reference 10 V.S.A § 554, which provides the Secretary of Vermont ANR with the power to ''[p]repare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution in this state'' and to ''[a]dopt, amend and repeal rules, implementing the provisions'' of Vermont's air pollution control laws set forth in 10 V.S.A. chapter 23. Vermont has submitted this statute for inclusion into the SIP. EPA proposes that Vermont has met the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

The evaluation of the submissions from Vermont with respect to the requirements of CAA section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Vermont's 10 V.S.A § 554 specifies that the Secretary of Vermont ANR shall have the power to ''[a]dvise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.'' Vermont has submitted this statute for inclusion into the SIP. In addition, VT APCR § 5–501(7)(c) requires VT ANR to provide notice to local governments and federal land managers of a determination by ANR to issue a draft PSD permit for a major stationary source or major modification. On August 1, 2016 (81 FR

[12] The 2010 1-hour SO_2 NAAQS is 75 ppb.

50342), EPA approved VT APCR § 5–501(7)(c) into Vermont's SIP.

EPA proposes to approve 10 V.S.A § 554 into the SIP and proposes that Vermont has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to: Notify the public if NAAQS are exceeded in an area; advise the public of health hazards associated with exceedances; and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Vermont's 10 V.S.A § 554 authorizes the Secretary of Vermont ANR to ''[c]ollect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.'' In addition, the VT DEC Air Quality and Climate Division Web site includes near real-time air quality data, and a record of historical data. Air quality forecasts are distributed daily via email to interested parties. Air quality alerts are sent by email to a large number of affected parties, including the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. Also, Air Quality Data Summaries of the year's air quality monitoring results are issued annually and posted on the VT DEC Air Quality and Climate Division Web site. Vermont is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that Vermont has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Vermont's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, does not fully satisfy the requirements of EPA's PSD implementation rules.

Consequently, we are proposing to conditionally approve the PSD sub-element of section 110(a)(2)(J) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, consistent with the actions we are proposing for sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II).

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 Memo, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

To satisfy Element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request. Vermont reviews the potential impact of major sources consistent with 40 CFR part 51, appendix W, ''Guidelines on Air Quality Models.'' *See* VT APCR § 5–406(2).

In its submittals, Vermont cites to VT APCR § 5–406, Required Air Modeling, which authorizes ''[t]he Air Pollution Control Officer [to] require the owner or operator of any proposed air contaminant source . . . to conduct . . . air quality modeling and to submit an air quality impact evaluation to demonstrate that operation of the proposed source . . . will not directly or indirectly result in a violation of any ambient air quality standard, interfere with the attainment of any ambient air quality standard, or violate any applicable prevention of significant deterioration increment . . . .'' Vermont also cites to VT APCR § 5–502, Major Stationary Sources and Major Modifications, which requires the submittal of an air quality impact evaluation or air quality modeling to ANR to demonstrate impacts of new and modified major sources. The modeling data are sent to EPA along with the draft major permit.

The state also collaborates with the Ozone Transport Commission (OTC) and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large-scale urban air shed modeling for ozone and PM, if necessary. EPA proposes that Vermont has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

Vermont implements and operates a Title V permit program. *See* Subchapter X of VT APCR, which was approved by EPA on November 29, 2001 (66 FR 59535). To gain this approval, Vermont demonstrated the ability to collect sufficient fees to run the program. Vermont also notes in its submittals that the costs of all CAA permitting, implementation, and enforcement for new or modified sources are covered by Title V fees, and that Vermont state law provides for the assessment of application fees from air emissions sources for permits for the construction or modification of air contaminant sources, and sets forth permit fees. *See* 10 V.S.A § 556, and 3 V.S.A § 2822(j).

EPA proposes that Vermont has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. We also are proposing to remove § 52.2382(a)(1) from the CFR, which states that EPA has taken no action to approve or disapprove permitting fees.

M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

To satisfy Element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP. Vermont's infrastructure submittals reference 10 V.S.A § 554, which in today's action is being proposed for approval into the SIP, and which authorizes the Secretary of Vermont ANR to ''[a]dvise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.'' EPA proposes that Vermont has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

N. Vermont Statutes for Inclusion Into the Vermont SIP

As noted above in the discussion of several elements, Vermont submitted, and EPA is proposing to approve 10 V.S.A. § 554 (Powers), 10 V.S.A. § 563 (Confidential records; penalty), and Vermont Executive Order 09–11 (Executive Code of Ethics) into the SIP.

V. What action is EPA taking?

EPA is proposing to approve most elements of the infrastructure SIPs submitted by Vermont for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, with the exception of three aspects of these SIPs relating to PSD which we are proposing to conditionally approve.

The state submitted these SIPs on the following dates: 1997 $PM_{2.5}$—February 18, 2009; 1997 ozone—February 18, 2009; 2006 $PM_{2.5}$—May 21, 2010; 2008 Pb—July 29, 2014; 2008 ozone—November 2, 2015; 2010 NO_2—November 2, 2015; and 2010 SO_2—November 2, 2015.

Specifically, EPA's proposed actions regarding each infrastructure SIP requirement are contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON VERMONT'S INFRASTRUCTURE SIP SUBMITTALS

Element	1997 $PM_{2.5}$ and 1997 ozone	2006 $PM_{2.5}$	2008 Pb	2008 Ozone	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	A	A	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A	A	A
(C)2: PSD program for major sources and major modifications	A*	A*	A*	A*	A*	A*
(C)3: PSD program for minor sources and minor modifications	A	A	A	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	NI	A	A	NT	A	NT
(D)2: PSD	A*	A*	A*	A*	A*	A*
(D)3: Visibility Protection	A	A	A	A	A	A
(D)4: Interstate Pollution Abatement	A	A	A	A	A	A
(D)5: International Pollution Abatement	A	A	A	A	A	A
(E)1: Adequate resources	A	A	A	A	A	A
(E)2: State boards	A	A	A	A	A	A
(E)3: Necessary assurances with respect to local agencies	NA	NA	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A	A	A
(G): Emergency power	A	A	A	A	A	A
(H): Future SIP revisions	A	A	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+	+	+
(J)1: Consultation with government officials	A	A	A	A	A	A
(J)2: Public notification	A	A	A	A	A	A
(J)3: PSD	A*	A*	A*	A*	A*	A*
(J)4: Visibility protection	+	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A	A	A

In the above table, the key is as follows:

A	Approve.
A*	Conditionally approve.
+	Not germane to infrastructure SIPs.
NI	Not included in the submittals which are the subject of today's action.
NA	Not applicable.
NT	Not taking action at this time.

In addition, EPA is proposing to approve, and incorporate into the Vermont SIP, the following Vermont statutes which were included for approval in Vermont's infrastructure SIP submittals: 10 V.S.A. §§ 554 and 563, and Vermont Executive Order 09–11, Executive Code of Ethics. EPA is further proposing to remove the following provisions from Title 40 of the CFR: sections 52.2373, 52.2374, and 52.2382(a)(1), (2), (4), and (5), for the reasons discussed below.

As noted in the discussion of section 110(a)(2)(F) above, in 1972, EPA found Vermont's SIP inadequate with respect to the requirement to make emission data available to the public as required by the Act. *See* 40 CFR 52.2373, and 52.2374(a); 37 FR 10842 (May 31, 1972). Consequently, EPA promulgated regulations setting forth procedures for the release of emission data. *See* 52.2374(b); 37 FR 11826 (June 14, 1972). EPA is proposing in today's notice, however, to approve Vermont's infrastructure SIP submittals with respect to this section 110(a)(2)(F) requirement as discussed above. Consequently, EPA proposes to remove sections 52.2373 and 52.2374 from Title 40 of the CFR.

In 1980, EPA, acting on SIP revisions submitted by Vermont relating mainly to Part D of the Act (Plan Requirements for Nonattainment Areas), determined that, for various reasons, it would not act on a handful of what it termed ''Non-Part D Measures'' submitted by the State but required by other parts of the Act. *See* 40 CFR 52.2382(a); 45 FR 10775 (Feb. 19, 1980). More specifically, EPA took no action on revisions related to certain requirements of section 121 (relating to intergovernmental consultation), section 126 (relating to interstate pollution notification), and section 128 (relating to conflict of interest). *See* 40 CFR 52.2382(a); 45 FR 10775 (Feb. 19, 1980). As discussed earlier, these three sections of the Act are made applicable to infrastructure SIPs pursuant to sections 110(a)(2)(J), (D)(ii), and (E)(ii), respectively. In addition, EPA took no action on the requirements of erstwhile section 110(a)(2)(K) (relating to permit fees), which was later recodified at 110(a)(2)(L). Since, in today's action we are proposing to approve or conditionally approve Vermont's infrastructure SIP submittals with respect to the relevant requirements in 110(a)(2)(D)(ii), (E)(ii), (J), and (L), we propose to remove 52.2382(a)(1), (2), (4), and (5) from Title 40 of the CFR as legally obsolete.

As noted in Table 1, we are proposing to conditionally approve portions of Vermont's infrastructure SIP submittals pertaining to PSD-related elements (C)(2), (D)(2), and (J)(3).

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State

to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its PSD program that fully remedies the deficiencies mentioned above under element C. If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Vermont SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements for all affected pollutants will be disapproved. In addition, a final disapproval triggers the Federal Implementation Plan requirement under section 110(c). If EPA approves the new submittal, the PSD program and relevant infrastructure SIP elements will be fully approved and replace the conditionally approved program in the SIP.

Additionally, we are proposing to update the 40 CFR 52.2371 classifications for two of Vermont's air quality control regions for sulfur dioxide based on recent air quality monitoring data collected by the state, which removes state's infrastructure SIP contingency plan obligation for sulfur dioxide.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

VI. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference two Vermont statutes and one Vermont Executive Order, all referenced in Section V above. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 16, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2017–06206 Filed 3–29–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0067; FRL–9960–99–Region 10]

Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area; Proposed Further Delay of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; further delay of effective date.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review,'' and the **Federal Register** document published by the Environmental Protection Agency (EPA or Agency) on January 26, 2017, the EPA is proposing to further delay the effective date for Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area for up to 90 days.

DATES: Written comments on the proposed rule must be received by April 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID EPA–R10–OAR–2015–0067, online at *www.regulations.gov.* For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; telephone number: (206) 553–0256; email address: *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 26, 2017, the EPA published a document in the **Federal Register** entitled ''Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017'' (82 FR 8499). In that document, the EPA delayed the effective date of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area to March 21, 2017, as requested in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review'' (January 20 Memo). That memo directed the heads of Executive Departments and Agencies to temporarily postpone for 60 days from the date of the January 20 Memo the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect.

The January 20 Memo also states: ''Where appropriate and as permitted by applicable law, [agencies] should consider proposing for notice and comment a rule to delay the effective date for regulations beyond that 60-day period.'' The EPA subsequently proposed (82 FR 11517) and then finalized (82 FR 14463) an action on March 21, 2017 to further delay the effective date for Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area until April 20, 2017. The EPA is proposing this additional delay of up to 90 days to give Agency officials the opportunity to decide whether they would like to conduct a substantive review of this rule. If Agency officials decide to conduct a substantive review of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area, the EPA will take appropriate actions to conduct such a review, including, but not limited to, issuing a document in the **Federal Register** addressing any further delays of the effective date of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area or extensions of compliances dates in the rule. If Agency officials decide not to conduct a substantive review of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area, it will become effective no later than July 19, 2017.

The EPA solicits comment only on its proposal to further delay the effective date and the length of the delay of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area. The EPA is not soliciting and will not consider comments on any other aspect of the rule itself.

Dated: March 24, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2017–06311 Filed 3–29–17; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 82, No. 60
Thursday, March 30, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Eagle County; Colorado; Golden Peak Improvements Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Vail Ski Resort (Vail) has submitted a proposal to the White River National Forest (WRNF) for improvements to ski/snowboard racing facilities within its Forest Service-administered Special User Permit (SUP) area. The WRNF has accepted this proposal, and is initiating a National Environmental Policy Act (NEPA) analysis to document and disclose potential impacts. The Proposed Action includes: Developing 42 acres of new terrain with associated snowmaking; installing one lift, two lift operation shelters, one restroom facility, snowmaking infrastructure, multiple small race event buildings, one equipment storage facility, one fuel storage facility, and one maintenance building; and constructing one access road and multiple drainage management structures.

DATES: Comments concerning the scope of the analysis must be received by May 1, 2017. The draft environmental impact statement is expected October 2017 and the final environmental impact statement is expected April 2018.

ADDRESSES: Send written comments to Scott Fitzwilliams, Forest Supervisor, c/o Max Forgensi, Mountain Sports/Special Uses Administrator, White River National Forest, P.O. Box 190, Minturn, CO 81645. Comments may also be sent via FAX (970) 827–9343. Electronic comments including attachments can be submitted to: *https://cara.ecosystem-management.org/Public//CommentInput?Project=47937.*

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be found on the project Web site: *https://www.fs.usda.gov/project/?project=47937,* or obtained from: Max Forgensi, Mountain Sports/Special Uses Administrator, Eagle/Holy Cross Ranger District. Mr. Forgensi can be reached by phone at (970) 827–5157 or by email at *mforgensi@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 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Golden Peak is the primary ski/snowboard racing and training venue for Vail and the Ski and Snowboard Club Vail (SSCV), and provides a world-class venue for local athletes and international events. As local, regional, national, and international groups continue to seek areas devoted specifically to ski/snowboard racing and training, providing a contained venue with adequate facilities to serve high-caliber events is needed.

Currently, the limited training and racing space on Golden Peak is unable to accommodate all users, and many activities must be held at other locations on the mountain, resulting in a disruption to the public's skiing experience. There is a need for:

- Developed racing and training terrain at Vail that meets international racing standards for women's Downhill and men's Super G courses, a moguls course, and skier cross course to adequately meet demand.
- Adequate separation between ski/snowboard racing and training terrain and terrain used by the general public at Vail to improve the quality of both the training venue and the guest experience.

Proposed Action

The Proposed Action includes the following elements:

- Lift and Terrain—construction of one lift (either surface or aerial) and approximately 42 acres of new ski trails for women's Downhill and men's Super G courses, moguls course and skier cross course
- Facilities—construction of lift operating buildings, race start buildings, an equipment storage building, a fuel storage facility, and a maintenance building
- Snowmaking and Infrastructure—construction of infrastructure to support snowmaking on new ski trails
- Construction Maintenance and Access—access road for construction of new lift and ski trails
- Clearing, Grading and Surface Smoothing—vegetation removal and surface smoothing/grading for new ski trails and drainage management

Responsible Official

The Responsible Official is the WRNF Forest Supervisor.

Nature of Decision To Be Made

Given the purpose and need, the Responsible Official will review the proposed action, the other alternatives, and the environmental consequences in order to decide the following:

- Whether to approve, approve with modifications, or deny the application for additional ski area improvements and associated activities.
- Whether to prescribe conditions needed for the protection of the environment on NFS lands.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. One public open house regarding this proposal will be held on April 6, 2017 from 5:30 p.m. to 7:30 p.m. at the Forest Service Holy Cross Office, 24747 US Highway 24, Minturn, Colorado 81645. Representatives from the WRNF and Vail Resort will be present to answer questions and provide additional information on this project.

To be most helpful, comments should be specific to the project area and should identify resources or effects that should be considered by the Forest Service. Submitting timely, specific written comments during this scoping period or any other official comment period establishes standing for filing objections under 36 CFR parts 218 A and B.

It is important that reviewers provide their comments at such times and in

such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: March 24, 2017.

Glenn P. Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–06310 Filed 3–29–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Idaho; John Wood Forest Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Soda Springs Ranger District proposes to conduct forest vegetation management activities and road work in a 5,590-acre project area within the Wood Canyon and Johnson Creek drainages located in the Caribou-Targhee National Forest, approximately six miles east of Soda Springs, Idaho. The project area has a forest vegetation management emphasis designated in the Caribou Revised Forest Plan (RFP) (2003). Overall, the landscape in which the project area is located has been identified as being outside of desired conditions outlined in the RFP with respect to forest structure and species composition.

DATES: Comments concerning the scope of the analysis must be received by May 1, 2017. The draft environmental impact statement is expected August 2017 and the final environmental impact statement is expected October 2017.

ADDRESSES: Send written comments to Soda Springs Ranger District, 410 East Hooper Avenue, Soda Springs, ID 83276. Comments may also be sent via email to *comments-intermtn-caribou-targhee-soda-springs@fs.fed.us* or via facsimile to (208) 547–2235.

FOR FURTHER INFORMATION CONTACT: Wayne Beck, Project Leader, (208) 847–8941. A public scoping letter with more details is posted on the forest Web site (*https://www.fs.usda.gov/projects/ctnf/landmanagement/* projects). In addition, a copy of the Caribou RFP is available on the forest Web site (*https://www.fs.usda.gov/main/ctnf/landmanagement/planning*).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the project proposal is to improve the overall composition, health and resilience of the forest within the project area, utilize and improve timber resources, and improve the Forest transportation system.

The project proposal is needed because a fire regime condition class assessment of the forested landscape indicated that the landscape qualifies as Condition Class 2. This means that the vegetation composition, structure and fuels have moderate departure from the natural regime and predispose the system to risk of loss of key ecosystem components. Also, the project area is within a Caribou RFP 5.2 prescription area. *The emphasis in this prescription area is on scheduled wood-fiber production, timber growth and yield, while maintaining or restoring forested ecosystems* (RFP at 4–71). This prescription area also sets the following guidelines: *[p]ractices to prevent or control natural disturbances, such as insects and disease losses and wildfire, are emphasized.* (RFP at 4–72) and *where aspen exists, it should be maintained or enhanced as a component through restoration treatments* (RFP at 4–72). Many of the stands in the project area that were previously harvested are becoming overly dense, which impacts growth and yield and increases risk to forest pests such as the western spruce budworm. Finally, there is a need to address the poor condition and resource concerns of the existing transportation system within the project area.

Proposed Action

A combination of vegetation management activities would occur on approximately 760 acres. More specifically, approximately 395 acres are proposed for selection harvest, which would require approximately 1.6 miles of temporary road construction to facilitate the harvest. Additionally, approximately 365 acres are proposed for non-harvest stand-tending treatments (pre-commercial thinning, piling, pile burning, jackpot burning and chopping).

Several different types of road work are also proposed. The road work is proposed to meet transportation system needs for timber removal, resource needs, and public safety. It is proposed to reconstruct and improve the condition of approximately 5.1 miles of roads within the project area. This would include activities such as blading and shaping the road bed, spot graveling, culvert replacements, and other minor repairs. Approximately, 2.3 miles of road has been identified as needing to be relocated to address resource concerns. These roads will be located in the same general area, but large portions will be moved to a new foot print. Additionally, it is proposed to construct Road 574 in a more sustainable location (1.6 miles new construction), obliterate the previous location along with several other short segments of road (2.1 miles), and close 0.3 miles. Development of a gravel pit within the project area is also be considered.

Possible Alternatives

The Forest Service would develop alternatives to the proposed action based on internal and public scoping comments and analyze any viable alternatives in a draft environmental impact statement.

Responsible Official

Soda Springs District Ranger, Bryan K. Fuell, is the responsible official.

Nature of Decision To Be Made

The decisions to be made include whether to implement the proposed action, as designed; whether there are other alternatives capable of satisfying the purpose and need; and whether any mitigation measures or monitoring is required to implement the proposed action or alternatives. These decisions would be made in the record of decision, which would be issued following the publication of a final environmental impact statement and completion of the Forest Service objection process (36 CFR part 218, subparts A and B).

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. At this time, no public meeting will be held. This decision may be reconsidered depending on the outcome of scoping. In addition to this notice of intent, a legal notice will be published in the Idaho State Journal, newspaper of

record, to ensure wide distribution of this notice.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Per 36 CFR 218, only those who provide specific written comments regarding the proposed project or activity will be eligible to file an objection. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

An additional opportunity for public participation will occur during the public comment period on the draft environmental impact statement, which will be initiated by the publication of a notice of availability in the **Federal Register**.

Dated: March 22, 2017.

Jeanne M. Higgins,

Associate Deputy Chief, National Forest System.

[FR Doc. 2017–06273 Filed 3–29–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–48–2017]

Foreign-Trade Zone 53—Tulsa, Oklahoma; Application for Subzone; Premier Logistics, LLC, Tulsa, Oklahoma

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tulsa-Rogers County Port Authority, grantee of FTZ 53, requesting subzone status for the facility of Premier Logistics, LLC, located in Tulsa, Oklahoma. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on March 24, 2017.

The proposed subzone (10 acres) is located at 4937 South 45th West Avenue in Tulsa. The proposed subzone would be subject to the existing activation limit of FTZ 53. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 24, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: March 24, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–06253 Filed 3–29–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–81–2016]

Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Authorization of Production Activity (Passenger Motor Vehicle Production), Chattanooga, Tennessee

On November 25, 2016, Volkswagen Group of America—Chattanooga Operations, LLC (VW) submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 134—Site 3, in Chattanooga, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 88210–88211, December 7, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 24, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–06251 Filed 3–29–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–17–2017]

Foreign-Trade Zone 87—Lake Charles, Louisiana Application for Expansion of Subzone 87F; Westlake Chemical Corporation, Sulphur, Louisiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Lake Charles Harbor & Terminal District, grantee of FTZ 87, requesting an expansion of Subzone 87F on behalf of Westlake Chemical Corporation. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on March 24, 2017.

Subzone 87F was approved on October 25, 2016 (Board Order 2016, 81 FR 76915, November 4, 2016). The subzone currently consists of the following sites: *Site 1* (583.88 acres)—Petro Operations, 900 Highway 108, Sulphur; *Site 2* (70.83 acres)—Poly Operations, 3525 Cities Services Highway, Sulphur; and, *Site 3* (691.78 acres)—Marine Terminal Operations, 1820 PAK Tank Road, Sulphur. The subzone also includes several pipelines.

The applicant is requesting authority to expand the subzone to include two additional sites: *Site 4* (39.52 acres)—North Plant, 1600 VCM Plant Road, Westlake; and, *Site 5* (1,633 acres, 2 parcels)—South Plant, 1300 PPG Drive, Westlake. The proposed expansion would also include several pipelines. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–87–2016).

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 24, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: March 24, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–06252 Filed 3–29–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–054]

Certain Aluminum Foil From the People's Republic of China: Initiation of Countervailing Duty Investigation

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

DATES: Effective March 28, 2017.

FOR FURTHER INFORMATION CONTACT: Emily Maloof at (202) 482–5649, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION

The Petition

On March 9, 2017, the Department of Commerce (Department) received a countervailing duty (CVD) Petition concerning imports of certain aluminum foil (aluminum foil) from the People's Republic of China (PRC), filed in proper form on behalf of the Aluminum Trade Enforcement Working Group (the petitioner).[1]

On March 14, 2017, the Department requested additional information and clarification of certain areas of the Petition.[2] The petitioner filed its response to this request on March 16, 2017, and March 22, 2017.[3] In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of the PRC (GOC) is providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) with respect to imports of aluminum foil from the PRC, and that imports of aluminum foil from the PRC are materially injuring, or threaten material injury to, the domestic industry producing aluminum foil in the United States. Also, consistent with section 702(b)(1) of the Act, for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

The Department finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act. The Department also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the CVD investigation that the petitioner is requesting.[4]

Period of Investigation

Because the Petition was filed on March 9, 2017, pursuant to 19 CFR 351.204(b)(2), the period of investigation is January 1, through December 31, 2016.

Scope of the Investigation

The product covered by this investigation is aluminum foil from the PRC. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[5] As a result of the responses submitted by the petitioner, we have revised the original scope.[6]

As discussed in the preamble to the Department's regulations,[7] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, April 18, 2017. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, April 28, 2017.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent antidumping duty (AD) investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[8] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement & Compliance's Administrative Protective Order (APO)/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401

[1] *See* the Petition for the Imposition of Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China,'' dated March 9, 2017 (the Petition), at Volumes I and III.

[2] *See* Letters from the Department to the petitioner entitled, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China: Supplemental Questions,'' dated March 14, 2017 (General Issues Supplemental Questionnaire).

[3] *See* Letter from the petitioner to the Department entitled, ''Re: Certain Aluminum Foil from the People's Republic of China—Petitioners' Responses to Department's Questions on General Injury Volume of Petition and Amendment to Petition to Modify Scope Language,'' dated March 16, 2017 (General Issues Supplement); *see also* Letter from the petitioner, ''Re: Certain Aluminum Foil from the People's Republic of China—Petitioners' Second Amendment to Petition to Modify Scope Definition,'' dated March 22, 2017 (Scope Revision).

[4] *See* the ''Determination of Industry Support for the Petition'' section below.

[5] *See* General Issues Supplemental Questionnaire and Scope Revision.

[6] *See* Appendix I.

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[8] *See* 19 CFR 351.303 (describing general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) and *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the GOC of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOC the opportunity for consultations with respect to the CVD Petition.[9] In response to the Department's letter, the GOC requested that consultations be held. Such consultations were held on March 27, 2017.[10]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that aluminum foil, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[13]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in Appendix I of this notice. The petitioner provided 2016 domestic like product production data for U.S. producers that are known to support the Petition. The petitioner also estimated total 2016 production of the domestic like product for the remaining producers in the U.S. industry. To establish industry support, the petitioner compared the production of companies supporting the Petition to the total 2016 production of the domestic like product for the entire domestic industry.[14] We relied on data the petitioner provided for purposes of measuring industry support.[15]

Our review of the data provided in the Petition and other information readily available to the Department indicates that the petitioner has established industry support for the Petition.[16] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[17] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[18] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[19] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(E) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting that the Department initiate.[20]

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act,

[9] *See* Letter of invitation from the Department regarding, ''Countervailing Duty Petition Certain Aluminum Foil from the People's Republic of China,'' dated March 10, 2017 (CVD Petition).

[10] *See* Department Memorandum, ''Countervailing Duty Petition on Certain Aluminum Foil from the People's Republic of China: GOC Consultations,'' dated March 27, 2017.

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Aluminum Foil from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II, ''Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Aluminum Foil from the People's Republic of China,'' (Attachment II). This checklist is dated concurrently with this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[14] *See* Volume I of the Petition, at 4–6 and Exhibits GEN–1A and GEN–8.

[15] *Id.* For further discussion, *see* PRC CVD Initiation Checklist, at Attachment II.

[16] *See* PRC CVD Initiation Checklist, at Attachment II.

[17] *See* section 702(c)(4)(D) of the Act; *see also* PRC CVD Initiation Checklist, at Attachment II.

[18] *See* PRC CVD Initiation Checklist, at Attachment II.

[19] *Id.*

[20] *Id.*

section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[21]

The petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; decreasing U.S. shipment and production trends, as well as low capacity utilization rates; declines in production-related workers and wages paid; and deterioration in financial performance.[22] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[23]

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The petitioner alleges that producers/exporters of aluminum foil in the PRC benefit from countervailable subsidies bestowed by the GOC. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of aluminum foil from the PRC receive countervailable subsidies from the GOC and various authorities thereof.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.[24] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[25] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[26]

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 26 of the 27 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* the PRC CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named 232 companies as producers/exporters of aluminum foil in the PRC.[27] Following standard practice in CVD investigations, the Department will, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of aluminum foil during the period of investigation. For this investigation, the Department intends to release U.S. Customs and Border Protection (CBP) data for U.S. imports of subject merchandise during the period of investigation under the following Harmonized Tariff Schedule of the United States numbers: 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. We intend to release the CBP data under APO to all parties with access to information protected by APO within five business days of the announcement of this **Federal Register** notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found at *http://enforcement.trade.gov/apo/.*

Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 p.m. ET on the seventh calendar day after publication of this notice. Comments must be filed in accordance with the filing requirements stated above. If respondent selection is necessary, we intend to base our decision regarding respondent selection upon comments received from interested parties and our analysis of the record information within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC *via* ACCESS. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by delivery of the public version to the government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of aluminum foil from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[28] A negative ITC determination will result in the investigation being terminated;[29] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available

[21] *See* Volume I of the Petition, at 11 and Exhibit GEN–7.

[22] *Id.,* at 9–23 and Exhibits GEN–4 and GEN–7 through GEN–10.

[23] *See* PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Aluminum Foil from the People's Republic of China (Attachment III).

[24] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[25] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[26] *Id.,* at 46794–95.

[27] *See* Volume I of the Petition at Exhibit GEN–4.

[28] *See* section 703(a)(2) of the Act.

[29] *See* section 703(a)(1) of the Act.

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). The regulation requires 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. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in this investigation.

Extension of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we 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, we 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. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[30] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[31] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Dated: March 28, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on only one side of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2017–06390 Filed 3–29–17; 8:45 am]

BILLING CODE 3510–DS–P

[30] *See* section 782(b) of the Act.

[31] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–053]

Certain Aluminum Foil From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

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

DATES: Effective March 28, 2017.

FOR FURTHER INFORMATION CONTACT: Tom Bellhouse at (202) 482–2057 or Steve Bezirganian at (202) 482–1131, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 9, 2017, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of certain aluminum foil (aluminum foil) from the People's Republic of China (PRC), filed in proper form on behalf of The Aluminum Association Trade Enforcement Working Group (the petitioner).[1] The AD petition was accompanied by a countervailing duty (CVD) petition for aluminum foil from the PRC.[2] The petitioner is a producer of aluminum foil.[3]

On March 14, 2017, the Department requested additional information and clarification of certain areas of the

[1] *See* Petitions for the Imposition of Antidumping and Countervailing Duties, dated March 9, 2017 (the Petition), at Volumes I and II.

[2] *Id.,* at Volume III.

[3] *Id.,* at Volume I.

Petition.[4] The petitioner filed responses to these requests on March 16, 2017, March 17, 2017, and March 22, 2017.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of aluminum foil from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports of aluminum foil from the PRC are materially injuring, or threaten material injury to, the domestic industry producing aluminum foil in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

The Department finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act. The Department also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigation that the petitioner is requesting.[6]

Period of Investigation

Because the Petition was filed on March 9, 2017, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is July 1, 2016, through December 31, 2016.

Scope of the Investigation

The product covered by this investigation is aluminum foil from the PRC. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7] As a result of the responses submitted by the petitioner, we have revised the original scope.[8]

As discussed in the preamble to the Department's regulations,[9] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, April 18, 2017. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Tuesday, April 28, 2017.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent CVD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement & Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of aluminum foil to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe aluminum foil, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on Wednesday, April 12, 2017. Any rebuttal comments, which may include factual information, must be filed by

[4] *See* Letters from the Department to the petitioner entitled, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China: Supplemental Questions,'' dated March 14, 2017 (General Issues Supplemental Questionnaire); *see also* ''Petition for the Imposition of Antidumping Duties on Imports of Certain Aluminum Foil from the People's Republic of China: Supplemental Questions,'' dated March 14, 2017 (AD Supplemental Questionnaire), and Letter from the petitioner, ''Re: Certain Aluminum Foil from the People's Republic of China—Petitioners' Second Amendment to Petition to Modify Scope Definition,'' dated March 22, 2017 (Scope Revision).

[5] *See* Letter from the petitioner to the Department entitled, ''Petitioners' Responses to Department's Questions on General and Injury Volume of Petition and Amendment to Petition to Modify Scope Language,'' dated March 16, 2017 (General Issues Supplement); *see also* Letter from the petitioner to the Department entitled, ''Petitioners' Response to the Department's Supplemental Questionnaire Relating to Antidumping Duty Petition,'' dated March 17, 2017 (AD Supplemental Response).

[6] *See* the ''Determination of Industry Support for the Petition'' section below.

[7] *See* General Issues Supplemental Questionnaire; *see also* General Issues Supplement at 3–6 and Exhibit GEN-Supp. 1, and Scope Revision.

[8] *See* Appendix I.

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[10] *See* 19 CFR 351.303 (describing general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) and *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

5:00 p.m. ET on Wednesday, April 19, 2017. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the record of this less-than-fair-value investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that aluminum foil, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[13]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in Appendix I of this notice. The petitioner provided 2016 domestic like product production data for U.S. producers that are known to support the Petition. The petitioner also estimated total 2016 production of the domestic like product for the remaining producers in the U.S. industry. To establish industry support, the petitioner compared the production of companies supporting the Petition to the total 2016 production of the domestic like product for the entire domestic industry.[14] We relied on data the petitioner provided for purposes of measuring industry support.[15]

Our review of the data provided in the Petition and other information readily available to the Department indicates that the petitioner has established industry support for the Petition.[16] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[17] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[18] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[19] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(E) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting that the Department initiate.[20]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[21]

The petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; decreasing U.S. shipment and production trends, as well as low capacity utilization rates; declines in production-related workers and wages paid; and deterioration in financial

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Certain Aluminum Foil from the People's Republic of China (PRC AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Aluminum Foil from the People's Republic of China, (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[14] *See* Volume I of the Petition, at 4–6 and Exhibits GEN–1A and GEN–8.

[15] *Id.* For further discussion, *see* PRC AD Initiation Checklist, at Attachment II.

[16] *See* PRC AD Initiation Checklist, at Attachment II.

[17] *See* section 732(c)(4)(D) of the Act; *see also* PRC AD Initiation Checklist, at Attachment II.

[18] *See* PRC AD Initiation Checklist, at Attachment II.

[19] *Id.*

[20] *Id.*

[21] *See* Volume I of the Petition, at 11 and Exhibit GEN–7.

performance.[22] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[23]

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate an investigation of imports of aluminum foil from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the initiation checklist.

Export Price

The petitioner based U.S. price on two offers by PRC producers for sales of aluminum foil produced in the PRC.[24] The petitioner made deductions from U.S. price, as appropriate and consistent with sale and delivery terms, for unrebated value added tax, foreign inland freight expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. duties, merchandise processing fees, harbor maintenance fees, and U.S inland freight expenses.[25]

Normal Value

The petitioner stated that the Department has identified the PRC as a non-market economy (NME) country as recently as the week before the petitioner filed the petition, and the Department has not since that time published any determination concluding the PRC is a market economy.[26] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.

The petitioner claims that South Africa is an appropriate surrogate country because it is a market economy country that is at a level of economic development comparable to that of the PRC, it is a significant producer of comparable merchandise, and public information from South Africa is available to value all material input factors.[27]

Based on the information provided by the petitioner, we determine that it is appropriate to use South Africa as a surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

The petitioner based the FOPs for materials, labor, and energy on the consumption rates of certain producers of aluminum foil in the United States.[28] The petitioner asserts that the production process for aluminum foil is similar regardless of whether the product is produced in the United States or in the PRC.[29] The petitioner valued the estimated factors of production using surrogate values from South Africa, as discussed below.[30]

Valuation of Raw Materials

The petitioner valued the FOPs for certain raw materials (*i.e.,* aluminum ingot and aluminum scrap) using public import data for South Africa obtained from the Global Trade Atlas (GTA) applicable for the POI.[31] The petitioner excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries.[32] In addition, in accordance with the Department's practice, the petitioner excluded imports that were labeled as originating from an unidentified country.[33] For aluminum ingots, the petitioner added international freight charges (*i.e.,* ocean freight and other shipment charges) and inland freight charges,[34] but did not make any such additions for aluminum scrap.[35] For one of the two sale offer products, the petitioner added the cost of additives used in the melting and casting of aluminum.[36] Finally, the petitioner made offsets to cost for estimated scrap generated by the production process.[37] The Department determines that the surrogate values used by the petitioner are reasonably available and, thus, are acceptable for purposes of initiation.

Valuation of Energy

The petitioner valued natural gas using the average unit value of imports of liquid natural gas into South Africa.[38] The petitioner valued electricity using electricity rates reported by Eskom, South Africa's electricity public utility.[39]

Valuation of Labor

The petitioner valued labor using the most-recently-available labor data published by the International Labour Organization (ILO).[40] Specifically, the petitioner relied on the most recently available data pertaining to average monthly earnings in the ''manufacturing industries'' sector of the South African

[22] *Id.,* at 9–23 and Exhibits GEN–4 and GEN–7 through GEN–10.

[23] *See* PRC AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Aluminum Foil from the People's Republic of China (Attachment III).

[24] *See* Volume II of the Petition, at 3–4 and Exhibit AD–1A, Exhibit AD–1B; *see also* AD Supplemental Response at 2, 4–6, and Exhibit AD-Supp. 1A, Exhibit AD-Supp. 7C.

[25] *See* Volume II of the Petition, at 4–6 and Exhibit AD–3A, Exhibit AD–3B, Exhibit AD–4, Exhibit AD–5, Exhibit AD–6, Exhibit AD–7A; *see also* AD Supplemental Response, at 2–4 and Exhibit AD-Supp. 4, Exhibit AD-Supp. 5, Exhibit AD-Supp. 7B.

[26] *See* Volume II of the Petition at 1.

[27] *See* Volume II of the Petition at 1–2, 7 and Exhibit AD–2A, Exhibit AD–2B.

[28] *See* Volume II of the Petition at 1–2, 7–10, and Exhibit AD–8A, Exhibit AD–8B, and AD Supplemental Response, at 6–9 and Exhibit AD-Supp. 9A, Exhibit AD-Supp. 9B.

[29] *See* Volume II of the Petition, at 7 and Exhibit AD–8A, Exhibit AD–8B.

[30] *Id.* at 2 and 7. *See also* AD Supplemental Response, at Exhibit AD-Supp. 9A, Exhibit AD-Supp. 9B.

[31] *See* Volume II of the Petition at 8–9 and AD Supplemental Response, at Exhibit AD-Supp. 10. The petitioner explained that the data for the months June 2016 through November 2016 were used for these inputs, rather than those of the actual POI (*i.e.,* July 2016 through December 2016), to conform with industry practices regarding the timing of the pricing of inputs used for production. *See* AD Supplemental Response, at 6–7, citing Exhibit AD-Supp. 1A and Exhibit AD–1B of Volume II of the Petition.

[32] *See* AD Supplemental Response at Exhibit AD-Supp. 10B, Exhibit AD-Supp. 10C.

[33] *Id.*

[34] *See* Volume II of the Petition at 8, and AD Supplemental Response at 7–8 and Exhibit AD–10B, Exhibit AD–10C.

[35] *See* Volume II of the Petition at 9.

[36] *See* Volume II of the Petition at 9, and AD Supplemental Response at 9 and Exhibit AD-Supp. 9A. The petitioner did not make any addition for cost of additives for the other sale offer product, noting the cost of additives for that product was not significant. See Volume II of the Petition at 9.

[37] *See* Volume II of the Petition at 9 and AD Supplemental Response at Exhibit AD-Supp. 9A, Exhibit AD-Supp. 9B.

[38] *See* Volume II of the Petition at 9 and Exhibit AD–11, and AD Supplemental Response at 8 and Exhibit AD-Supp. 11.

[39] *See* Volume II of the Petition at 10 and Exhibit AD–12.

[40] *See* Volume II of the Petition at 10 and Exhibit AD–13.

economy, indexed to the POI using South African consumer price information available from the International Monetary Fund (IMF).[41]

Valuation of Packing Materials

The petitioner determined the FOPs for packing materials based on their experience in packing their own products as well as on their knowledge of how PRC producers typically pack aluminum foil for export to the United States.[42] For one sale offer product, the petitioner indicated the packing materials would be wooden crates and wooden pallets, and valued them based on South Africa import values.[43] For the other sale offer product, the petitioner indicated that the packing material would be steel racks, and valued them based on South Africa import values.[44] For both sale offer products, the petitioner valued labor expenses for packing based on the hourly rates derived from the aforementioned ILO earnings data.[45]

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

The petitioner calculated ratios for factory overhead, selling, general and administrative expenses based on the 2015 consolidated financial statements of Hulamin, Ltd. (Hulamin), a South African producer of aluminum foil.[46] Because Hulamin had net financial income rather than net financial expenses, the petitioner reported financial expenses as zero, in accordance with Department practice.[47] The petitioner calculated a profit rate for Hulamin, and multiplied that rate by the cost of production of each of the two sale offer products to obtain profit values for each. Those profit values, in turn, were added to the cost of production of the respective sale offer products to obtain cost of production plus profit for each of the sale offer products.[48]

[41] *Id.; see also* AD Supplemental Response at 8 and Exhibit AD-Supp. 13.

[42] *See* Volume II of the Petition at 10, and AD Supplemental Response at 9 and Exhibit AD-Supp. 9A, Exhibit AD-Supp. 9B, Exhibit AD-Supp. 9C.

[43] *See* Volume II of the Petition at 10 and AD Supplemental Response at Exhibit AD-Supp. 9A. *See also* AD Supplemental Response at 9 and Exhibit AD-Supp. 9C.

[44] *See* Volume II of the Petition at 10–11 and AD Supplemental Response at 9 and Exhibit AD-Supp. 9B.

[45] *See* AD Supplemental Response at Exhibit AD-Supp. 9A, Exhibit AD-Supp. 9B.

[46] *See* Volume II of the Petition at 11–12 and Exhibit AD–14, Exhibit AD–15, Exhibit AD–16.

[47] *Id.,* at 11 and Exhibit AD–16.

[48] *Id.,* at 12 and Exhibit AD–16; see also AD Supplemental Response at Exhibit AD-Supp. 9A, Exhibit AD-Supp. 9B.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of aluminum foil from the PRC are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margins for aluminum foil from the PRC are 38.40 percent and 140.21 percent.[49]

Initiation of Less-Than-Fair-Value Investigation

Based upon the examination of the AD Petition on aluminum foil from the PRC, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of aluminum foil from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we intend to make our preliminary determination no later than 140 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD laws were made.[50] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[51] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[52]

Respondent Selection

In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to the investigation and base respondent selection on the responses received. For this investigation, the Department will request Q&V information from known exporters and producers identified, with complete contact information, in the Petition. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp.*

Producers/exporters of aluminum foil from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance Web site. The Q&V response must be submitted by the relevant PRC exporters/producers no later than April 12, 2017. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[53] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[54] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that companies from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V response will not receive separate rate consideration.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation.

[49] *See* AD Supplemental Response at Exhibit AD-Supp. 17A, Exhibit AD-Supp. 17B; *see also* PRC AD Initiation Checklist.

[50] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[51] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[52] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[53] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[54] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[55]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of the PRC via ACCESS. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by delivery of the public version to the government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of aluminum foil from the PRC are materially injuring or threatening material injury to a U.S. industry.[56] A negative ITC determination will result in the investigation being terminated;[57] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[58] 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.[59] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we 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, we 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. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR–2013–09–20/html/2013–22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[60] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petition filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[61] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008).

Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 28, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on only one side of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the

[55] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[56] *See* section 733(a) of the Act.

[57] *Id.*

[58] *See* 19 CFR 351.301(b).

[59] *See* 19 CFR 351.301(b)(2).

[60] *See* section 782(b) of the Act.

[61] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2017–06389 Filed 3–29–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Final Rescission of the New Shipper Review of Shanghai Sunbeauty Trading Co., Ltd.

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

SUMMARY: On December 6, 2016, the Department of Commerce (the Department) published its *Preliminary Rescission* for the new shipper review (NSR) of the antidumping duty order on honey from the People's Republic of China (PRC). The period of review is December 1, 2014, through November 30, 2015. As discussed below, we preliminarily determined to rescind this review because we found the new shipper sales of Shanghai Sunbeauty Trading Co., Ltd. (Sunbeauty) to be non-*bona fide.* Based on our analysis of the comments received, we make no changes to the *Preliminary Rescission.* Accordingly, we have determined to rescind this NSR with respect to Sunbeauty.

DATES: Effective March 30, 2017.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta or Carrie Bethea, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593 or (202) 482–1491, respectively.

SUPPLEMENTARY INFORMATION:

Background

For a complete description of the events that followed the publication of the *Preliminary Rescission,*[1] see the Issues and Decision Memorandum.[2] A list of topics included in the Issues and Decision Memorandum is included as an Appendix to this notice. The Issues and 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 *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic version of the Issues and Decision Memorandum are identical in content.

Scope of the Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties are addressed in the Issues and Decision Memorandum.[3] A list of the issues which parties raised is attached to this notice as an Appendix.

Final Rescission of Sunbeauty's New Shipper Review

In the *Preliminary Rescission,* we announced our preliminary intent to rescind this review, because we found that Sunbeauty's sales are non-*bona fide* and could not be relied upon to calculate a dumping margin. Based on the Department's complete analysis of all the information and comments on the record of this review, we make no changes to the *Preliminary Rescission.* Accordingly, we have determined to rescind this NSR with respect to Sunbeauty. For a complete discussion, see the Preliminary *Bona Fides* Memo,[4] the Final Business Proprietary Memo,[5] and the Issues and Decision Memorandum.

Assessment

As the Department is rescinding this NSR, we have not calculated a company-specific dumping margin for Sunbeauty. Sunbeauty's entries covered by this NSR will be assessed at the cash deposit rate required at the time of entry, which is the PRC-wide rate (*i.e.,* $2.63 per kilogram).

Cash Deposit Requirements

Effective upon publication of this notice of the final rescission of the NSR of Sunbeauty, the Department will instruct U.S. Customs and Border Protection to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise from Sunbeauty. The following cash deposit requirements will be effective upon publication of these final results for all shipments of subject merchandise from Sunbeauty entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of Tariff Act of 1930, as amended (the Act): (1) For subject merchandise produced and exported by Sunbeauty, the cash deposit rate will continue to be the PRC-wide

[1] *See Honey from the People's Republic of China: Preliminary Intent to Rescind New Shipper Review,* 81 FR 87906, (December 6, 2016) (*Preliminary Rescission*).

[2] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, entitled, ''Issues and Decision Memorandum for the Final Rescission of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China: Shanghai Sunbeauty Trading Co. Ltd.,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Issues and Decision Memorandum.

[4] *See* Memorandum to James C. Doyle, Director, Office V from Carrie Bethea, International Trade Compliance Analyst, Office V, entitled, ''*Bona Fides* Analysis of Honey from the People's Republic of China for Shanghai Sunbeauty Trading Co., Ltd.,'' dated November 30, 2016 (Preliminary *Bona Fides* Memo).

[5] Memorandum to the File, entitled, ''Business Proprietary Information Memo for Shanghai Sunbeauty Trading Co., Ltd.,'' dated concurrently with the Memorandum to Ronald K. Lorentzen from Gary Taverman, entitled, ''Issues and Decision Memorandum for the Final Rescission of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China: Shanghai Sunbeauty Trading Co., Ltd.'' (Final Business Proprietary Information Memo).

rate (*i.e.,* $2.63 per kilogram); (2) for subject merchandise exported by Sunbeauty but not manufactured by Sunbeauty, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* $2.63 per kilogram); and (3) for subject merchandise manufactured by Sunbeauty, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notifications to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214 and 19 CFR 351.221(b)(5).

Dated: March 24, 2017.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
Issue: *Bona Fide* Nature of Sunbeauty's Sales
V. Recommendation

[FR Doc. 2017–06286 Filed 3–29–17; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF323

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, April 18, 19, and 20, 2017, beginning at 9 a.m. on April 18, 8:30 a.m. on April 19, and 8:30 a.m. on April 20.

ADDRESSES: The meeting will be held at the Hilton Mystic, 20 Coogan Blvd., Mystic, CT 06355; telephone: (860) 572–0731; online at *http://www3.hilton.com/en/hotels/connecticut/hilton-mystic-MYSMHHF/index.html.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, April 18, 2017

After introductions and brief announcements, the meeting will begin with reports from the Council Chairman and Executive Director, NMFS's Regional Administrator for the Greater Atlantic Regional Fisheries Office (GARFO), liaisons from the Northeast Fisheries Science Center (NEFSC) and Mid-Atlantic Fishery Management Council, representatives from NOAA General Counsel and the Office of Law Enforcement, and staff from the Atlantic States Marine Fisheries Commission (ASMFC) and the U.S. Coast Guard. Following these reports, the Council will hear from its Scallop Committee, which will provide a progress report on 2017 work priorities. The Council also potentially may initiate a framework adjustment to the Atlantic Sea Scallop Fishery Management Plan to address Northern Gulf of Maine Management Area issues.

After a lunch break, the Council will hear from its Skate Committee, which will provide a summary of comments received during recent scoping hearings for Amendment 5 to the Northeast Skate Complex Fishery Management Plan. The Council also will review and may consider revising the existing control dates for the skate bait and skate non-bait (wing) fisheries. The Council will close out the day with a report from its Habitat Committee, which first will present an overview of input received during two mid-March coral workshops. These workshops were held in New Bedford, MA and Portsmouth, NH with active fishermen to help refine the alternatives in the Council's Draft Omnibus Deep-Sea Coral Amendment. The Council then will identify preferred alternatives in the amendment to send to public hearing. Finally, the Council will receive a progress report on the Clam Dredge Exemption Area Framework Adjustment, which is under development.

Wednesday, April 19, 2017

The second day of the meeting will begin with an Ecosystem Status Report by NEFSC staff to update the Council on the state of the Northeast Continental Shelf ecosystem. This report will be followed by an update from the Council's Ecosystem-Based Fishery Management Committee on developing a worked example of harvest control rules for ecosystem management. Next, the Northeast Fisheries Science Center will provide a presentation on the Standardized Bycatch Reporting Methodology and outline steps for improvement. GARFO staff will summarize the peer review that was conducted regarding in-season discard estimation methods, known as the Discard Methodology Review. Members of the public then will be able to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes.

After a lunch break, the Whiting Committee will be up first. The Council will review and is expected to approve the range of limited access, permitting, and possession limit alternatives for the Draft Environmental Impact Statement for Amendment 22 to the Northeast Multispecies Fishery Management Plan. Amendment 22, referred to as ''the whiting amendment,'' is focused on small-mesh multispecies. After that, the Council will spend the remainder of the afternoon on research-related issues.

First, the Council will receive a report from its Research Steering Committee regarding the committee's review of collaborative research projects funded by the Council. Next, the Council is expected to approve 2017–22 research priorities. Finally, the Northeast Fisheries Science Center will provide a review of its Cooperative Research Program.

Thursday, April 20, 2017

The third day of the meeting will begin with a report from the Council Programmatic Review Steering Committee. The Council then is expected to approve a plan for conducting the review. Next, the Council will hear from its Atlantic Herring Committee, starting off with a presentation on the results of the mid-March Management Strategy Evaluation (MSE) Peer Review. MSE is being used to develop an acceptable biological catch (ABC) control rule for Amendment 8 to the Atlantic Herring Fishery Management Plan. The Council potentially may approve the range of alternatives for Amendment 8, including ABC control rule options and measures to address localized depletion and user conflicts. Following this discussion, the Council will review and approve comments on Addendum I to Amendment 3 of ASMFC's interstate Atlantic herring plan. Finally, the Council will receive an update from GARFO on its evaluation of incorporating portside data into herring catch cap quota monitoring.

Following a lunch break, the Council may resume its herring discussion if necessary. Then, the Council will address the Industry-Funded Monitoring (IFM) Omnibus Amendment. The Council will review the preferred alternatives it selected during its January meeting for both the amendment itself and for IFM monitoring for the Atlantic herring fishery. The Council may make clarifications to and/or changes to the preferred alternatives for the Atlantic Herring Industry Funded Monitoring Program. The Council is expected to take final action and vote to submit its preferred alternatives to NMFS. The Council will close out the meeting with ''other business.''

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 27, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–06280 Filed 3–29–17; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11:00 a.m., Thursday, April 6, 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.

Natise Allen,

Executive Assistant.

[FR Doc. 2017–06362 Filed 3–28–17; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Board of Visitors (BOV) of the U.S. Air Force Academy; Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors.

ACTION: Amended meeting notice (corrected dates).

SUMMARY: On Wednesday, March 22, 2017, the Department of the Air Force published a notice announcing a Board of Visitors of the Air Force Academy meeting. The announcement erroneously stated that the meeting dates were the 6th and 7th of April, 2017. The 7th of April will be the only day that the meeting will take place. All other information in the March 22, 2107 notice remains the same.

DATES: The meeting will be held from 9:00 a.m. to 13:45 p.m. on Friday, April 7, 2017.

ADDRESSES: Polaris Hall, U.S. Air Force Academy, Colorado Springs, Colorado, 80840.

FOR FURTHER INFORMATION CONTACT: Major James Kuchta, Accessions and Training Division, AF/A1PT, 1040 Air Force Pentagon, Washington, DC 20330, (703) 695–4066, *James.L.Kuchta.mil@mail.mil.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Board of Visitors of the United States Air Force Academy was unable to provide public notification amending its previously announced meeting notice on Wednesday, March 22, 2017 (82 FR 14699), as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

In accordance with 10 U.S.C. Section 9355, the U.S. Air Force Academy BoV will hold a meeting at Polaris Hall, U.S. Air Force Academy, Colorado Springs, CO on Friday, 7 April, 2017. The meeting will begin at 0900 and conclude at 1345. The purpose of this meeting is to review morale and discipline, social climate, strategic communication, infrastructure, and other matters relating to the Academy. Specific topics for this meeting include a Superintendent's Update; Capital Projects and Construction Update; Status of Discipline; Graduate Assessment Update.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (March 3) prior to the start of the meeting. All members of the public must contact Maj Kuchta at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT**. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to

provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the POC listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the BoV.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the BoV about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Maj James Kuchta, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the BoV Chairman for their consideration prior to the meeting. Written comments or statements received after this date may not be provided to the BoV until its next meeting. Please note that because the BoV operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The BoV DFO will log each request to make a comment, in the order received, and the DFO and BoV Chairman will determine whether the subject matter of each comment is relevant to the BoV's mission and/or the topics to be addressed in this public meeting.

A period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than five (5) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2017–06305 Filed 3–29–17; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) 2017 Summer Study Task Force on Countering Anti-access Systems with Longer Range and Standoff Capabilities (''the Long Range Effects 2017 Summer Study Task Force'') will meet in closed session on Thursday, March 23, 2017, from 7:50 a.m. to 5:00 p.m. at the Pentagon, Room MD779, Washington, DC 20330 and Friday, March 24, 2017, from 8:00 a.m. to 4:00 p.m. at the Strategic Analysis Inc., The Executive Conference Center, 4075 Wilson Blvd., Suite 350, Arlington, VA.

DATES: Thursday, March 23, 2017, from 7:50 a.m. to 5:00 p.m.; and Friday, March 24, 2017, from 8:00 a.m. to 4:00 p.m.

ADDRESSES: Pentagon, Room MD779, Washington, DC 20330 and Strategic Analysis Inc. Executive Conference Center, 4075 Wilson Blvd., Suite 350, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via email at *debra.a.rose20.civ@mail.mil,* or via phone at (703) 571–0084 or the Defense Science Board's Designated Federal Officer (DFO) Ms. Karen D.H. Saunders, Executive Director, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301, via email at *karen.d.saunders.civ@mail.mil* or via phone at (703) 571–0079.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Defense Science Board was unable to provide public notification concerning its meeting on March 23 through 24, 2017, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

The mission of the DSB is to provide independent advice and recommendations on matters relating to the Department of Defense's (DoD) scientific and technical enterprise. The objective of the Long Range Effects 2017 Summer Study Task Force is to explore new defense systems and technologies that will enable cost effective power projection that relies on the use of longer stand-off distances than current capabilities. System components may be deployed on manned or unmanned platforms with a range of potential autonomous capabilities. Use of cost reducing technology and advanced production practices from defense and commercial industry may be a major part of the strategy for deploying adequate numbers of weapons. The study should investigate and analyze all of these areas and recommend preferred system options. This two-day session will focus on future capabilities and architectures for the Department. Day One briefings will include opening remarks and expectations for the two-day session from Dr. David Whelan and Mr. Mark Russell, task force co-chairs; a briefing on the U.S. Strategic Command (USSTRATCOM) Future Mission Concepts, including DoD capability and resource integration issues, from Mr. Steve Callicut, USSTRATCOM; a briefing on Future Naval Capabilities, including utilization of Navy resources to address adversary long range strike capabilities, from VADM John Richardson, Chief of Naval Operations, U.S. Navy; a briefing on countering anti-access systems with longer range and standoff capabilities from Mr. James MacStravic, Performing the Duties of the Under Secretary of Defense for Acquisition, Technology, and Logistics;

a briefing from Mr. Barry Pike, Program Executive Officer, Missiles and Space, U.S. Army, on the utilization of Army resources to address adversary long range strike capabilities; a briefing on the Joint Force Special Operations Combatant Command Insights for the Pacific Region from Colonel William Nagel, Special Operations Command—Pacific; and a briefing on the operational programs and planning in the U.S. Pacific area of operations by Dr. George Ka'iliwai, U.S. Pacific Command. The Day Two briefing will be an overview of DoD's planning and development of strategic capabilities across DoD missions presented by Dr. William Roper, Director, Strategic Capabilities Office, Office of the Secretary of Defense. The remainder of this day will be the Long Range Effects 2017 Summer Study Task Force's four panel break-out sessions: Architecture; Intelligence, Surveillance, and Reconnaissance (ISR); Basing, Delivery, and Weapons; Command, Control, Communications, and Cyber. These panels will meet simultaneously to discuss topics to analyze in support of the study. The Day Two will close with discussion of the four panel's work.

In accordance with section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the Long Range Effects 2017 Summer Study Task Force meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology, and Logistics), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because matters covered by 5 U.S.C. 552b(c)(1) will be considered. The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

In accordance with section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the Long Range Effects 2017 Summer Study Task Force members at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB's DFO—Ms. Karen D.H. Saunders, Executive Director, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301, via email at *karen.d.saunders.civ@mail.mil* or via phone at (703) 571–0079 at any point; however, if a written statement is not received at least 3 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Long Range Effects 2017 Summer Study Task Force until the next meeting of this task force. The DFO will review all submissions with the Long Range Effects 2017 Summer Study Task Force Co-Chairs and ensure they are provided to Long Range Effects 2017 Summer Study Task Force members prior to the end of the two-day meeting on March 24, 2017.

Dated: March 24, 2017.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2017–06229 Filed 3–29–17; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9960–25–OA]

Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC); Secondary National Ambient Air Quality Standards Review Panel for Oxides of Nitrogen and Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee (CASAC) Secondary National Ambient Air Quality Standards Review Panel for Oxides of Nitrogen and Sulfur to peer review EPA's *Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria (First External Review Draft).*

DATES: The public meeting of the CASAC Secondary National Ambient Air Quality Standards Review Panel for Oxides of Nitrogen and Sulfur will be held on Wednesday May 24, 2017, from 9:00 a.m. to 5:15 p.m. (Eastern Standard Time) and Thursday, May 25, 2017, from 8:00 a.m. to 3:30 p.m. (Eastern Time).

Location: The public meeting will be held at the Hilton Durham Hotel near Duke University, 3800 Hillsborough Road, Durham, North Carolina, 27705.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public meeting may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone at (202) 564–2155 or at *armitage.thomas@epa.gov.* General information about the CASAC, as well as any updates concerning the meetings announced in this notice, may be found on the CASAC Web page at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and National Ambient Air Quality Standards (NAAQS) and recommend any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including oxides of nitrogen, oxides of sulfur, and particulate matter (PM). EPA is currently reviewing the secondary (welfare-based) ambient air quality standards for oxides of nitrogen, oxides of sulfur, and PM.

Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Secondary National Ambient Air Quality Standards Review Panel for Oxides of Nitrogen and Sulfur will hold a public face-to-face meeting to review EPA's *Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria (First External Review Draft).* The CASAC Secondary National Ambient Air Quality Standards Review Panel for Oxides of Nitrogen and Sulfur will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. The Panel will provide advice to the EPA Administrator through the chartered CASAC.

Technical Contacts: Any technical questions concerning the *Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and*

Particulate Matter—Ecological Criteria (First External Review Draft) should be directed to Dr. Tara Greaver (*greaver.tara@epa.gov*), EPA Office of Research and Development.

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be available on the CASAC Web page at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the panel and the EPA review documents, and/or the group conducting the activity, for the CASAC to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Dr. Thomas Armitage, DFO, in writing (preferably via email) at the contact information noted above by May 17, 2017, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by CASAC members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by May 17, 2017. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at (202) 564–2155 or *armitage.thomas@epa.gov.* To request accommodation of a disability, please contact Dr. Armitage preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: March 10, 2017.

Khanna Johnston,

Acting Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2017–06316 Filed 3–29–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128; FRL–9959–72–ORD]

First External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: Environmental Protection Agency (EPA) is announcing a public comment period for the draft document titled, ''First External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' (EPA/600/R–16/372). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD) as part of the review of the secondary (welfare-based) National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen, oxides of sulfur, and particulate matter. The Integrated Science Assessment (ISA), in conjunction with additional technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. On January 28, 2016, EPA released a separate ISA as part of an independent review for the primary (health-based) NAAQS for oxides of nitrogen (EPA/600/R–15/068). In addition, EPA is currently developing separate ISAs to support the primary NAAQS review for oxides of sulfur and the primary and non-ecological secondary (*e.g.,* visibility, climate, materials damage) NAAQS review for particulate matter.

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public (meeting date and location to be specified in a separate **Federal Register** notice). This draft document is not final, as described in EPA's information quality guidelines, and it does not represent, and should not be construed to represent, Agency policy or views. When revising the document, EPA will consider any public comments submitted during the public comment period specified in this notice.

DATES: The public comment period begins on March 30, 2017, and ends on May 24, 2017. Comments must be received on or before May 24, 2017.

ADDRESSES: The ''First External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' will be available primarily via the internet on EPA's Integrated Science Assessment home page at *https://www.epa.gov/isa/integrated-science-assessment-isa-oxides-nitrogen-and-sulfur-ecological* or the public docket at *http://www.regulations.gov,* Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128. A limited number of CD–ROM copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov* to request a CD–ROM, and please provide your name, your mailing address, and the document title, ''First External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; phone: 202–566–1752; fax: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information, contact Dr. Tara Greaver, NCEA; phone: 919–541–2435; fax: 919–541–1818; or email: *greaver.tara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or

welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . .'' Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS (for more information on the NAAQS review process, see *https://www.epa.gov/naaqs*).

Oxides of nitrogen, oxides of sulfur, and particulate matter are three of six criteria pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA (formerly called an Air Quality Criteria Document). The ISA, in conjunction with additional technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The CASAC, an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the EPA's air quality criteria.

On August 21, 2013 (78 FR 53452), EPA formally initiated its current review of the air quality criteria for the ecological effects of oxides of nitrogen and oxides of sulfur, and the associated secondary (welfare-based) NAAQS, requesting the submission of recent scientific information on specified topics. Similarly, on December 3, 2014 (79 FR 71764), EPA formally initiated its current review of the air quality criteria for the particulate matter NAAQS. EPA conducted two workshops—the first on March 4 to 6, 2014, for oxides of nitrogen and oxides of sulfur (79 FR 8644, February 13, 2014), and the second on February 11, 2015 (79 FR 71764, December 3, 2014), for particulate matter—to gather input from invited scientific experts, both internal and external to EPA, as well as from the public, regarding key science and policy issues relevant to the review of the these secondary NAAQS. These science and policy issues were incorporated into EPA's ''Draft Integrated Review Plan for the Secondary National Ambient Air Quality Standard for Oxides of Nitrogen and Oxides of Sulfur'' as well as the ''Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter.'' The Draft Integrated Review Plan (IRP) for oxides of nitrogen and oxides of sulfur was available for public comment (80 FR 69220, November 9, 2015) and discussion by the CASAC via publicly accessible teleconference consultation (80 FR 65223, February 10, 2016). The Draft IRP for particulate matter was available for public comment (81 FR 2297, April 19, 2016) and discussion by the CASAC via publicly accessible teleconference consultation (81 FR 13362, March 14, 2016) prior to release of the final document (81 FR 87933, December 6, 2016). The final ''Integrated Review Plan for the Secondary National Ambient Air Quality Standard for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter'' will be announced by a separate **Federal Register** notice.

Teleconference workshops with invited scientific experts, both internal and external to EPA, were held on August 25, 26, and 27, 2015 (80 FR 48316, August 12, 2015), and June 13, 2016 (81 FR 89262, May 11, 2016), to discuss initial draft materials prepared in the development of the draft ISA.

The ''First External Review Draft Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter—Ecological Criteria'' will be discussed at a public meeting for review by CASAC and the public. In addition to the public comment period announced in this notice, the public will have an opportunity to address the CASAC. A separate **Federal Register** notice will inform the public of the exact date and time of the CASAC meeting and of the procedures for public participation.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004.

The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically on *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: February 14, 2017.

Mary A. Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2017–06317 Filed 3–29–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9959–89–Region 8]

Proposed Administrative Settlement Agreement and Order on Consent, Quartz Hill Tailings Pile Within the Central City/Clear Creek Superfund Site, Central City, Gilpin County, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the requirements of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of the proposed administrative settlement between the U.S. Environmental Protection Agency (''EPA'') and the City of Central, CO (''Settling Party''). Pursuant to the terms of the proposed settlement, the Settling Party will enact a land use ordinance and conduct operations and maintenance activities over the Quartz Hill Tailings Pile, within the Central City/Clear Creek Superfund Site. In exchange, the EPA will provide a covenant not to sue, and release certain liens against property owned by the Settling Party within the Central City/Clear Creek Superfund Site. The State of Colorado is also a signatory to the proposed agreement.

DATES: Comments must be submitted on or before May 1, 2017. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

ADDRESSES: The Agency's response to any comments, the proposed agreement and additional background information relating to the agreement is available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop, Denver, Colorado.

Comments and requests for a copy of the proposed agreement should be addressed to Maureen O'Reilly, Enforcement Specialist, Environmental Protection Agency-Region 8, Mail Code 8ENF–RC, 1595 Wynkoop Street, Denver, Colorado 80202–2466, and should reference the Central City/Clear Creek Superfund Site, Central City, Gilpin County, Colorado.

FOR FURTHER INFORMATION CONTACT: Amelia Piggott, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency-Region 8, Mail Code 8ENF–L, 1595 Wynkoop Street, Denver, Colorado 80202–2466, (303) 312–6410.

Dated: February 15, 2017.

Suzanne J. Bohan,

Acting Deputy Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 2017–06118 Filed 3–29–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0302; FRL–9957–76–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for the Graphic Arts Industry (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for the Graphic Arts Industry (40 CFR part 60, subpart QQ) (Renewal)'' (EPA ICR No. 0657.12, OMB Control No. 2060–0105), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2017. Public comments were previously requested via the **Federal Register** (81 FR 26546) on May 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

DATES: Additional comments may be submitted on or before May 1, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0302, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as the specific requirements at 40 CFR part 60, subpart QQ. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or

any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form numbers: None.

Respondents/affected entities: Graphics arts facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60 Subpart QQ).

Estimated number of respondents: 21 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 1,920 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $198,000 (per year), which includes $0 annualized capital/startup and operation & maintenance costs.

Changes in the estimates: There is an adjustment increase in the total estimated burden and cost as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the burden and cost estimates occurred for two reasons: (1) This ICR assumes all existing respondents will have to familiarize with the regulatory requirements each year; and (2) the burden has increased due an increase in the estimated number of sources subject to the standard. The number of sources has increased by one since the last ICR to account for industry growth in the past three years.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2017–06313 Filed 3–29–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0152; FRL 9960–27–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Compliance Assurance Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Compliance Assurance Monitoring Program'' (EPA ICR No. 1663.09, OMB Control No. 2060–0376) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2017. Public comments were previously requested via the **Federal Register** (81 FR 44860) on July 11, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 1, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2003–0152, to (1) the EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for the EPA.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mr. Barrett Parker, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5635; fax number: (919) 541–3207; email address: *parker.barrett@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Clean Air Act (CAA) contains several provisions directing the EPA to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth in section 504 and section 114 of the CAA. Under CAA section 504(c), each operating permit must ''set forth inspection, entry, monitoring, compliance, certification and reporting requirements to assure compliance with the permit terms and conditions.'' See also CAA section 504(a) (each permit shall require reporting of monitoring and such other conditions as are necessary to assure compliance). CAA section 504(b) allows us to prescribe by rule, methods and procedures for determining compliance recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Section 114(a)(1) of the CAA provides additional authority concerning monitoring, reporting, and recordkeeping requirements. This section provides the Administrator with the authority to require any owner operator of a source to install and to operate monitoring systems and to record the resulting monitoring data. We promulgated the Compliance Assurance Monitoring rule, 40 CFR part 64, on October 22, 1997 (62 FR 54900), pursuant to these provisions. In accordance with CAA section 114(c) and CAA section 503(e), the monitoring information source owners must submit must also be available to the public except under circumstances set forth in section 114(c) of the CAA. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are all facilities required to have an operating permit under Title V of the CAA. See section 502(a) of the CAA, which defines the sources required to obtain a Title V permit. See also 40 CFR 70.2 and 71.2.

Respondent's obligation to respond: Mandatory under Title V of the CAA. See section 502(a) of the CAA, which defines the sources required to obtain a Title V permit. See also 40 CFR 70.2 and 71.2.

Estimated number of respondents: There are 24,121 pollutant specific emission units (PSEUs), where the number of respondents is the number of PSEUs subject to the compliance assurance monitoring rule, and 116 permitting authorities. Therefore, the

estimated number of respondents is 24,237 (total).

Frequency of response: At least every 6 months per Title V, 70.6(a)(3)(iii)(A) and (B).

Total estimated burden: 51,080 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,998,453 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in the estimates: There is an increase of 607 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to adjustments to the estimates (*e.g.,* to account for permit issuance increases). There is an increase of 1,114 respondents in the average annual number of respondents. This increase is due to an increased number of permitting authorities (four more) and to an estimated increase in the number of PSEUs (1,110 more).

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2017–06314 Filed 3–29–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval the continuing information collection (extensions with no change) described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted at the addresses below on or before May 1, 2017.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Shannon Joyce, Desk Officer for Federal Maritime Commission, 725 17th Street NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV*, Fax (202) 395–5167

and to:

Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, Telephone: (202) 523–5800, O*MD@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Donna Lee at 202–523–5800 or email: *omd@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comment

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Commission invites the general public and other Federal agencies to comment on the proposed information collection. On December 13, 2016, the Commission published a notice and request for comment in the **Federal Register** (81 FR 89940) regarding the agency's request for extension from OMB for information collections as required by the Paperwork Reduction Act of 1995. The Commission received no comments on the request for extension of OMB approval. The Commission has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Open for Comment

Title: 46 CFR part 540—Application for Certificate of Financial Responsibility/Form FMC–131.

OMB Approval Number: 3072–0012 (Expires February 28, 2017).

Abstract: Sections 2 and 3 of Public Law 89–777 (46 U.S.C. 44101–44106) require owners or charterers of passenger vessels with passenger berths or stateroom accommodations for at least 50 passengers and embarking passengers at United States ports to establish their financial responsibility to meet liability incurred for death or injury to passengers and other persons, and to indemnify passengers in the event of nonperformance of transportation. The Commission's Rules at 46 CFR part 540 implement Public Law 89–777 and specify financial responsibility coverage requirements for such owners and charterers.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The information will be used by the Commission's staff to ensure that passenger vessel owners and charterers have evidenced financial responsibility to indemnify passengers and others in the event of nonperformance or casualty.

Frequency: This information is collected when applicants apply for a certificate or when existing certificants change any information in their application forms.

Affected Public Who Will Be Asked or Required to Respond: Respondents are owners, charterers and operators of passenger vessels with passenger berths or stateroom accommodations for at least 50 passengers that embark passengers from U.S. ports.

Number of Annual Respondents: The Commission estimates the total number of respondents at 47 annually.

Estimated Time per Response: The time per response ranges from 0.5 to 8 hours for reporting and recordkeeping requirements contained in the rules, and 8 hours for completing Application Form FMC–131.

Total Annual Burden: The Commission estimates the total hour burden at 1,294 hours.

Rachel Dickon,

Assistant Secretary.

[FR Doc. 2017–06263 Filed 3–29–17; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement 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 (http://fmcinet/fmc.agreements.web/public) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012475.

Title: Tripartite Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha.

Filing Party: Jeffrey Lawrence and Joshua Stein; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The Agreement authorizes the Parties to establish and operate a

joint service for the transportation of containerized cargo in the trade between the United States and all countries worldwide, and to engage in cooperative working arrangements in preparation for the operation of the joint service.

By Order of the Federal Maritime Commission.

Dated: March 27, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–06265 Filed 3–29–17; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956, 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 25, 2017.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Old Line Bancshares, Inc.,* Bowie, Maryland; to acquire 100 percent of the voting securities of DCB Bancshares, Inc., Damascus, Maryland, and thereby indirectly acquire Damascus Community Bank, Damascus, Maryland.

Board of Governors of the Federal Reserve System, March 27, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–06279 Filed 3–29–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Physiologic Predictors of the Need for Trauma Center Care: A Systematic Review

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Supplemental Evidence and Data Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review of *Physiologic Predictors of the Need for Trauma Center Care: A Systematic Review,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before May 1, 2017.

ADDRESSES:

Email submissions: SEADS@epc-src.org.

Print submissions:

Mailing Address: Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator,PO Box 69539, Portland, OR 97239.

Shipping Address (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 3710 SW., U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239.

FOR FURTHER INFORMATION CONTACT: Ryan McKenna, Telephone: 503–220–8262 ext. 51723 or Email: *SEADS@epc-src.org.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality (AHRQ) has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Physiologic Predictors of the Need for Trauma Center Care: A Systematic Review.* AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Physiologic Predictors of the Need for Trauma Center Care: A Systematic Review,* including those that describe adverse events. The entire research protocol, including the key questions, is also available online at: *https://www.effectivehealthcare.ahrq.gov/index.cfm/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productid=2435*

This is to notify the public that the EPC Program would find the following information on *Physiologic Predictors of the Need for Trauma Center Care: A Systematic Review* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* please provide a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute ALL Phase II and above clinical trials sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution will be very beneficial to the EPC Program. The contents of all submissions will be made available to the public upon request so materials submitted must be publicly available or able to be made public. Materials that are considered

confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/index.cfm/join-the-email-list1/.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

The Key Questions

Key Question 1

For patients with known or suspected trauma who are treated out-of-hospital by Emergency Medical System (EMS) personnel, what is the predictive utility of measures of circulatory compromise (*e.g.,* systolic blood pressure, mean arterial pressure, heart rate, heart rate complexity/variability) or derivative measures (*e.g.,* the shock index) for predicting serious injury requiring transport to the highest level trauma center available?

I. How does the predictive utility of the studied measures of circulatory compromise vary across age groups (*e.g.,* children or the elderly)? Specifically, what age ranges and values for the different age ranges are supported by the evidence?

Key Question 2

For patients with known or suspected trauma who are treated out-of-hospital by EMS personnel, what is the predictive utility of measures of respiratory compromise, (*e.g.,* ventilatory support, respiration rate, tissue O2 saturation, respiratory effort, measures of acidemia such as end-tidal CO2, lactate, or base deficit) for predicting serious injury requiring transport to the highest level trauma center available?

I. How does the predictive utility of the studied measures of respiratory compromise vary across age groups (*e.g.,* children or the elderly)? Specifically, what age ranges and values for the different age ranges are supported by the evidence?

Key Question 3

For patients with known or suspected trauma who are treated out of the hospital by EMS personnel, what is the predictive utility for combinations of measures of respiratory and circulatory compromise together with or without measures of altered levels of consciousness (as defined by Glasgow coma scale or its components), for predicting serious injury requiring transport to the highest level trauma center available?

I. How does the predictive utility of combinations of measures vary across age groups (*e.g.,* children or the elderly)? Specifically, what age ranges and values for the different age ranges are supported by the evidence?

Using the PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings) framework and a graphical analytic framework required adapting these tools as they were designed for and usually used for intervention studies. Our approach is informed by guidance related to frameworks in the Methods Guide for Systematic Reviews of Diagnostic Tests in addition to the Methods Guide for Effectiveness and Comparative Effectiveness Reviews. We have included the standard PICOTS terms, but added detail to explain how we are using them for this review and we have added a legend and text to the graphical framework.

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings)

Population(s)

Population refers to the patients who are the subjects in the studies to be included.

Include: Studies of patients of any age with known or suspected trauma who require assessment of physiologic compromise by EMS out of the hospital.

Exclude: Studies of patients with nontrauma conditions or illnesses, patients with burns or chemical exposures, healthy people, and animal studies. Studies of patients in which other assessments are used (*e.g.,* type of injury) or in which the patient population is limited to a subgroup of patients defined as seriously injured.

- Studies in which the patient population is a priori restricted to patients with serious traumatic injuries.
- Studies in which all patients have injuries that can be assessed or would be defined as serious based on direct observation (*e.g.,* an amputation).

Interventions (Physiologic Measures)

The intervention is usually the treatment or health service of interest that is being evaluated in terms of its impact on the population. In this review the physiologic measures are what are evaluated. This review will include any measure of circulatory or respiratory compromise or combination measures. Examples are provided for each Key Question; however, additional measures may be identified by the search.

Include:

I. *Key Question 1:* Physiologic measures of circulatory compromise, including but not limited to systolic blood pressure, mean arterial pressure, heart rate, heart rate complexity/variability, or derivative measures such as the shock index.

II. *Key Question 2:* Physiologic measures of respiratory compromise or effort, including but not limited to respiration rate, tissue O2 saturation, respiratory effort, measure of acidemia (*e.g.,* end-tidal CO2, lactate, base deficit), or advanced out-of-hospital airway intervention.

III. *Key Question 3:* Combinations of measures of respiratory and circulatory compromise with or without measures of altered levels of consciousness (as defined by Glasgow coma scale or its components).

IV. *All Key Questions:* Additional measures may be identified during the search and included based on input from clinical experts. Studies of newer devices that provide these or other measurements will be included if available and relevant.

In all cases measurement can be for a single point in time, change over time, or can be trends in the measure evaluated by a person or technology.

Exclude: Clinical assessment or indicator of health status that is not a separate indicator or a combination indicator including a measure of circulatory or respiratory compromise (*e.g.,* temperature, consciousness, eye tracking, musculoskeletal soundness, balance, blood glucose, orientation).

Comparisons and Outcomes

As this is not a review of intervention studies, the structure of the questions for the review as well as the questions posed by included studies are different. The Key Questions address how well measures of physiologic compromise identify trauma patients likely to have a serious injury requiring high-level trauma care.

We include two types of evaluations of measures: (1) Studies of how well single measures predict severe injury; and (2) studies that compare the performance of two or more measures directly (head-to-head studies).

The end points or ''outcomes'' of interest are the predictive utility of the measures. We include three different approaches to assessing predictive

utility: (1) Adjusted risk estimates (*e.g.,* odds ratio, relative risk, hazards ratio); (2) discrimination (*e.g.,* area under the receiver operating characteristic curve [AUROC]); and (3) measures of diagnostic accuracy (*e.g.,* sensitivity, specificity, positive predictive values, and negative predictive values).

The predictive utility is defined in terms of the physiologic measure's ability to identify patients who have severe injury. Defining and operationalizing what ''severe injury'' means is challenging for several reasons. Whether a patient had a serious injury at the time of field triage cannot be determined conclusively and we expect that clinical outcomes (*e.g.,* death or disability) are affected by out-of-hospital and in-hospital treatment (*i.e.,* a person can have a serious injury and recover). For this reason, we accept several indicators that a patient was seriously injured. These include outcomes, such as death, whether the patient required treatments and interventions used for serious injury, or whether the injury is rated as severe using accepted rating scales. It is possible the review will identify additional indicators that a patient had a severe injury; however the following list includes those that have been used in prior research.

Indicators of Serious Injury

I. In-hospital mortality.

II. Resource use/intervention standards or lists.

a. Published Consensus-Based Criterion Standard—This list defines need for trauma center care as any one of the following 10 specific indicators: Major surgery, advanced airway, blood products, admission for spinal cord injury, thoracotomy, pericardiocentesis, cesarean delivery, intracranial pressure monitoring, interventional radiology, and in-hospital death.

b. Need For Life-Saving Interventions—Lists used by the U.S. military that include angioembolization, blood transfusion, cardiopulmonary resuscitation, chest tube, intubation, needle decompression, surgical cricothyrotomy or thoracotomy, pericardiocentesis, angiography with embolization, angiography without and surgical intervention.

c. Major Surgery—Not including orthopedic surgery.

d. Ratings of Injury Severity—Injury Severity Score (ISS) >15, as this is a commonly used threshold for high risk patients, but other cut-offs will be considered if used in included studies. The ISS score is based on an assessment that divides the body into nine regions, classifies the level of injury in each of the three most severely injured regions on a scale of 1 to 6, squares these values, and adds them together.

Timing

Physiological measures upon the arrival of EMS personnel to the scene of injury, during treatment in the field, and during transport (referred to as out-of-hospital or in the field). Studies with measures taken upon arrival at an emergency department will be considered. Details about timing of measurement will be recorded in data abstraction if they are reported.

Settings

Include:

I. Studies measuring physiologic compromise in the field/out of hospital

II. Studies of initial ED measurement as indirect evidence only if out of hospital evidence is not available and the measure is deemed clinically relevant

III. Studies conducted in civilian or military settings

Exclude:

I. Inpatient, clinic, or emergency department (ED)

II. Studies conducted in developing countries with out-of-hospital care systems that differ from those in the United States

Study Designs

Include:

I. Any study that assesses the predictive utility of included measures either individually or that compares two or more measures. Designs may include trials and prospective and retrospective observational studies

a. Systematic reviews

Exclude:

I. Nonsystematic reviews, commentaries, and letters

II. Descriptions of the properties or performance of measures that do not include predictive utility

Sharon B. Arnold,

Acting Director.

[FR Doc. 2017–06232 Filed 3–29–17; 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

Correction

In notice document 2017–5115, beginning on page 13809, in the issue of Wednesday, March 15, 2017, make the following correction:

On page 13809, in the third column, in the second line of the **DATES** paragraph, ''Tuesday, May 23, 2016'' should read, ''Tuesday, May 23, 2017.''

[FR Doc. C1–2017–05115 Filed 3–29–17; 8:45 am]

BILLING CODE 1301–00–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 24, 2017.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kimberly Lynette Houston, Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Bethesda, Maryland

20892, 301.827.4902, *kimberly.houston@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; NICHD Genomic Clinical Variant Expert Curation Panels (U24) Review.

Date: April 27, 2017.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Residence Inn, Bethesda, MD 20892.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Bethesda, Maryland 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 24, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–06249 Filed 3–29–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Rapid Assessment of Zika Virus (ZIKV) Complications (R21).

Date: April 26, 2017.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Senior Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3E61, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5019, *schleefrr@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: April 27, 2017.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Senior Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G30; National Institutes of Health/NIAID, 5601 Fishers Lane, Drive, MSC 9823, Bethesda, MD 20892–9823, 240–669–5058, *rathored@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 24, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–06248 Filed 3–29–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; The Preconception Exposure Window and Health of the Offspring.

Date: April 18, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Place Durham-Southpoint; 7840 NC 751 Hwy., Durham, NC 27713.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Research Careers (K01,K22,K99/R00) in Environmental Health Sciences.

Date: April 18, 2017.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Rodbell 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Janice B Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Research Careers (K01) in Environmental Health Sciences.

Date: April 19, 2017.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee; Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30; Research Triangle Park, NC 27709, (919) 541–0752; *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 24, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–06250 Filed 3–29–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5962–N–03]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2017; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Revised Fiscal Year (FY) 2017 Fair Market Rents (FMRs) and Discussion of Comments on FY 2017 FMRs.

SUMMARY: This notice updates the FY 2017 FMRs for Portland, ME HUD Metro FMR Area (HMFA) and Vallejo-Fairfield, CA Metropolitan Statistical Area (MSA), as requested by commenters. In addition to announcing these revised FY 2017 FMRs, this notice also includes HUD responses to the comments received regarding the FY 2017 FMRs.

DATES: *Effective Date:* The revised FY 2017 FMRs for Portland, ME, HMFA and Vallejo-Fairfield, CA, MSA are effective on May 1, 2017.

FOR FURTHER INFORMATION, CONTACT: Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–402–2409. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339 (toll-free).

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff.

For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 (toll-free) or access the information on the HUD USER Web site: *http://www.huduser.gov/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2017 FMR documentation system at *https://www.huduser.gov/portal/datasets/fmr.html#2017_query* and 50th percentile rents for all FMR areas are published at *http://www.huduser.gov/portal/datasets/50per.html.*

SUPPLEMENTARY INFORMATION: On August 26, 2016, HUD published the FY 2017 FMRs, requesting comments on the FY 2017 FMRs, and outlined procedures for requesting a reevaluation of an area's FY 2017 FMRs (81 FR 58952). This notice revises FY 2017 FMRs for two areas that requested reevaluation and provided data to HUD to allow for a reevaluation, and provides responses to the public comments HUD received on the previous notice referenced above.

I. Revised FY 2017 FMRs

The FMRs appearing in the following table supersede the use of the FY 2016 FMRs for Portland, ME HUD Metro FMR Area (HMFA) and Vallejo-Fairfield, CA Metropolitan Statistical Area (MSA). The updated FY 2017 FMRs are based on surveys conducted in December 2016 by the area public housing agencies (PHAs) and reflect the estimated 40th percentile rent levels trended to April 1, 2017.

The FMRs for the affected area are revised as follows:

2017 fair market rent area	FMR by number of bedrooms in unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Portland, ME, HMFA	911	1028	1301	1755	1906
Vallejo-Fairfield, CA MSA	830	1035	1294	1884	2280

The FMR Schedules are amended as shown in the Appendix to this notice and are available on the HUD USER Web site: *http://www.huduser.gov/portal/datasets/fmr.html.* The FMR Schedules will not be codified in 24 CFR part 888.

II. Public Comments on FY 2017 FMRs

A total of 29 comments were received and posted on *regulations.gov*, *https://www.regulations.gov/docket?D=HUD-2016-0093.* Fourteen of these comments were requests for reevaluation of the FY 2017 FMRs for 11 FMR areas. HUD approved requests for nine metropolitan areas and declined them for two metropolitan areas (where the requester(s) did not administer more than 50 percent of the housing choice voucher families in the metropolitan area, as required) in a posting on October 3, 2016 available at *https://www.huduser.gov/portal/datasets/fmr/fmr2017/Areas-where-FY2016-FMRs-Remain-in-Effect.pdf.* These nine areas were granted approval to continue to use FY 2016 FMRs until the reevaluation of the FY 2017 FMRs has occurred. Each metropolitan area was given until January 6, 2017 to provide HUD with the data to reevaluate the FY 2017 FMRs. One area, the Dallas, TX HUD Metro FMR Area (HMFA), which uses Small Area FMRs under a court settlement, has already been reevaluated and its FY 2017 Small Area FMRs have been updated (81 FR 78177), effective December 7, 2016. This notice updates FY 2017 FMRs for two additional areas. The remaining six areas did not provide HUD data to complete a reevaluation, and their FY 2017 FMRs are unchanged from the amounts provided in the August 26, 2016 notice. In accordance with the reevaluation procedures outlined in the August 26, 2016 FY 2017 Fair Market Rent notice (81 FR 58952, Section V. Requests For FMR Reevaluations, item 4), HUD posted a listing of these six areas where data was not submitted and announced that the FY 2017 FMRs for these areas became effective on January 9, 2017 (*https://www.huduser.gov/portal/datasets/fmr/fmr2017/Areas-Where-FY2017-FMRs-become-effective.pdf*).

Most of the other comments discussed inaccuracies of the FMRs and a need for more current data. Several of the comments addressed HUD's specific request for public comment on ''on what should be considered 'material changes' in FMR estimation methods for purposes of triggering public notice and comment under HOTMA.'' [1] In addition, there was a request for a change in a geographic area definition for a metropolitan area in which parts of the area are not contiguous. HUD has summarized the comments where possible and provides responses to these comment groups in greater detail below.

General Comments

Comments: FMRs do not represent accurate on-the-ground rental market prices. The accuracy of FMRs is a function of the underlying data set and

[1] HOTMA is the Housing Opportunities Through Modernization Act of 2016 (Pub. L. 114–201, approved July 29, 2016).

the methodology used to convert the data set to the FMRs, and the source of the data is unchanged from last year.

HUD Response: The American Community Survey (ACS) continues to be the primary source of gross rent data used in the calculation of the FMRs as it is the only known statistically reliable data source that provides comprehensive information on gross rents paid collected in a consistent manner nationwide. The ACS data HUD acquires is adjusted for housing quality and calculated at the 40th percentile rent for the FMR areas. HUD does point out that the data used to calculate FY 2017 FMRs is one year more current than the data used to calculate FY 2016 FMRs. HUD uses the most current ACS data available when calculating the FMRs. As an example, consider the publication timeline for the FY 2017 FMRs. The FY 2017 FMRs were calculated in June and July of 2016 for publication in August 2016, but the 2015 ACS data was not released until September through December of 2016. Therefore, during calculation of FY 2017 FMRs, the 2014 ACS data was the most current available ACS data. HUD augments the most current available ACS data with the annual change in gross rents measured by the Bureau of Labor Statistics' Consumer Price Index (measured between 2014 and 2015 in the FY 2017 FMR example), and a forecasted trend factor to align the calculated FMRs with the Fiscal Year for which the FMRs are effective.

Comments: Inaccurate FMRs have strong negative impacts on PHAs' ability to serve Housing Choice Voucher (HCV) participants. Low-income families that rely on the HCV program will feel the greatest impact in areas where the published FMRs are too low relative to actual costs. These low FMRs cause cost burdens for voucher-assisted households to increase, sometimes to the point of forcing low-income families to seek housing in areas with greater concentrations of poverty and lower-quality housing stock.

HUD Response: HUD is aware of the impacts when FMRs are too high or too low and strives to limit inaccuracies and year-to-year fluctuations in FMRs. HUD continually reviews its methodology and expects to propose changes in a future **Federal Register** notice.

Comments: HUD's previous statements about making further changes that would be reflected in its FY 2017 FMRs, were not acted upon. There are erratic fluctuations in FMR values within the same bedroom size in the same county, in opposite directions year over year, which do not accurately reflect many local housing markets. There are fluctuations in FMR values in opposite directions between different bedroom sizes within the same year and there are erratic fluctuations in opposite directions year over year that have had the effect of largely cancelling each other out over this three-year period, in a way that does not accurately reflect gross rent values in many rental housing markets. This commenter also expressed concern in the large variations in differences between the FY 2017 Unadjusted rents and the FY 2017 Final FMRs.

HUD Response: HUD's initial plan for Proposed FY 2017 FMRs included several changes to the FMR calculation methods to address these criticisms of FMRs; however, with the enactment of the Housing Opportunities Through Modernization Act (HOTMA) (Pub. L. 114–201, approved July 29, 2016) which changed the FMR publication process, there was insufficient time to publish a notice of proposed material change, review comments, and post FY 2017 FMRs with a 30-day delayed effective date (as is all now required), and still meet the mandated October 1, 2016 effective date for FY 2017 FMRs (which is unchanged). Therefore, HUD published FY 2017 FMRs with no methodology changes, and expects to propose them in a forthcoming notice.

HUD implemented the state non-metropolitan minimum FMR standard to ensure that voucher holders have access to suitable rental housing units where the rent paid is sufficient to cover the long-term operating and capital requirements for the dwelling. Areas where the state non-metropolitan minimum rent is applied have ACS-based unadjusted rents that are below a reasonable level for these long-term commitments.

State non-metropolitan minimum rents are calculated as the population weighted median 2 bedroom rent calculated from the data specific to each non-metropolitan county in a state. The Final 2 bedroom FMR for an area becomes the state non-metropolitan minimum if the rent calculated based on the county level data is below the minimum; therefore, depending on the distribution of county-level unadjusted rents, certain counties could have considerable differences between their unadjusted rent and their published FMR. Unadjusted rents are made available to PHAs solely for the purpose of setting flat rents for their public housing portfolios.

Comments: FMRs are deeply flawed and the changes HUD has taken regarding annual adjustment factors are still insufficient. Actions taken by the Senate Appropriations Committee are an attempt to force HUD to make deeper and broader improvements to its FMRs. The Senate FY 2017 THUD-Appropriations bill (Pub. L. 114–223, approved on September 29, 2016) appropriates $41.5 million to HUD to pay for local rental market surveys of areas affected by changing economic conditions and natural disasters.

HUD Response: The funds in the Senate appropriations bill referenced by the commenter are for the American Housing Survey, which focuses on housing quality and other demographic issues rather than rents. This is a longitudinal survey with limited local data and the funds cannot be redirected for rent surveys in areas affected by changing economic conditions and natural disasters. The HUD appropriations previously used to conduct rent surveys to adjust FMRs have not been made since 2012.

Comments: Ever since HUD used its discretionary authority to adopt each new OMB area for FMR purposes, starting in FY 2006, HUD's rent estimates have gone haywire. To calculate the FY 2016 FMRs, HUD incorporated OMB's latest metropolitan area definition from 2013. As a result, there are counties previously designated by HUD as non-metro that HUD subsequently designated as metropolitan and vice-versa. HUD's FMR areas and SAFMR areas artificially inflate rent values in non-metropolitan areas and artificially deflate FMR values in metropolitan areas.

HUD Response: In 2006, when HUD applied OMB's new metropolitan area definitions based on the 2000 Decennial Census to the FMRs, HUD was following longstanding past practice. HUD modified FMR areas in accordance with updated OMB area definitions after the 1980, and 1990 Decennial Censuses. HUD's incorporation of the 2010 Decennial Census-based area definitions into the FY 2016 FMRs continued HUD's longstanding past practices. The updated OMB area definitions' changes in area geography, and especially changes from non-metropolitan to metropolitan area designations, are important in providing consistency across all federal programs. HUD specifically considers the impact of area definition changes on Fair Market Rent levels and other program parameters when implementing metropolitan area definition changes, and specifically deviates from OMB definitions to prevent large changes when sufficient local data is available.

Comments: HUD should use more timely data when calculating FMRs. HUD should work to develop a method to incorporate more recent data into its

published FMRs rather than continue to rely on PHA-funded studies to correct inaccuracies in FMRs. The ACS five-year and one-year datasets do not possess adequate external validity for calculating current non-regulated rents for all FMR areas. Additionally, the ACS dataset fails to capture key data on housing quality to ensure that calculations are based on the relevant population. This omission greatly alters the FMR estimates and leads to underestimation of the current housing costs. PHAs are not well suited to conduct surveys and compile sophisticated statistical analyses. This is a function that would be better suited for HUD's Office of Policy Development and Research (PD&R).

HUD Response: There is no other data on gross rents paid that is consistently collected on a nationwide basis, available to HUD, and more timely than the ACS dataset. HUD recognizes the housing quality data limitations of the ACS dataset and uses a combination of ACS survey responses and a public housing ''cut-off'' rent calculated from HUD administrative data to identify and eliminate these low rent units from the distribution of gross rents paid before a 40th percentile rent is calculated. The rationale for using this ''cut-off'' rent is that units with gross rents below these amounts are either of insufficient quality to meet the housing quality standards for units occupied by voucher holders, or are representative of an assisted tenant's out of pocket expenses and not a true measure of the market gross rent for the unit. Eliminating these units from the distribution before the 40th percentile rent is calculated raises the 40th percentile rent for the area. As discussed earlier, HUD currently lacks funding and the mechanisms necessary to collect rent data by a more specialized survey method.

Comments: The effective date for new FMRs should be 60 days from publication, not 30 days. HUD has offered only a 30-day period for PHAs to submit a request for reevaluation of the FMR for their regions. HUD should provide at least 60 days for PHAs to make a reevaluation request. Further, PHAs should be able to choose to continue to use the prior year FMR or use the new FMR for which they requested a reevaluation. Otherwise, a PHA seeking reevaluation whose FMR has increased is, in effect, penalized for requesting reevaluation because it must continue to use the prior year's lower FMR.

HUD Response: HOTMA requires that FMRs become effective no less than 30 days following their publication. In order to provide additional time for PHAs to implement newly effective FMRs, HUD's Small Area FMR rule (81 FMR 80567) provides that all PHAs have up to three months from the date when the new FMRs go into effect in which to update their payment standards if a change is necessary to fall within the basic range of the new FMRs. Regarding the timing of reevaluation requests, the FY 2017 FMRs were delayed due to the HOTMA-mandated changes in FMR publication requirements and procedures. Based on timing constraints, HUD provided the longest window possible for making the FY 2017 FMRs effective and for providing a request for FMR reevaluation. Finally, provisions within HOTMA govern the process for FMR reevaluation requests. Specifically, HOTMA states: ''The Secretary shall establish a procedure for public housing agencies and other interested parties to comment on such fair market rentals and to request, within a time specified by the Secretary, reevaluation of the fair market rentals in a jurisdiction *before* such rentals become effective.'' [emphasis added]. Therefore, HUD may not make the newly calculated FMRs effective when a valid reevaluation request is received. Practically speaking, allowing a PHA to use the higher of the previous year or current year FMR would also create significant issues for quality control and program audit activities.

Comments: HUD should allow interested stakeholders to comment on the utility component of FMRs. We recommend that HUD provide PHAs with the utility data it gathers from the annual FMR calculations so that PHAs may evaluate the percentage change in the utility component from year to year.

HUD Response: HUD receives ACS data on gross rents paid from the Census Bureau to determine FMRs. The utility component is embedded in this gross rent and not separately available. The inflation adjustments HUD applies to the ACS data includes indices for rent and utilities. While the rent and utility inflation indices can be found in the FMR documentation system, they only serve to inflate the gross rents HUD receives from the ACS, and are not separate estimates of the utility component of gross rent. Section 108 of HOTMA charges HUD with collecting data on utility consumption and costs in local areas to the extent that HUD can do so cost efficiently. HUD is reviewing what can be accomplished cost efficiently and will release these data when they become available.

Comments: HUD should take an expansive view of what constitutes a ''material change'' in FMR estimation methods. It is unlikely that HUD can predict the impact of changes in FMR methodology for every FMR geography. The ''material change'' criteria should not be based on either the number of FMR areas impacted or a triggering threshold based on the number of areas whose FMRs would change by a certain percentage before HUD is required to get comments on a ''material change''. Only changes that impact how a PHA can spend money (since PHA payment standards are based on FMRs) should be required to be considered material.

HUD Response: HUD appreciates this comment and HUD is taking an expansive view on what constitutes a ''material change'' and intends to provide an opportunity for public comment on all FMR methodological changes in forthcoming proposed notices of material changes in FMR calculations. Moreover, HUD points out that most method changes do not occur in one direction and are not static. That is, FMRs in some areas will go up and some areas will go down as a result of calculation changes, and these changes may mean that an area that went up one year will go down the next year.

Comments: HUD should consider smoothing-out the sharp swings in rents from the year-to-year caused by year-to-year changes in the determination of the recent mover factor. Such large changes affect planning and management efforts.

HUD Response: HUD may assess the need to propose changes to the FMR estimation methodology related to data integrity in a forthcoming notice of Proposed Material Change that should reduce such large year-to-year swings that can arise from the one-year recent mover data.

Comments: The bonuses for three-bedroom, four-bedroom and higher bedroom-count units, ostensibly to help the largest and most difficult-to-house families find units, should not be used without qualification. HUD's policy signals to every developer that a greater profit is to be found in the production of high bedroom-count units. The per-room rent differential offered by HUD for a three-bedroom unit is five times as attractive (per room) as the one offered for a single-bedroom unit, and thus hinders our ability to respond to local housing market conditions.

HUD Response: The bonuses applied to the ratios used to calculate the FMRs for higher bedroom-count units have been an important means of serving the relatively small group of large-sized families dependent on vouchers. While HUD appreciate the comment, HUD does not believe the bonuses should be eliminated, even for certain areas.

Comments Specific to Puerto Rico

Comments: HUD should not use multiple non-contiguous geographical areas as an FMR Area nor apply a single FMR to non-adjacent geographical areas. HUD's use of non-contiguous county equivalents (municipios) in a metropolitan area does not conform to the adjacency standard governing the designation of metropolitan and nonmetropolitan areas.

HUD Response: The county removed from the Barranquitas Aibonito-Quebradillas FMR area was not removed because it is not a contiguous area, it was removed because OMB removed it from this metropolitan area. OMB kept the remaining non-contiguous county (municipio), Maunabo, in the metropolitan area, and did not follow the adjacency criteria for this metropolitan area. Both counties (municipios) have been in the metro area at least as far back as 2006. Functionally, removing Maunabo Municipio from the current FMR area will not change the effective FMR for the municipio as there is insufficient data to calculate a stand-alone FMR for the municipio and the state non-metropolitan minimum would still be used.

Comments: The use of the Consumer Expenditure Survey (CES) heat use index as a proxy to adjust the ''Rent of primary residence'' statistic to remove the influence of utilities has a depressing effect in a tropical area.

HUD Response: HUD's longstanding use of the CES heat use index helps HUD estimate the portion of gross rent attributable to shelter cost and the portion attributable to utility costs. The commenter suggests that HUD's methodology has the effect of lowering FMRs in tropical areas. However, given recent economic trends, increasing the influence of utility costs in the calculation of gross rents in Puerto Rico at this time would *further* depress rents, not raise them. More fundamentally, HUD's use of the heat use index to ''remove'' the influence of utilities from the ''rent of primary residence component'' of gross rents is necessary because the rent of primary residence index captures some utility costs for units where utilities are included in the rent payment. Therefore, HUD must determine how much utility costs are embedded in the rent of primary residence so as to not double count the influence of utility costs changes when constructing a gross rent inflation factor.

To summarize how the CES heat use index is used in the calculation of FMRs: FMRs are gross rent estimates. Gross rents include the cost of the shelter plus the cost of the necessary utilities for the dwelling unit. In order to produce an FMR that comports with the statutory requirements of calculating the FMRs ''based on the most recent available data trended so the rentals will be current for the year to which they apply,'' HUD uses data from the American Community Survey on gross rents paid, updated by the change in gross rents measured through the CPI and trended using a national forecast of expected growth in gross rents. In order to calculate a gross rent increase factor using CPI data, HUD must determine how to combine the CPI's measurement of the ''rent of primary residence'' and the ''fuels and utilities'' component of Housing. This step is complicated by the fact that some of the rents reported in the survey used to generate the CPI data for ''rent of primary residence'' already include utility costs. To cleanly separate the two components of ''rents'' and ''utilities,'' it is necessary to factor out any utility costs reported as rents. HUD uses the CES heat use index to estimate this amount.

Several years ago, HUD began using CPI ''rent'' and ''utilities'' components measured solely for Puerto Rico to calculate Puerto Rico's gross rent increase factor. However, because no local measure is known to exist that could serve as the equivalent of the CES heat use index, HUD uses the South Census Region CES information as a proxy in Puerto Rico. For the relevant time period (2014 to 2015), the ''rent of primary residence'' statistic measured across all of Puerto Rico increased by 0.47 percent while the ''fuels and utilities'' component of housing declined by 14.75 percent. Given the large decrease in fuels and utilities measured in Puerto Rico, every combination of the two CPI components to obtain a measurement of the change in gross rents where the weight on the ''rent of primary residence'' component is 95 percent or less for Puerto Rico yields an overall negative CPI update factor (less than 1). Therefore, as stated above, increasing the influence of utility costs in the calculation of gross rents in Puerto Rico in 2017 would *further* depress rents, not raise them.

III. Environmental Impact

This Notice makes changes in FMRs for two FMR areas and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: March 23, 2017.

Matthew E. Ammon,

General Deputy Assistant Secretary for Policy Development & Research.

[FR Doc. 2017–06298 Filed 3–29–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FHC–2017–N033; FXFR131109WFHS0–167–FF09F10000]

Information Collection Request Sent to the Office of Management and Budget for Approval; Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on March 31, 2017. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before May 1, 2017.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *madonna_baucum@fws.gov* (email). Please include ''1018–0078'' in the subject line of your comments. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: Madonna Baucum, at *madonna_baucum@fws.gov* (email) or (703) 358–2503 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Lacey Act (18 U.S.C. 42) (Act) prohibits the importation of any animal deemed to be and prescribed by regulation to be injurious to:

- Human beings;
- The interests of agriculture, horticulture, and forestry; or
- Wildlife or the wildlife resources of the United States.

The Department of the Interior is charged with implementation and enforcement of this Act. The 50 CFR 16.13 regulations allow for the importation of dead uneviscerated salmonids (family Salmonidae), live salmonids, live fertilized eggs, or gametes of salmonid fish into the United States. To effectively carry out our responsibilities and protect the aquatic resources of the United States, it is necessary to collect information regarding the source, destination, and health status of salmonid fish and their reproductive parts. In order to evaluate import requests that contain this data, it is imperative that the information collected is accurate. Those individuals who provide the fish health data and sign the health certificate must demonstrate professional qualifications, and be approved as Title 50 Certifiers by the Fish and Wildlife Service through an application process.

We use three forms to collect this Title 50 Certifier application information:

(1) FWS Form 3–2273 (Title 50 Certifying Official Form). New applicants and those seeking recertification as a title 50 certifying official provide information so that we can assess their qualifications.

(2) FWS Form 3–2274 (U.S. Title 50 Certification Form). Certifying officials use this form to affirm the health status of the fish or fish reproductive products to be imported.

(3) FWS Form 3–2275 (Title 50 Importation Request Form). We use the information on this form to ensure the safety of the shipment and to track and control importations.

II. Data

OMB Control Number: 1018–0078.

Title: Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs (50 CFR 16.13).

Service Form Number(s): FWS Forms 3–2273, 3–2274, and 3–2275.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Aquatic animal health professionals seeking to be certified title 50 inspectors; certified title 50 inspectors who have performed health certifications on live salmonids; and any entity wishing to import live salmonids or salmonid reproductive products into the United States.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours *
FWS Form 3–2273 (Title 50 Certifying Official Form)				
Private Sector	9	9	1 hour	9
Government	7	7	1 hour	7
FWS Form 3–2274 (U.S. Title 50 Health Certification Form)				
Private Sector	10	20	30 minutes	10
Government	15	30	30 minutes	15
FWS Form 3–2275 (Title 50 Importation Request Form)				
Private Sector	10	20	15 minutes	5
Government	15	30	15 minutes	8
Totals:	66	116		54

* Rounded.

Estimated Annual Nonhour Burden Cost: None.

III. Comments

On December 19, 2016, we published in the **Federal Register** (81 FR 91944) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on February 17, 2017. We received one formal comment in response to that notice. That comment was critical of the 50 CFR 16.13 regulations generally, suggesting that no salmonid fishes be imported into the United States and that we utilize only domestic salmonids for propagation and aquaculture purposes. Although we allow importation of salmonids and their reproductive parts, we regulate their importation because they may carry harmful pathogens. The Service, however, agrees that the further development of a domestic salmonid fish trade could lessen the demand for imported fishes.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Authority

The authorities for this action are the Lacey Act (18 U.S.C. 42; Act), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: March 24, 2017.

Tina A. Campbell,

Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2017–06259 Filed 3–29–17; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–557 and 731–TA–1312 (Final)]

Stainless Steel Sheet and Strip From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of stainless steel sheet and strip from China, provided for in subheadings 7219.13.00, 7219.14.00, 7219.23.00, 7219.24.00, 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00, 7219.90.00, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.80, 7220.20.90, and 7220.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of China.[2]

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective February 12, 2016, following receipt of petitions filed with the Commission and Commerce by AK Steel Corp., West Chester, Ohio; Allegheny Ludlum, LLC, Pittsburgh, Pennsylvania; North American Stainless, Inc., Ghent, Kentucky; and Outokumpu Stainless USA, LLC, Bannockburn, Illinois. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of stainless steel sheet and strip from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 6, 2016 (81 FR 69548). The hearing was held in Washington, DC, on January 31, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on March 24, 2017. The views of the Commission are contained in USITC Publication 4676 (March 2017), entitled *Stainless Steel Sheet and Strip from China: Investigation Nos. 701–TA–557 and 731–TA–1312 (Final).*

By order of the Commission.

Issued: March 24, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–06231 Filed 3–29–17; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on stainless steel sheet and strip from China.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–475 and 731–TA–1177 (Review)]

Aluminum Extrusions From China Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing and antidumping duty orders on aluminum extrusions from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on April 1, 2016 (81 FR 18884) and determined on July 5, 2016 that it would conduct full reviews (81 FR 45304, July 13, 2016). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 5, 2016 (81 FR 69078). The hearing was held in Washington, DC, on January 26, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on March 27, 2017. The views of the Commission are contained in USITC Publication 4677 (March 2017), entitled *Certain Aluminum Extrusions from China: Investigation Nos. 701–TA–475 and 731–TA–1177 (Review).*

By order of the Commission.

Issued: March 27, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–06274 Filed 3–29–17; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–0314]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Firearm Inquiry Statistics (FIST) Program

AGENCY: Bureau of Justice Statistics, Department of Justice

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 82 FR 8212 on January 24, 2017, allowing for a 60 day comment period. No comments were received.

DATES: Comments are encouraged and will be accepted for 30 days until May 1, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments

especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Allina Lee, Statistical Policy Advisor, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–305–2696).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* 2016 Firearm Inquiry Statistics Program: Annual Survey of Background Checks for Firearm Transfers and Permits.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number at this time. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Through the Firearm Inquiry Statistics (FIST) Program, the Bureau of Justice Statistics (BJS) obtains information from state and local checking agencies responsible for maintaining records on the number of background checks for firearm transfers or permits that were issued, processed, tracked, or conducted during the calendar year. Specifically, state and local checking agencies are asked to provide information on the number of applications and denials for firearm transfers received or tracked by the agency, and reasons why an application was denied. BJS combines these data with the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System transaction data to produce comprehensive national statistics on firearm application and denial activities resulting from the Brady Handgun Violence Prevention Act of 1993 (the Brady Act) and similar state laws governing background checks and firearm transfers. BJS also collects information from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) on FBI denials screened and referred to ATF field offices for investigation and possible prosecution. BJS began the FIST program in 1995 and collects FIST data annually. BJS publishes FIST data on the BJS Web site in statistical tables and uses the information to respond to inquiries from Congress, federal, state, and local government officials, researchers, students, the media, and other members of the general public interested in in criminal justice statistics.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,044 checking agencies will take part in the 2016 FIST survey, including the 34 state agency reporters that provide complete statewide counts of applications of firearm transfers or permits and denials, a full census of local checking agencies in 9 states where the local agencies are the FIST points-of-contact, and a sample of agencies in 3 states where local checking agencies are responsible for conducting background checks. Based on testing of the current survey form and BJS's extensive history conducting the FIST collection, BJS estimates that the burden will vary depending on the number of permit or transfer types the respondent agency conducts background checks: 20 minutes for agencies that conduct background checks for 1 type; 30 minutes for agencies that conduct background checks for 2 types; and 30 minutes for state reporting agencies. The overall estimated burden is 25 minutes per respondent, which is consistent with the burden associated with the 3 most recent collections (2012, 2014, and 2015).

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 435 hours annually. (This estimate assumes a 100% response rate). It is estimated that respondents will take 25 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to 435 hours (1,044 respondents × 25 minutes = 435 hours).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: March 27, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–06275 Filed 3–29–17; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[Project No. 0769; NRC–2017–0043]

NuScale Power, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: License application; docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has accepted for docketing an application for a design certification of a Small Modular Reactor (SMR) submitted by NuScale Power, LLC (NuScale).

DATES: March 15, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0043 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–2017–0043. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then

select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The entire NuScale application is available in ADAMS under Accession No. ML17013A229.

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

FOR FURTHER INFORMATION CONTACT: Bruce Bavol, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6715, email: *Bruce.Bavol@nrc.gov.*

SUPPLEMENTARY INFORMATION: By letter dated December 31, 2016, NuScale filed an application for a design certification of the NuScale SMR with the NRC, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' A notice of receipt and availability of this application was previously published in the **Federal Register** on February 22, 2017 (82 FR 11372).

The NRC staff has determined that NuScale has submitted information in accordance with 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR part 52 that is acceptable for docketing. The docket number established for this application is 52–048.

The NRC staff will perform a detailed technical review of the design certification application. Docketing of the design certification application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. A notice relating to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The NuScale SMR is a pressurized-water reactor (PWR). The design is based on the Multi-Application Small Light Water Reactor (MASLWR) developed at Oregon State University in the early 2000s. The NuScale SMR is a natural circulation light-water reactor with the reactor core and helical coil steam generator located in a common reactor vessel in a cylindrical steel containment. The NuScale power module is immersed in water in a safety-related pool. The reactor pool is located below grade and is designed to hold up to 12 power modules. Each NuScale SMR has a rated thermal output of 160 megawatts thermal (MWt) and electrical output of 50 megawatts electric (MWe). Each plant can hold up to 12 modules yielding a total capacity of 600 MWe.

Dated at Rockville, Maryland, this 20th day of March, 2017.

For the Nuclear Regulatory Commission.

Frank Akstulewicz,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–06309 Filed 3–29–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0001]

Sunshine Act Meeting Notice

DATE: Weeks of April 3, 10, 17, 24, May 1, 8, 2017.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 3, 2017—Tentative

Tuesday, April 4, 2017

9:55 a.m. Affirmation Session (Public Meeting) (Tentative)
Tennessee Valley Authority (Browns Ferry Nuclear Plant Units 1, 2, and 3), Petitioner's Appeal of LBP–16–11 (Tentative)
This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*
10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting) (Contact: Paul Michalak: 301–415–5804)
This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, April 6, 2017

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Mark Banks: 301–415–3718)
This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 10, 2017—Tentative

There are no meetings scheduled for the week of April 10, 2017.

Week of April 17, 2017—Tentative

There are no meetings scheduled for the week of April 17, 2017.

Week of April 24, 2017—Tentative

Wednesday, April 26, 2017

9:00 a.m. Briefing on the Status of Subsequent License Renewal Preparations (Public Meeting) (Contact: Steven Bloom: 301–415–2431)
This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, April 27, 2017

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Douglas Bollock: 301–415–6609)
This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of May 1, 2017—Tentative

There are no meetings scheduled for the week of May 1, 2017.

Week of May 8, 2017—Tentative

Tuesday, May 9, 2017

10:00 a.m. Briefing on Security Issues (Closed Ex. 1)
2:00 p.m. Briefing on Security Issues (Closed Ex. 1)

Thursday, May 11, 2017

9:00 a.m. Briefing on Risk-Informed Regulation (Public Meeting) (Contact: Steve Ruffin: 301–415–1985)
This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for

reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: March 28, 2017.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2017–06374 Filed 3–28–17; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–311 NRC–2017–0082]

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit No. 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 Facility Operating License No. DPR–75, issued to PSEG Nuclear LLC (PSEG or the licensee) for operation of the Salem Nuclear Generating Station (Salem), Unit No. 2. The amendment would extend the Salem, Unit No. 2, implementation period for Amendment No. 294 from the spring 2017 refueling outage to prior to restart from the fall 2018 refueling outage. Amendment No. 294, which was issued by the NRC staff on April 28, 2016, revised the Salem, Unit No. 2, Technical Specifications in support of replacement of the source range and intermediate range neutron monitoring systems.

DATES: Submit comments by May 1, 2017. Requests for a hearing or petition for leave to intervene must be filed by May 30, 2017.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0082. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carleen J. Parker, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1603, email: *Carleen.Parker@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0082 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–2017–0082.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The license amendment request dated March 13, 2017, is available in ADAMS under Accession No. ML17072A443.
- *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–2017–0082 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.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License No. DPR–75, issued to PSEG for operation of Salem, Unit No. 2, located in Salem County, New Jersey.

The proposed amendment would extend the Salem, Unit No. 2, implementation period for Amendment No. 294 from the spring 2017 refueling outage to prior to restart from the fall 2018 refueling outage. Amendment No. 294, which was issued by the NRC staff on April 28, 2016 (ADAMS Accession No. ML16096A419), revised the Salem, Unit No. 2, Technical Specifications in support of replacement of the source range and intermediate range neutron monitoring systems.

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. Do the proposed changes involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed amendment implementation schedule revision is administrative in nature and does not require any modifications to or change in operation of plant systems or components. The change to the amendment implementation period does not increase the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis (UFSAR). Current Technical Specification (TS) requirements will continue to ensure the plant is operated consistent with the UFSAR accident analysis with the currently installed source range and intermediate range nuclear instrumentation.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment implementation schedule revision is administrative in nature. The revision of the amendment implementation does not require any physical plant modifications, does not alter any plant systems or components, and does not change the operation of the plant.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their intended functions. These barriers include the fuel cladding, the reactor coolant system pressure boundary, and the containment. The proposed TS change is administrative in nature and does not affect any of these barriers. Current TS requirements will continue to ensure the plant is operated consistent with the UFSAR accident analysis with the currently installed source range and intermediate range nuclear instrumentation.

Therefore, the proposed change does not involve a significant reduction in the 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 prevention of either resumption of operation or of increase in power output up to the plant's licensed power level. 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.

III. 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 30, 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.

IV. 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's 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,* 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,* 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.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day 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)–(iii).

For further details with respect to this action, see the application for license amendment dated March 13, 2017.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, New Jersey 08038.

NRC Branch Chief: James G. Danna.

Dated at Rockville, Maryland, this 22nd day of March 2017.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–06307 Filed 3–29–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 5, 2017, 11545 Rockville Pike, Room T–2B3, Rockville, Maryland 20852.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, April 5, 2017–12:00 p.m. until 1:00 p.m.*

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown at 240–888–9835 to be escorted to the meeting room.

Dated: March 22, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–06315 Filed 3–29–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Station, Units 3 and 4; Annex and Radwaste Building Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 73 and 72 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information that is requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemptions and amendments were issued on March 13, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/*

adams.html. To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated April 18, 2014, and is available in ADAMS under Accession No. ML14108A096.

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

FOR FURTHER INFORMATION CONTACT: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting exemptions from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 73 and 72 to COLs, NPF–1 and NPF–92, to the licensee. The exemptions are required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis report in the form of departures from the incorporated plant-specific Design Control Document Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information. Specifically, the proposed license amendment request (LAR) would:

(1) Update the Annex Building column line designations on affected Tier 1 Figures and Tier 2 Figure 3.7.2–19; and

(2) Revise the Radwaste Building configuration including the shielding design and radiation area monitoring.

Part of the justification for granting the exemptions was provided by the review of the amendments. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemptions and issued the amendments concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemptions met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendments were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17072A262.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML17072A189 and ML17072A196, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML17072A162 and ML17072A173, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption documents issued to Vogtle Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated April 18, 2014, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, Section III.B, as part of license amendment request 13–019, ''Annex and Radwaste Building Changes (LAR 13–019).''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17072A262, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated April 18, 2014, and supplemented by letters dated May 6, 2014, and January 11, 2017. These exemptions are related to, and necessary for, the granting of License Amendment Nos. 73 and 72, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17072A262), these exemptions meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. These exemptions are effective as of the date of its issuance.

III. License Amendment Request

By letter dated April 18, 2014, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on May 13, 2014 (79 FR 27345). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that the licensee requested on April 18, 2014. The exemptions and amendments were issued on March 13, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17072A116).

Dated at Rockville, Maryland, this 23rd day of March 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–06308 Filed 3–29–17; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans (OMB control number 1212–0017; expires May 31, 2017). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by May 30, 2017.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

PBGC will make all comments, including personal information provided, available on its Web site at *www.pbgc.gov.*

Copies of the collection of information may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting that office or calling 202–326–4040 during normal business hours. TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.

FOR FURTHER INFORMATION CONTACT: Jo Amato Burns *burns.jo.amato@pbgc.gov*), Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4400, ext. 3072, or Deborah C. Murphy (*murphy.deborah@pbgc.gov*), Assistant General Counsel, same address and phone number, ext. 3451. TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400.

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group (''the employer'') incur liability (''employer liability'') if the plan terminates with assets insufficient to pay benefit liabilities under the plan. PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor, or member of the contributing sponsor's controlled group, that believes employer liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination to so notify PBGC upon plan termination and to submit net worth information. This information is necessary to enable PBGC to determine whether, and to what extent, employer liability exceeds 30 percent of the collective net worth of the employer (which includes the contributing sponsor and all and members of the sponsor's controlled group).

The collection of information under the regulation has been approved by OMB under control number 1212–0017 (expires May 31, 2017). PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that an average of thirty contributing sponsors or controlled group members per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information will be 12 hours and $4,400 per respondent, with an average total annual burden of 360 hours and $133,200.

PBGC is soliciting public comments to:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the 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.

Deborah Chase Murphy,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2017–06283 Filed 3–29–17; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: It's Time To Sign Up for Direct Deposit or Direct Express, OPM Form RI 38–128

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension without change of a currently approved information collection (ICR), It's Time To Sign Up for Direct Deposit or Direct Express, OPM Form RI 38–128.

DATES: Comments are encouraged and will be accepted until May 30, 2017.

ADDRESSES: Interested persons are invited to submit written comments on

the proposed information collection to U.S. Office of Personnel Management, Retirement Services, 1900 E Street NW., Room 2347–E, Washington, DC 20415, Attention: Alberta Butler or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, U.S. Office of Personnel Management, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OBM No 3206–0226). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Form RI 38–128 is primarily used by OPM to give recent retirees the opportunity to waive Direct Deposit of their annuity payments. The form is sent only if the separating agency did not give the retiring employee this election opportunity. This form may also be used to enroll in Direct Deposit, which was its primary use before Public Law 104–134 was passed. This law requires OPM to make all recurring benefits payments electronically to beneficiaries who live where Direct Deposit is available. Beneficiaries who do not enroll in the Direct Deposit Program will be enrolled in Direct Express.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: It's Time To Sign Up for Direct Deposit or Direct Express.

OMB Number: 3206–0226.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 20,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 10,000.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–06306 Filed 3–29–17; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80309; File No. SR–NYSEMKT–2016–63]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Partial Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4, To Amend the Co-Location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

March 24, 2017.

I. Introduction

On August 16, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the co-location services offered by the Exchange to add certain access and connectivity fees, applicable to Users [3] in the Exchange's data center in Mahwah, NJ (''Data Center''). The Exchange proposed to: (1) Provide additional information regarding access to the trading and execution systems of the Exchange and its affiliated SROs, and establish fees for connectivity to certain NYSE, NYSE Arca, and NYSE MKT market data feeds; and (2) provide and establish fees for connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds''); access to the trading and execution services of Third Party markets and other content service providers (''Third Party Systems''); connectivity to Depository Trust & Clearing Corporation (''DTCC'') services; connectivity to third party testing and certification feeds; and the use of virtual control circuits (''VCCs'').

The Commission published the proposed rule change for comment in the **Federal Register** on August 26, 2016.[4] The Commission received no comments in response to the proposed rule change.[5] On October 4, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 24, 2016.[6]

On November 2, 2016, the Exchange filed partial Amendment No. 1 to the proposed rule change.[7] On November 29, 2016, the Commission instituted proceedings (''Order Instituting Proceedings'' or ''OIP'') to determine whether to approve or disapprove the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[4] *See* Securities Exchange Act Release No. 34–78629 (August 22, 2016), 81 FR 58992 (''Notice'').

[5] The Commission notes that it received one comment letter on a related filing by NYSE (NYSE–2016–45, the ''NYSE Companion Filing''), which is equally relevant to this filing. *See* letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated September 9, 2016 (''IEX I Letter'').

Responding to the IEX I Letter, *see* letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated September 23, 2016 (''Response Letter I''), available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-3.pdf.* In note 3 of Response Letter I, the NYSE states that its response is also applicable to the Exchange's filing, Securities Exchange Act Release No. 78629 (August 22, 2016), 81 FR 58992 (August 26, 2016) (SR–NYSEMKT–2016–63). Accordingly, Response Letter I is referred to as the Exchange's response.

[6] *See* Securities Exchange Act Release No. 34–78968 (September 28, 2016), 81 FR 68493.

[7] In partial Amendment No. 1 the Exchange addressed (1) the benefits offered by the Premium NYSE Data Products that are not present in the Included Data Products (2) how Premium NYSE Data Products are related to the purpose of co-location, (3) the similarity of charging for connectivity to Third Party Systems and DTCC and charging for connectivity to Premium NYSE Data Products and (4) the costs incurred by the Exchange in providing connectivity to Premium NYSE Data Products to Users in the Data Center. Amendment No. 1 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663-1.pdf.*

proposed rule change, as modified by Amendment No. 1.[8] The proposed rule change, as modified by Amendment No. 1, is referred to as the ''Prior Proposal.''

On December 9, 2016, the Exchange filed Amendment No. 2 to the proposed rule change and on December 13, 2016 also filed Amendment No. 3 to the proposed rule change.[9] Amendment Nos. 2 and 3, which, together superseded and replaced the Prior Proposal in its entirety, were published for comment in the **Federal Register** on December 29, 2016.[10]

The Commission received additional comment letters following publication of the Order Instituting Proceedings.[11] Some of these comment letters addressed only the Prior Proposal, and some addressed the Prior Proposal, as modified by Amendment Nos. 2 and 3. NYSE, on behalf of the Exchange, responded to the comment letters submitted after the OIP in letters dated January 17, 2017 and February 13, 2017.[12] On February 7, 2017, the Exchange filed partial Amendment No. 4 to the proposed rule change.[13] On February 27, 2017, pursuant to Section 19(b)(2) of the Act,[14] the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment Nos. 1 through 4.[15] The Commission is publishing this notice to solicit comment on partial Amendment No. 4 and, is approving the proposed rule change, as modified by Amendment Nos. 1 through 4, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4

A. Background: Prior Proposal and the Order Instituting Proceedings

In the proposed rule change, as modified by Amendment Nos. 1 through 4 (also referred to as the ''Current Proposal''), the Exchange proposes to amend the co-location services offered by the Exchange to add certain access and connectivity services and establish fees applicable to Users in the Data Center. Specifically, the Exchange proposes to provide and establish fees for connectivity to: (i) Third Party Data Feeds, (ii) Third Party Systems, (iii) DTCC services, (iv) third party testing and certification feeds; and for the use of VCCs.[16]

In the Prior Proposal (*i.e.,* prior to filing Amendment Nos. 2 and 3), the Exchange also had proposed to provide additional information about access to NYSE, NYSE Arca, and NYSE MKT trading and execution services, and to establish fees for connectivity to certain proprietary market data feeds.[17] Specifically, the Exchange had proposed that connectivity to most of the Exchange's and its affiliated SROs' proprietary market data products would be included in the purchase price of an LCN/IP network connection in the Data Center, but that an additional connectivity fee (''Premium NYSE Product Connectivity Fee'') would apply to the NYSE Integrated Feed, NYSE Arca Integrated Feed, NYSE MKT Integrated Feed, and the NYSE Best Quote and Trades (BQT) feed (''Premium NYSE Data Products'').[18] As a result, the purchase of access to NYSE, NYSE Arca, and NYSE MKT trading and execution services, would not include connectivity to every purchased proprietary data product; and whereas the Exchange would charge no additional fees for connectivity to most of the Exchange's and its affiliated SROs' data products, it would charge additional fees for connectivity to Premium NYSE Data Products.

The Commission specifically requested comment on this aspect of the Prior Proposal in the OIP. In particular, in the OIP, the Commission expressed concern that the Exchange had not identified a distinction between the provision of connectivity to Premium NYSE Data Products and the Exchange's and its affiliated SROs' other data products, and noted that the Premium NYSE Data Products are similar to such other data products.[19] In addition, the Commission requested comment on whether charging fees for connectivity to Premium NYSE Data Products in a different manner from other Exchange and affiliated SRO proprietary market data products was consistent with Section 6(b)(4) of the Act.[20] The Commission also sought comment on whether Users would have viable alternatives to paying the Exchange a connectivity fee for the Premium NYSE Data Products.[21] As discussed below, several commenters stated that it was inequitable for the Exchange to charge a separate and additional connectivity fee for some Exchange and affiliated SRO proprietary market data products and not others, and that receiving the Premium NYSE Data Products from an

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[8] *See* Securities Exchange Act Release 34–79378 (November 22, 2016), 81 FR 86050.

[9] The Commission notes that the Exhibit 5 filed with Amendment No. 2 contained erroneous rule text and therefore was corrected in Amendment No. 3. Amendment Nos. 2 and 3 are available at *https://www.sec.gov/comments/sr-nysemkt-2016–63/nysemkt201663.shtml.*

[10] *See* Securities Exchange Act Release No. 34–79672 (December 22, 2016), 81 FR 96080 (''Notice of Amendment Nos. 2 and 3'').

[11] *See* letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated December 12, 2016 (''SIFMA I Letter''); letter to Brent J. Fields, Commission, from Joe Wald, Chief Executive Officer, Clearpool Group, dated December 16, 2016 (''Clearpool Letter''); letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated December 21, 2016 (''IEX II Letter''); letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated February 6, 2017 (''SIFMA II Letter''). All comments received by the Commission on the proposed rule change are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663.shtml.*

The Commission received additional comment letters on the NYSE Companion Filing which are equally relevant to this filing. *See* letter to Brent J. Fields, Commission, from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated December 12, 2016 (''Citadel Letter''); letter to Brent J. Fields, Commission, from David L. Cavicke, Chief Legal Officer, Wolverine LLC (''Wolverine Letter''); letter to Bent J. Fields, Secretary, Commission, from Stefano Durdic, Managing Director, R2G Services, LLC, dated January 21, 2017 (''R2G Letter''). All comments received by the Commission on the NYSE Companion Filing are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645.shtml.*

[12] *See* letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated January 17, 2017; letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated February 13, 2017 (''Response Letter II'' and ''Response Letter III,'' respectively), available at *https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663.shtml.* In Response Letter II, note 4, and Response Letter III, note 2, respectively, the NYSE states that its response to comments on the NYSE Companion Filing are equally applicable to this filing. Accordingly, Response Letters II and III are referred to as the Exchange's response.

[13] In partial Amendment No. 4 the Exchange proposes to (1) remove reference to the National Stock Exchange from its list of Third Party Systems, and (2) provide and establish fees for connectivity to three additional Third Party Data Feeds—ICE Data Services Consolidated Feed, ICE Data Services PRD, and ICE Data Services PRD CEP, which are feeds owned by the Exchange's ultimate parent, but not by the Exchange or its affiliated self-regulatory organizations, NYSE MKT or NYSE. Partial Amendment No. 4, as filed by the Exchange, is available at *https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663-1570727-131699.pdf.*

[14] 15 U.S.C. 78s(b)(2).

[15] *See* Securities Exchange Act Release No. 34–80077 (February 22, 2017), 82 FR 11959. The Commission designated April 23, 2017 as the date by which it should determine whether to disapprove the proposed rule change.

[16] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96081, and partial Amendment No. 4 *supra* note 13. A VCC is a unicast connection between two Users over dedicated bandwidth using the IP network. *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96081.

[17] For a detailed description of the Prior Proposal, *see* the Notice, *supra* note 4, and the OIP, discussing Amendment No. 2, *supra* note 8.

[18] *See* the Notice, *supra* note 4, and the OIP, discussing Amendment No. 1, *supra* note 8.

[19] *See* OIP, *supra* note 8, 81 FR at 86054.

[20] *See id.*

[21] *See id.*

alternative source was not a viable option.[22]

In Amendment Nos. 2 and 3, the Exchange eliminated the Premium NYSE Product Connectivity Fee from the Current Proposal, and that fee is therefore no longer presented to the Commission for consideration.

B. Description of the Current Proposal

As stated above and more fully described in the Notice of Amendment Nos. 2 and 3, as partially modified by Amendment No. 4, the Exchange proposes to provide and establish fees for connectivity to: (i) Third Party Data Feeds, (ii) Third Party Systems, (iii) DTCC services, (iv) third party testing and certification feeds; and for the use of VCCs.[23]

Regarding Third Party Data Feeds, the Exchange proposes to offer Users the option to connect to Third Party Data Feeds in the Data Center for a monthly connectivity fee per feed.[24] The Exchange states that it receives Third Party Data Feeds in the Data Center from multiple national securities exchanges and other content service providers which it then provides to requesting Users for a fee.[25] The Exchange states that its proposal to charge Users a monthly fee for connectivity to Third Party Data Feeds is consistent with the monthly connectivity fee Nasdaq charges its co-location customers for connectivity to third party data.[26] According to the Exchange, the proposed fees ''allow the Exchange to defray or cover the costs associated with offering Users connectivity to Third Party Data Feeds while providing Users the convenience of receiving such Third Party Data Feeds within co-location.'' [27] Additionally, the Exchange noted that some of the proposed fees vary depending on the bandwidth considerations and, in cases where the bandwidth requirements are the same as other proposed services such as Third Party Systems or VCCs, the prices reflect ''the competitive considerations and the costs the Exchange incurs in providing such connections.'' [28]

To connect to a Third Party Data Feed, a User must enter into a contract with the relevant third party market or content service provider, under which the third party market or content service provider charges the User for the data feed.[29] The Exchange receives these Third Party Data Feeds over its fiber optic network and, after the data provider and User enter into a contract and the Exchange receives authorization from the data provider, the Exchange re-transmits the data to the User's port.[30] Users only receive, and are only charged for, the feed(s) for which they have entered into contracts.[31] Additionally, the Exchange notes that Third Party Data Feeds do not provide access or order entry to its execution system or access to the execution system of the third party generating the feed.[32] The Exchange proposes to charge a set monthly recurring connectivity fee per Third Party Data Feed, as set forth in its proposed Price List and Fee Schedule (''Fee Schedules'').[33] A User is free to receive all or some of the feeds included in its Fee Schedules.[34] The Exchange notes that Third Party Data Feed providers may charge redistribution fees, such as Nasdaq's Extranet Access Fees and OTC Markets Group's Access Fees, which the Exchange will pass through to the User in addition to charging the applicable connectivity fee.[35]

The Exchange represents that ''as alternatives to using the [proposed connectivity to Third Party Data Feeds] provided by the Exchange, a User may access or connect to such . . . products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.'' [36]

As more fully described in the Notice of Amendment Nos. 2 and 3, as modified by partial Amendment No. 4, the Exchange also proposes to provide and establish fees for connectivity (also referred to as ''Access'') to Third Party Systems,[37] to DTCC services,[38] and to third party certification and testing feeds, and charge a monthly recurring fee.[39] The Exchange proposes to amend its Fee Schedules to provide and establish fees for connectivity to these service providers and certification/testing feeds.[40] The Exchange states that connectivity is dependent on a User meeting the necessary technical requirements, paying the applicable fees, and the Exchange receiving authorization from the relevant third party service provider to make the connection.[41]

For each service, a User must execute a contract with the respective third party service provider pursuant to which a User pays each the associated fee(s) for their services.[42] Once the Exchange receives authorization from the third party service provider, the Exchange will enable a User to connect to the service provider and/or third party certification and testing feed(s) over the IP Network.[43] The proposed

[22] *See infra* notes 69–71 and accompanying text.

[23] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96081 and partial Amendment No. 4 *supra* note 13.

[24] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96082.

[25] *See id.*

[26] *See id.* The Exchange notes that Nasdaq charges monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS data feeds, respectively, and of $2,500 for connectivity to EDGA or EDGX. *See id.*

[27] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96085; partial Amendment No. 4, *supra* note 13.

[28] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96085; partial Amendment No. 4, *supra* note 13.

[29] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96082.

[30] *See id.*

[31] *See id.*

[32] *See id.* The Exchange notes that there is one exception to this for the ICE feeds which include both market data and trading and clearing services. In order to receive the ICE feeds, a User must receive authorization from ICE to receive both market data and trading and clearing services. *See id.*

[33] *See id.,* as modified by partial Amendment No. 4, *supra* note 13 (adding additional Third Party Data Feeds).

[34] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96082.

[35] *See id.*

[36] *See id.* at 96085.

[37] The Exchange states that it selects what connectivity to Third Party Systems to offer in the Data Center based on User demand. *See id.* at 96081. In partial Amendment No. 4, the Exchange removed the National Stock Exchange from the list of Third Party Systems, noting that it is now owned by the Exchange's parent. *See* partial Amendment No. 4, *supra* note 13. Establishing a User's access to a Third Party System does not give the Exchange any right to use the Third Party Systems; connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and a User's connection to a Third Party System is not through the Exchange's execution system. *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96081.

[38] The Exchange states that connectivity to DTCC ''is distinct from the access to shared data services for clearing and settlement services that a User receives when it purchases access to the LCN or IP network. The shared data services allow Users and other entities with access to the Trading Systems to post files for settlement and clearing services to access.'' *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96083 n. 25.

[39] Certification feeds certify that a User conforms to any of the relevant content service providers' requirements for accessing Third Party Systems or receiving Third Party Data, whereas testing feeds provide Users an environment in which to conduct system tests with non-live data. *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96083.

[40] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96081–96083.

[41] *See id.*

[42] *See id.*

[43] *See id.* For Third Party Systems, once the Exchange receives the authorization from the

Continued

recurring monthly fees for connectivity to Third Party Systems and DTCC are based upon the bandwidth requirements per system.[44]

The Exchange represents that as alternatives to using the proposed connectivity to Third Party Systems, to DTCC services, and to third party certification and testing feeds offered by the Exchange, ''a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.'' [45]

Finally, as more fully described in the Notice of Amendment Nos. 2 and 3, as partially modified by partial Amendment No. 4, the Exchange also proposes to provide and establish fees for VCCs.[46] A VCC (previously called a ''peer to peer'' connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth using the IP network to be used for any purpose.[47] The proposed recurring monthly fees for VCCs are based upon the bandwidth requirements per VCC connection between two Users.[48] Connectivity to VCCs will similarly require permission from the other User before the Exchange will establish the connection.[49] As an alternative to using a VCC, Users can connect to other Users through a cross-connect.[50]

The Exchange states in reference to all of the proposed services that in adding the fees it seeks to defray or cover its costs in providing these voluntary services to Users, and that in order to provide these services it must, among other things, provide, maintain and operate the data center facility hardware and technology infrastructure; and handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues.[51] The Exchange also states that the fees charged for co-location services are constrained by the active competition for the order flow and other business from such market participants,[52] and that charging excessive fees would make it stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms.[53] Additionally, the Exchange states that Users have alternatives if they believe the fees are excessive.[54] Specifically, the Exchange notes that a User could terminate its co-location arrangement with the Exchange ''and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's [D]ata [C]enter (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with colocation.'' [55]

III. Summary of Comments Received and Exchange Responses

The Commission received four comment letters on the proposed rule change, as modified by Amendment Nos. 1 through 4, and an additional four comment letters on the NYSE Companion Filing.[56] The Exchange submitted three letters in response to the comments.[57]

A. Comment Submitted Prior to the OIP

The Commission received one comment letter prior to publication of the OIP.[58] The initial commenter requested that the Exchange provide additional information on the history of all of the proposed fees (which the commenter believed were already in effect), and the relationship between the fees and the Exchange's costs to maintain the Data Center and provide co-location services.[59] The commenter urged ''additive transparency'' to enable members to evaluate the fixed costs of exchange membership and whether fees were applied equitably.[60] This commenter also stated that broker-dealers ''may be practically required to buy and consume proprietary market data feeds directly from exchanges in order to provide competitive products for those clients, and that the trading environment ''imposes a form of trading tax on all members by offering different methods of access to different members.'' [61] The commenter questioned whether ''there are any true alternatives that are practically available to various types of participants who are seeking to compete with those who are paying exchanges for co-location and data services,'' and urged that the Exchange provide information and analysis on how its ability to set co-location fees is constrained by market forces for a ''comparable product.'' [62]

In response, the Exchange replied that historical information about the development of its product offerings is ''not required by the Act and is not relevant to [] the substance of the Proposal–which is, by definition, forward looking . . . .'' [63] The Exchange added that costs are not its only consideration in setting prices, but rather that prices ''include the competitive landscape; whether Users would be required to utilize a given service; the alternatives available to Users; and, significantly, the benefits Users obtain from the services.'' [64] In response to the commenter's argument regarding different methods of access to trading, the Exchange stated that ''it is a vendor of fair and non-discriminatory access, and like any vendor with multiple product offerings, different purchasers may make different choices regarding which products they wish to purchase.'' [65] The Exchange further stated that co-location fees are not fixed costs to members, but costs to any User who voluntarily chooses to purchase such services based upon ''[t]he form and latency of access and connectivity that bests suits a User's needs.'' [66] The Exchange added that Users do not require the Exchange's access or connectivity offerings in co-location to trade on the Exchange and can instead use alternative access and connectivity options for trading if they choose.[67]

respective third party it establishes a unicast connection between the User and the relevant third party over the IP network. *See id.* at 96081. For the DTCC, ''[t]he Exchange receives the DTCC feed over its fiber optic network and, after DTCC and the User enter into the services contract and the Exchange receives authorization from DTCC, the Exchange provides connectivity to DTCC to the User over the User's IP network port.'' *See id.* at 96083.

[44] *See id.* at 96081, 96083.

[45] *See id.* at 96084–96085.

[46] *See id.* at 96083.

[47] *See id.*

[48] *See id.*

[49] *See id.*

[50] *See id.* at 96084.

[51] *See id.* at 96085.

[52] *See id.* at 96084.

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See supra* notes 5 and 11. Because the additional letters on NYSE Companion Filing address the same issues, all eight letters are considered as submitted in response to the proposed rule change, as modified by Amendment Nos. 1 through 4, and are discussed herein. In addition, one commenter noted that it filed a denial of access petition on the proposal. *See* SIFMA I Letter at 1 and SIFMA II Letter at 3.

[57] *See* Response Letters I, II, and III, *supra* notes 5 and 12.

[58] *See* IEX I Letter, *supra* note 5.

[59] *See id.* at 1–2.

[60] *See id.*

[61] *See id.* at 2.

[62] *See id.*

[63] *See* Response Letter I, *supra* note 5, at 3.

[64] *See id.*

[65] *See id.* at 5.

[66] *See id.* at 4.

[67] *See id.*

B. Comments Following Publication of the OIP

(i) Comments on the Premium NYSE Product Connectivity Fee and Cumulative Fees Generally

As noted above, the Commission specifically requested comment on the Premium NYSE Product Connectivity Fee in the OIP.[68] In response, some commenters objected to the establishment of a separate connectivity fee for Premium NYSE Data Products as duplicative of fees already charged for bandwidth and access to the market data product itself, and therefore that this fee would result in an inequitable allocation of fees, inconsistent with Section 6(b)(4) of the Act.[69] Another commenter similarly objected to an additional connectivity/bandwidth charge for each Premium NYSE Data Product as an example of ''double dipping,'' and a fee having ''no merit'' on its own.[70] Additionally, some commenters objected to the reasonableness of the proposed Premium NYSE Product Connectivity Fee on the basis that there was no viable alternative to paying the fee to obtain connectivity to the Premium NYSE Data Products.[71]

In response to comments on the Premium NYSE Product Connectivity Fee, the Exchange noted that it was no longer proposing that fee and that the questions posed in the OIP about that fee were moot.[72]

Some commenters opposed to the Premium NYSE Product Connectivity Fee also expressed broader concern about ''layered'' and cumulative fees charged by the Exchange to access market data.[73] Some of these commenters believe that the rising costs related to the receipt of market data in co-location over time effectively impose a barrier to entry for smaller broker-dealers and new entrants, and are a burden on competition.[74] For example, Wolverine stated that it has an aggregate cost of ''$123,750 per month of fixed costs in co-location, port, and access fees today, solely for access to NYSE controlled markets,'' which is ''an amount which presents a steep barrier to entry for new participants.'' [75] Wolverine also estimated that its NYSE market data costs have increased ''over 700% over 8 years.'' [76] Citadel similarly stated that ''additive and layered fees are a persistent problem with exchange fees more generally,'' and urged scrutiny of the aggregate impact of fees, ''in particular with respect to market data products where exchanges have a monopoly as the initial distributors.'' [77]

Clearpool stated, among other things, that market participants are beholden to the exchanges for market data; that it is not feasible for broker-dealers with best execution obligations to rely on SIP data as an alternative to exchange proprietary data feeds; and that the role and cost of using SIP and proprietary feeds should be considered in connection with Commission proposals to improve Regulation NMS Rules 605 and 606 reporting.[78] Clearpool advocated for the Commission to ''thoroughly review the issues around market data'' and to ensure that it is priced more competitively and equitably for all market participants.[79] Clearpool also stated that high costs prevent new innovative technology services, including order routing, risk management, and transaction cost analysis services, from entering the market, and further, that increasing fees significantly reduce the margin that smaller broker-dealers can earn on a transaction, putting them at a disadvantage to larger firms that can absorb these costs.[80]

In response to these comments, the Exchange challenged Wolverine's assessment that Exchange fees have increased by 700% over the past eight years, explaining that it was a mischaracterization and did not represent a true comparison of the fees paid for particular data feeds in 2008 as compared to fees paid for those specific feeds today.[81] The Exchange also rejected Wolverine's argument that all of its costs–including the optional cage surrounding its cabinets, power, cross connects, network ports and connectivity—should be treated as costs related to market access.[82] The Exchange stated, that ''however self-servingly [Wolverine] tries to characterize them, these listed costs, like rent and employee compensation and benefits, are simply costs associated with Wolverine's business activities. These business activities and Wolverine's business judgment—not the Exchange—determine the most effective way for Wolverine to select the products and services it uses.'' [83]

Regarding comments about market data and co-location fees more generally, the Exchange responded that a User that chooses to receive market data within co-location will incur several costs in addition to the cost a market data provider will charge for its data, including the costs associated with the LCN or IP network port, power, cross connects, and connectivity, but the need for equipment and connections to enable receipt of a market data feed within co-location does not convert the costs of such equipment and connections into market data fees.[84] The Exchange also stated that some commenters were using the Prior Proposal as a ''departure point to discuss broader issues related to market data.'' [85] The Exchange catalogued comments about exchange fees for proprietary market data products, the effect of Commission proposals to improve disclosure of order execution and order routing information under Rules 605 and 606 of Regulation NMS, and the payment of rebates for posted liquidity as comments beyond the scope of the Current Proposal, as well as the fees any one exchange might propose.[86]

The Exchange also stated that market participants are not required to co-locate with or subscribe to proprietary market data products from an exchange, emphasizing that firms using exchange market data products in co-location ''have chosen to build business models based on speed.'' [87]

[68] *See* OIP, *supra* note 8, and Section II.A. *supra.*

[69] *See* Citadel Letter at 2; Clearpool Letter at 4.

[70] *See* Wolverine Letter at 3. *See also* Citadel Letter at 2; R2G Letter at 3 (each expressing concern about cumulative fees).

[71] *See* Citadel Letter at 3 (''there is no readily available substitute or equivalent means of access to the Premium NYSE Data Products''); Wolverine Letter at 3 (objecting to the statement ''the Exchange is not the exclusive method to connect to Premium NYSE Data Products'' noting that it is ''misleading at best.''). *See also* R2G Letter at 1–2 (stating, its view that the Prior Proposal ''raises serious concerns'' under the Exchange Act, but that ''Amendment No. 3 adequately addresses the original concerns,'' and adding that it would, however, object if the Exchange similarly sought to apply the logic of Amendment No. 3 regarding Third Party Systems to any ''NYSE Proprietary Product'').

[72] *See* Response Letter II at 4, 7–8. The Exchange also stated, as discussed further below, that it did not agree with commenters suggesting that a connectivity fee is indistinguishable from a market data fee.

[73] *See* Wolverine Letter at 1–3; Clearpool Letter at 3; Citadel Letter at 3; R2G Letter 1, 3–6.

[74] *See* Wolverine Letter at 1–3; Clearpool Letter at 3; Citadel Letter at 3.

[75] *See* Wolverine Letter at 3.

[76] *See id.* at 1 (also objecting to port and other charges (outside the scope of the Current Proposal) as unreasonable); *see also* R2G Letter at 3 (expressing agreement with Wolverine).

[77] *See* Citadel Letter at 2.

[78] *See* Clearpool Letter at 2–4.

[79] *See id.* at 1, 4.

[80] *See id.* at 3.

[81] *See* Response Letter II at 10 and n.27.

[82] *See id.* at 10.

[83] *See id.*

[84] *See id.* at 5.

[85] *See id.*

[86] *See id.* at 5–6. *See also infra* notes 114–127, discussing SIFMA's comments characterizing a variety of fees as market data fees and the Exchange's response.

[87] *See* Response Letter II at 11–12.

(ii) Comments Regarding Competition and Alternatives to the Proposed Co-Location Services

Some commenters addressing both the Prior Proposal and Amendment Nos. 2 and 3 suggested that co-location services in general are not optional.[88] In the context of whether the Current Proposal's connectivity fees are reasonable, some of these commenters argued that there is a lack of competition for the Exchange's co-location and data services generally, and suggested a lack of viable alternatives to the Current Proposal's proposed connectivity services and fees in particular.[89] For instance, SIFMA argued that the Exchange's ability to set co-location fees is not constrained by market forces because there is ''no comparable connectivity or product,'' and low-latency alternatives to these services do not exist.[90] SIFMA stated that ''[a]ny alternative with severely increased latencies would not be a viable alternative.'' [91] Similarly, IEX argued that if co-location services are optional, and therefore need not be purchased if the fees are excessive, then the Exchange should demonstrate how firms are not placed at a competitive disadvantage if they elect to not receive such services from the Exchange.[92] In particular, IEX suggested that the Exchange provide data on the expected latency (or range of latencies) in receiving data or transmitting orders directly from the Exchange, compared to the equivalent latency (or range) for firms that rely on a third party access center.[93] IEX requested that the NYSE ''explain whether it believes that this difference would not affect the ability of electronic market makers and other trading firms and active agency brokers to compete with firms in the same businesses that have faster access, and if so how it reached this conclusion.'' [94] IEX also disputed that competition for order flow constrains pricing of co-location services, arguing that NYSE often displays protected quotes for certain stocks, a status it achieves by paying a high number of rebates for liquidity, and firms are forced to interact with it to avoid trade-throughs.[95] Both IEX and SIFMA argued that in the absence of competition for the proposed services and fees (which, in SIFMA's view are indistinguishable from market data fees), the Exchange should be required to discuss the relationship between the proposed fees and increasing Data Center costs, or detail how the fee increases relate to the costs of providing the service, in order to justify the proposed fees as reasonable.[96]

In contrast, two commenters acknowledged the existence of alternatives to some Exchange co-location services.[97] One of these commenters noted that alternatives are present for Third Party System connectivity as evidenced by the fact that it ''finds NYSE's third part[y] system costs out of line and does not subscribe to this NYSE offering, instead implementing this connectivity internally using a proprietary network.'' [98] Another commenter stated that it ''directly competes with NYSE for these [Third Party Systems] services and does so at prices significantly lower than the fees NYSE has proposed.'' [99]

In response to comments that competitive forces do not constrain co-location fees and that alternatives to co-location services are lacking, the Exchange defended its representations that the proposed services are offered as a convenience to Users, are voluntary, and that Users have viable alternatives to the proposed services.[100] The Exchange stated that additional latency in an alternative means of connectivity does not negate the viability of that alternative,[101] and that commenters arguing that only an ''equivalent'' latency alternative is a viable alternative are misguided.[102] The Exchange stated that, ''the Act does not require that there be at least one third party option available that has exactly the same characteristics as a proposed service before a national securities exchange can impose or change a fee for a service,'' adding that such a requirement would be ''untenable, as every exchange would have to have an exact duplicate before it could charge a fee.'' [103] Rather, the relevant question is whether a proposed fee would be ''an equitable allocation of reasonable dues, fees, and other charges among Users in the data center; does not unfairly discriminate between customers, issuers, brokers, or dealers; and does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.'' [104] The Exchange noted that it did not represent that the connectivity alternatives available to co-located Users (including alternatives for connectivity to Premium NYSE Data Products) are exactly the same as those proposed, but rather that the cited alternatives show that Users have the option ''to receive the same market data, or make the same trades, in other manners.'' [105] The Exchange added that its cited alternatives ''offer distinct services and pricing structures that some Users may find more attractive than those proposed by the Exchange,'' and that these alternatives are ''real,'' even if not all Users will find them equally attractive for their individual business model.[106] The Exchange stated that the viability of alternatives is ''underscored by the Wolverine Letter, which explicitly states that it does not object to the proposed fees for access to Third Party Systems in the Current Proposal on the basis that firms may contract with other parties or contract

[88] *See* IEX I Letter at 2 (best execution requires broker-dealer to have ''effective access'' to exchanges); SIFMA II Letter at 4 (''brokers are legally obligated to seek best execution for their customers. They are required to consider the likelihood that a trade will be executed and whether there is an opportunity to obtain a price better than what is currently quoted.'') *See also* Citadel Letter at 3 (stating that ''competitive pressures oblige broker-dealers to seek the most efficient access to markets and market data to execute orders . . . ,'' creating a risk for those firms that elect to trade with ''slower and less efficient access.''); R2G Letter at 3 (referring to an ''ever increasing need for speed''); Wolverine Letter at 1 (stating that it is ''required to subscribe to the lowest latency NYSE market data products and services'').

[89] *See* IEX I Letter at 2, IEX II Letter at 1–3, SIFMA I Letter at 2 and SIFMA II Letter at 2. *Compare* with comments alleging a lack of viable alternatives to connectivity to Premium NYSE Data Products, *supra* note 73.

[90] *See* SIFMA I Letter at 2. According to SIFMA, ''the mere presence of the IEX Letter in the comment file'' evidences of a lack of competitive market forces to constrain pricing, because IEX is a competitor to the Exchange. *See id.* at 3.

[91] *See* SIFMA I Letter at 3 (also stating ''different fees are charged for the different types of connectivity, with no rational basis, [is] unfairly discriminatory between customers.'')

[92] *See* IEX II Letter at 2.

[93] *See id.*

[94] *See id.*

[95] *See id.* at 3. *See also* SIFMA II Letter at 2 (expressing general agreement); *see also* SIFMA I Letter at 3 (stating that the presence of a comment letter from IEX cuts against the argument that competition for order flow constrains fees). *See also* Citadel Letter at 2 (urging greater transparency regarding the Exchange's Data Center costs).

[96] *See* IEX II Letter at 3; SIFMA II Letter at 2.

[97] *See* Wolverine Letter at 3; R2G Letter at 1–2.

[98] *See* Wolverine Letter at 3.

[99] *See* R2G Letter at 1–2.

[100] *See* Response Letter II at 6.

[101] *See id.* at 7–8.

[102] *See id.* at 7.

[103] *See id.* at 8.

[104] *See id.*

[105] *See id.* The Exchange also noted that Clearpool is not a co-location customer of the Exchange, which the Exchange believes illustrates that market participants can and do avail themselves of alternatives for connecting to NYSE market data products. *See id.*

[106] *See id.* In addition, in response to IEX's suggestion that the Exchange provide data on the expected latency (or range of latencies) in receiving data or transmitting orders directly from the Data Center, compared to the expected latency (or range) for firms that rely on a third party access center, the Exchange stated it could not do so without having access to the latency data of third parties, or each User's specific system configuration and latency needs and therefore could not satisfy IEX's ''deliberately impossible requirement.'' *See id.* at 7.

directly with network providers.'' [107] The Exchange added that, ''[I]t is the Exchange's understanding that a User could access Third Party Systems and connect to Third Party Data Feeds, third party testing and certification feeds, and DTCC using one or more of the listed alternatives without increasing its latency levels—and, in many cases, the alternatives would offer lower latency.'' [108]

Further, the Exchange emphasized that while some commenters focus exclusively on latency as the only relevant consideration, ''Users with different investment strategies or business models may focus on other characteristics, including redundancy, resiliency, cost, and the services that third parties offer but the Exchange does not, such as managed services.'' [109] The Exchange stated that alternatives exist as evidenced by the fact that ''there are at least six Users within the co-location hall that offer other Users or hosted customers access to trading or connectivity to market data, including the two other exchanges that are co-located with the Exchange, as well as the fact that Users may contract with any of the 15 telecommunication providers—including five third party wireless networks—available to Users to connect to third party vendors.'' [110] The Exchange also noted that the alternatives are possible in part because the Exchange voluntarily allows Users to provide services to other Users and third parties out of the Exchange's co-location facility—that is, to compete with the Exchange using the Exchange's own facilities.[111] For example, according to the Exchange, ''a User that wished to receive Nasdaq market data could connect directly to the Nasdaq server within co-location.'' [112] Therefore, the Exchange believes that contrary to commenters' beliefs, the Exchange's cited alternatives offer comparable services that can be used in lieu of receiving Exchange offered services, and that there are competitive forces constraining pricing.[113]

SIFMA raised additional arguments. SIFMA urged that ''[t]he proposed connectivity fees should be reviewed in a manner consistent with the decisions of the United States Court of Appeals for the District of Columbia Circuit'' in *NetCoalition* v. *SEC,* because says SIFMA, they are market data fees.[114] SIFMA took the position that under NetCoalition I (615 F.3d 525 (D.C. Cir. 2010)) an exchange's assertion that order flow competition constrains pricing of data is insufficient.[115] More specifically, in SIFMA's view ''port, power, cross connect, connectivity and cage fees, which are necessary in order to obtain the market data from NYSE,'' ''however labeled, are market data fees.'' [116] SIFMA also noted that it had submitted a ''properly filed 19(d) denial of access petition on the proposal,'' but had requested that it be ''held in abeyance pending the decision in the *NetCoalition* follow-on proceedings . . . .'' [117] SIFMA urged however, that such petition, despite its abeyance, not be ignored.[118]

In response to SIFMA on these points, the Exchange stated that, ''*NetCoalition* addressed the standards governing proprietary market data fees,'' and that it is ''incorrect'' to characterize the Current Proposal as establishing market data fees.[119] The Exchange stated:

> the fact that a User needs to have a port, power, and connectivity in place in order to be able to receive a market data feed *within co-location* does not convert the costs of such equipment and connections into market data fees. Rather, they are costs associated with the User's business activities. If a User opts to put a cage around its servers in the colocation hall, the cage fee it pays is a cost it chooses to incur in connection with the way it has chosen to do business, not a market data fee.[120]

The Exchange distinguished the services and fees proposed in the Current Proposal from market data fees, emphasizing that they are connectivity fees or access fees applicable when a User chooses to utilize connectivity or access services within co-location.[121] The Exchange noted that two of the proposed fees are for services that facilitate Users' trading activities, and have nothing to do with market data: a proposed fee for access within co-location to the execution systems of third party markets and other content service providers, and a proposed fee for connectivity within co-location to DTCC services, such as clearing, fund transfer, insurance, and settlement services.[122] The Exchange similarly distinguished the proposed connectivity fee for third party testing and certification feeds as not equivalent to providing a customer with market data.[123] Addressing the proposed connectivity fee for Third Party Data Feeds within co-location, the Exchange noted that this proposed fee ''has more often been mistaken for a market data fee,'' but distinguished the service of providing a User with connectivity to Third Party Data Feeds from the service that the third party providing the market data provides by sending the data over the connection, noting that the third party content service provider charges the User the market data fee.[124]

The Exchange did not agree with SIFMA's contention that the Current Proposal would establish market data fees, nor agree that *NetCoalition* standard was applicable to the Current Proposal,[125] but instead stated, ''[t]here is significant competition for the connectivity relevant to the Current Proposal;'' and ''even if the NetCoalition standard did apply, the Current Proposal satisfies it.'' [126]

Regarding SIFMA's denial of access petition, the Exchange responded that a denial of access petition is not a comment letter, and should not be treated as such given that SIFMA itself has requested that its denial of access petition on fee filings be held in abeyance pending a decision in the *NetCoalition* follow-on proceedings.[127]

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[107] *See id.* at 9. The Exchange did not similarly address the R2G Letter.

[108] *See id.* at 9–10.

[109] *See id.* at 8 n.16.

[110] *See id.* at 9.

[111] *See id.*

[112] *See id.* at 10 n.24.

[113] *See id.* at 9.

[114] *See* SIFMA II Letter at 2–3 (citing *NetCoalition I,* 615 F.3d 525 (D.C. Cir. 2010); *NetCoalition II,* 715 F.3d 342 (D.C. Cir. 2013)).

[115] SIFMA I Letter at 3 (noting that ''[t]he Court's *NetCoalition* decisions, the controlling law on this subject, rejected this order flow argument because, like here, there was no support for the assertion that order flow competition constrained the ability of the exchange to charge supracompetitive prices for data.'').

[116] *See* SIFMA II Letter at 3. *See also* SIFMA I Letter at 4 (stating that market data fees, port fees, hardware fees and connectivity fees are all ''within the ambit of the *NetCoalition* decisions.'')

[117] *See* SIFMA I Letter at 1; SIFMA II Letter at 3.

[118] *See* SIFMA II Letter at 3.

[119] *See* Response Letter III at 3–4.

[120] *See id.* at 4 (emphasis in original).

[121] *See id.* at 5–6. The Exchange noted that SIFMA did not address VCC fees. *See id.* at 5, n. 17.

[122] *See id.* at 5–6 (also noting that fees for Third Party System and DTCC connectivity vary by bandwidth and are generally proportional to the bandwidth required).

[123] *See id.* at 5 (also noting that fees for connectivity to third party testing and certification feeds reflect that bandwidth requirements are generally not large, and the relatively low fee may encourage Users to conduct tests and certify conformance, which the Exchange believes generally benefits the markets).

[124] *See id.* at 5–6 (also noting that the fees for Third Party Data Feeds vary because Third Party Data Feeds vary in bandwidth; proximity to the Exchange, requiring different circuit lengths; fees charged by the third party provider, such as port feeds; and levels of User demand).

[125] *See id.* at 3. *See also* Response Letter II at 13.

[126] *See* Response Letter III at 3. *See also* Response Letter II at 13.

[127] *See* Response Letter III at 3. *See also* Response Letter II at 13; SIFMA Letter II at 3 (noting that ''SIFMA's 19(d)s will be held in abeyance pending the decision in the NetCoalition follow-on proceedings . . .'').

IV. Discussion and Commission Findings

After careful consideration of the proposed rule change, as modified by Amendment Nos. 1 through 4, the comments received, and the Exchange's responses to the comments, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 through 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[128] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities; Section 6(b)(5) of the Act,[129] which requires that the rules of an exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and Section 6(b)(8) of the Act,[130] which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.[131]

As discussed more fully above, some commenters oppose the proposed co-location fees on the basis that viable alternatives to the Exchange's co-location services are lacking, and particularly that similar low-latency alternatives to the Exchange's co-location services do not exist.[132] According to these commenters, the lack of viable alternatives means that competitive forces do not constrain Exchange pricing of co-location services, and the Exchange's proposed fees should be subject to a cost-based assessment.[133]

In response to these comments, the Exchange counters that co-location Users have several alternatives to the Exchange's proposed services, both inside and outside the Data Center. The Exchange explains that as alternatives to using the access to Third Party Systems, and connectivity to Third Party Data Feeds, third party testing and certification feeds, and DTCC, provided by the Exchange, a User may access or connect to such services and products through an Exchange access center, third party access center, or a third party vendor outside the Data Center, and may do so using a third party telecommunication provider, a third party wireless network, the Secure Financial Transaction Infrastructure (SFTI) network, or a combination thereof.[134] Furthermore, the Exchange points out that alternatives to the Exchange's access and connectivity services also exist inside the Data Center, as evidenced by the fact that ''there are at least six Users within the co-location hall that offer other Users or hosted customers access to trading or connectivity to market data, including the two other exchanges that are co-located with the Exchange, as well as the fact that Users may contract with any of the 15 telecommunication providers—including five third party wireless networks—available to Users to connect to third party vendors.'' [135] The Exchange notes that these alternatives are possible because the Exchange allows Users to provide services to other Users and third parties out of the Exchange's co-location facility—that is, to compete with the Exchange using the Exchange's own facilities.[136]

The Commission has carefully considered the comments and the Exchange's response concerning the availability of alternatives to the Exchange's proposed access and connectivity services. In addition, the Commission notes that two commenters expressed the view that viable alternative means of accessing Third Party Systems are available.[137] The Commission believes that viable alternatives to the Exchange's proposed co-location services are available which bring competitive forces to bear on the fees set forth in the Current Proposal.[138]

Also, as discussed above, some commenters expressed concern that the proposed fees would impose a barrier to entry on smaller broker-dealers and new entrants, and a burden on competition.[139] The Commission does not believe that the Current Proposal would impose a burden on competition inconsistent with the Act because, as discussed above, viable alternatives to the Exchange's proposed services exist, both inside and outside the Data Center.

Finally, the Commission notes that several commenters believed the originally proposed NYSE Premium Connectivity Fee to be duplicative and an inequitable allocation of fees.[140] Because the Exchange eliminated that fee in Amendment Nos. 2 and 3, the Commission believes that these concerns have been addressed.[141]

Accordingly, the Commission finds that the Current Proposal is consistent with the Act.

V. Solicitation of Comments on Partial Amendment No. 4

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether partial Amendment No. 4 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEMKT–2016–63 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–NYSEMKT–2016–63. This file number should be included on the

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[128] 15 U.S.C. 78f(b)(4).

[129] 15 U.S.C. 78f(b)(5).

[130] 15 U.S.C. 78f(b)(8).

[131] 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).

[132] *See supra* notes 62, 88–94, and accompanying text.

[133] *See supra* notes 62, 96, 114–116 and accompanying text.

[134] *See* Response Letter II at 6.

[135] *See id.* at 9.

[136] *See id.*

[137] *See supra* notes 97–99. One of these commenters also stated its view that Amendment No. 3 addressed the concerns raised in the OIP. *See supra* note 71. Furthermore, the Exchange's proposal with respect to connectivity to Third Party Data Feeds is not novel, given that Nasdaq similarly charges connectivity fees for third party data feeds, as reflected on its co-location fee schedule. *See* Nasdaq Rule 7034.

[138] *See also* Securities Exchange Act Release No. 34–62397 (June 28, 2010); Securities Exchange Act Release No. 34–66013 (December 20, 2011), 76 FR 80992 (December 27, 2011) (noting ''that members may choose not to obtain low latency network connectivity through the Exchange and instead negotiate connectivity options separately through other vendors on site''); Securities Exchange Act Release No. 34–76748 (finding the establishment of an exclusive wireless connection consistent with the Act because, among other reasons, the alternatives suggested provided the same or similar speeds as compared to the NYSE's wireless connectivity); Securities Exchange Act Release No. 34–68735 (finding the establishment of an exclusive wireless connection consistent with the Act because, among other reasons, the alternatives suggested provided the same or similar speeds as compared to Nasdaq's wireless connectivity).

[139] *See supra* notes 74–80 and accompanying text.

[140] *See supra* notes 69–70 and accompanying text.

[141] The Commission believes that comments expressing concerns about proprietary market data fees more generally are outside the scope of the Current Proposal.

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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–63 and should be submitted on or before April 20, 2017.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1–4

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos 1–4, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. The revisions made to the proposal in partial Amendment No. 4 [142] (1) removed reference to the National Stock Exchange (NSX) from its list of Third Party Systems, (2) added three additional Third Party Data Feeds—ICE Data Services Consolidated Feed, ICE Data Services PRD, and ICE Data Services PRD CEP, (3) added connectivity fees for each of the newly added Third Party Data feeds. With respect to NSX, the Exchange represents that NSX was acquired by the NYSE Group on January 31, 2017, making it no longer a Third Party System. The Commission believes this characterization is consistent with the NYSE Group's similarly situated affiliated exchanges, NYSEMKT and NYSE, which, like NSX are solely within the NYSE Group's control. Regarding the ICE Data Services feeds, the Exchange notes that it has an indirect interest in these feeds because ICE Data Services is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc. As represented in partial Amendment No. 4, the Exchange considers the ICE Data Services Consolidated Feed (like the NYSE Global Index feed), a Third Party Data Feed because it includes third party market data rather than exclusively the proprietary market data of the Exchange and its affiliated SROs, NYSE and NYSE Arca.[143] The Commission believes that partial Amendment No. 4 does not raise issues not previously raised in the proposed rule change, as modified Amendment Nos. 1–3, and addressed in Exchange Response Letters I, II, and III. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[144] to approve the proposed rule change, as modified by Amendment Nos. 1–4, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[145] that the proposed rule change (SR–NYSEMKT–2016–63) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[146]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06256 Filed 3–29–17; 8:45 am]

BILLING CODE 8011–01–P

[142] *See* partial Amendment No. 4, *supra* note 13.

[143] *See id.*

[144] 15 U.S.C. 78s(b)(2).

[145] *See id.*

[146] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80304; File No. SR–ICEEU–2017–002]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Revise the ICE Clear Europe Clearing Rules Relating to the Application of Default Provisions in the Event of a Resolution Proceeding

March 24, 2017.

I. Introduction

On January 25, 2017, ICE Clear Europe Limited (''ICE Clear Europe'' or ''Clearing House'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–ICEEU–2017–002) to amend the ICE Clear Europe Clearing Rules (''Rules'') relating to the application of default provisions in the event of a resolution proceeding.[3] The proposed rule change was published for comment in the **Federal Register** on February 15, 2017.[4] On February 8, 2017, ICE Clear Europe filed Amendment No. 1 to the proposed rule change and on February 10, 2017, ICE Clear Europe filed Amendment No. 2 to the proposed rule change.[5] The Commission received no comment letters regarding the proposed change. The Commission is publishing this notice to solicit comment on Amendment Nos. 1 and 2 from interested persons and, for the reasons stated below, is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Change

The principal purpose of the proposed rule change, as modified by Amendment Nos. 1 and 2, is to amend the Rules to clarify that the default remedies enumerated in the Rules are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used in this order, but not defined herein, have the meanings specified in ICE Clear Europe Clearing Rules.

[4] Securities Exchange Act Release No. 34–79999 (February 9, 2017), 82 FR 10848 (February 15, 2017) (SR–ICEEU–2017–002).

[5] Amendment Nos. 1 and 2 are technical amendments to ICE Clear Europe's filing with respect to comments on the proposed rule change received by ICE Clear Europe.

In its filing on January 25, 2017, ICE Clear Europe represented that it had published a prior version of the proposed amendments for consultation with its clearing members, two clearing members had inquired about the regulatory process surrounding the proposed change, and one clearing member suggested that certain additional clarifications be made to limit the application of other aspects of the ''Insolvency'' definition in the Rules. ICE Clear Europe further represented its conclusion that these suggested clarifications were not necessary or appropriate and that ICE Clear Europe would not make these requested clarifications.

In Amendment No. 1, on February 8, 2017, ICE Clear Europe amended the filing (1) to note that no written comments were received in response to its prior consultation publication (Circular C16/018, *available at https://www.theice.com/clear-europe/circulars* (February 22, 2016)), (2) to include Circular C16/018 as Exhibit 2, and (3) to add a footnote that ''Capitalized terms used [in the notice] but not defined [t]herein have the meanings specified in the [ ] Rules.'' However, Exhibit 2 was not referenced in Item 9 of ICE Clear Europe's amended filing. Subsequently, ICE Clear Europe filed Amendment No. 2 on February 10, 2017. In Amendment No. 2, ICE Clear Europe referenced Exhibit 2 in Item 9 of its filing and corrected a pagination error in Amendment No. 1.

not automatically triggered by certain resolution or insolvency proceedings brought under the special resolution regimes of the UK Banking Act 2009 or the national legislation of any European Economic Area jurisdiction implementing the Bank Recovery and Resolution Directive (Directive 2014/59/EU) (''BRRD'').

Nevertheless, the proposed rule change preserves ICE Clear Europe's right under the Rules to declare an Event of Default or exercise default remedies in the event a clearing member (or other person) is not performing substantive obligations to the Clearing House. The proposed rule change also preserves ICE Clear Europe's right to declare an Event of Default or exercise all of the default remedies available in the Rules if applicable law, including special resolution regimes, does not prohibit doing so. Finally, the proposed rule change confirms that application of a special resolution regime with respect to ICE Clear Europe does not constitute an insolvency of ICE Clear Europe for purposes of the Rules.

III. Discussion and Commission's Findings

Section 19(b)(2)(C) of the Act[6] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change, which clarifies the application of certain default provisions in the event of a resolution proceeding with respect to either the Clearing House, a clearing member, or other person, are consistent with the requirements of the requirements of Section 17A(b)(3)(F) of the Act.[8] The proposed change recognizes that other statutory resolution regimes could have an impact on ICE Clear Europe's rights and responsibilities in the event either ICE Clear Europe or one of its clearing members is subject to these regimes. Similarly, the proposed rule change clarifies the extent to which ICE Clear Europe's rights and responsibilities under its Rules are affected during the operation of a statutory resolution regime. ICE Clear Europe represents that the amendments are not intended to increase risk to ICE Clear Europe, and will not impact ICE Clear Europe's ability to take risk management measures under its Rules with respect to non-defaulting clearing members (including clearing members that may be subject to a Resolution Step that is not an Unprotected Resolution Step).

The Commission finds that this explicit recognition and the additional clarity provided, should promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions as well as promote the public interest when default circumstances arise. The Commission notes ICE Clear Europe's representation that the amendments are not intended to increase risk to ICE Clear Europe and will not impact ICE Clear Europe's ability to take risk management measures with respect to its non-defaulting clearing members (including clearing members that may be subject to a Resolution Step that is not an Unprotected Resolution Step). Moreover, the Commission finds that by clarifying legal limitations on ICE Clear Europe's ability to determine that a clearing member is in default during certain resolution proceedings, the proposed rule change is consistent with Rule 17Ad–22(e)(1), which requires that a clearing house provide ''a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.''[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 1 and 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.* Please include File Number SR–ICEEU–2017–002 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–ICEEU–2017–002. 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 ICE Clear Europe and on its Web site at *https://www.theice.com/clear-europe/regulation#rule-filings.*

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–ICEEU–2017–002 and should be submitted on or before April 20, 2017.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[10] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after publication of Amendment Nos. 1 and 2 in the **Federal Register**. As described above, the proposed rule change clarifies that the default remedies enumerated in the Rules are not automatically triggered by certain resolution proceedings brought under the UK Banking Act 2009 or the BRRD (and related national implementing legislation). Nevertheless, the rule change preserves ICE Clear Credit's right under the Rules to declare an Event of Default and exercise default remedies in the event a clearing member (or other person) is not performing

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] *Id.*

[9] 17 CFR 240.17Ad–22(e)(1).

[10] 15 U.S.C. 78s(b)(2).

substantive obligations to the Clearing House. Also, as noted above, Amendment Nos. 1 and 2 are technical amendments to ICE Clear Europe's filing with respect to comments on the proposed rule change received by ICE Clear Europe.

Thus, the proposed rule change is intended to comply with restrictions on ICE Clear Europe's exercise of its default remedies provided by applicable laws in other jurisdictions. Moreover, ICE Clear Europe represents that the proposed rule change has been filed at the request of regulatory authorities in the United Kingdom and the European Union. Finally, the Commission finds that implementation of the proposed rule change will not substantially affect the rights of members of the Clearing House as a practical matter because the proposed rule change clarifies restrictions that are already imposed on the Clearing House by applicable law in other jurisdictions. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis pursuant to section 19(b)(2) of the Act.

VI. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–ICEEU–2017–002), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.[11]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06242 Filed 3–29–17; 8:45 am]

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[11] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32572; File No. 812–14488]

Transamerica Life Insurance Company, et al.

March 24, 2017.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or ''Act'').

APPLICANTS: Transamerica Life Insurance Company (''TLIC''), Transamerica Financial Life Insurance Company (''TFLIC'') (each a ''Company'' and together, the ''Companies''), Separate Account VA–2L, and Separate Account VA–2LNY (each, an ''Account'' and together, the ''Accounts''). The Companies and the Accounts collectively are referred to herein as the ''Applicants.''

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(c) of the 1940 Act, approving the substitution of shares issued by certain series of Transamerica Series Trust (the ''Replacement Funds'') for shares of certain registered investment companies currently held by sub-accounts of the Accounts (the ''Existing Funds''), to support certain variable annuity contracts (collectively, the ''Contracts'') issued by the Companies.

FILING DATE: The application was filed on June 15, 2015, and was amended on December 8, 2015, July 1, 2016, and November 14, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 18, 2017 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Commission: Secretary, SEC, 100 F Street NE., Washington, DC 20549–1090. Applicants: Alison C. Ryan, Associate General Counsel, Transamerica, 1150 South Olive Street T–27–01, Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations:

1. TLIC is the depositor of Account VA–2L. TFLIC is the depositor of Account VA–2LNY. Each Company is an indirect, wholly-owned subsidiary of AEGON, N.V.

2. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act, and each is registered under the 1940 Act as a unit investment trust. Each Account is divided into sub-accounts, which reflect the investment performance of certain registered investment companies, including Transamerica Series Trust. The Accounts are administered and accounted for as part of the general business of the Companies. The application sets forth the registration statement file numbers for the security interests under the Contracts and the Accounts.

3. The Contracts are individual and group variable annuity contracts. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of a registered open-end management investment company held by a sub-account of an Account.

4. Transamerica Series Trust is an open-end management investment company of the series type that is registered with the Commission under the 1940 Act (File No. 811–04419).[1] Shares of the series are registered under the Securities Act of 1933 (File No. 033–00507) and are sold to the separate accounts of life insurance companies to fund benefits under variable life policies or variable annuity contracts and to certain affiliated asset allocation funds.

5. Transamerica Asset Management, Inc. (''TAM''), an investment adviser that is registered with the Commission, has overall responsibility for the management of each Transamerica Series Trust Replacement Fund. TAM delegates to a sub-adviser the responsibility for day-to-day management of the investments of each Transamerica Series Trust Replacement Fund, subject to TAM's oversight. TAM may, in the future, determine to provide the day-to-day management of any

[1] Effective May 1, 2008, Transamerica Series Trust changed its name from AEGON/Transamerica Series Trust.

Transamerica Series Trust Replacement Fund without the use of a sub-adviser.

6. Applicants propose, as set forth below, to substitute shares of the Replacement Funds for shares of the Existing Funds (''Substitutions'') to fund the Contracts:

Existing fund	Replacement fund
Dreyfus Variable Investment Fund: Appreciation Portfolio (Service Shares).	Transamerica WMC US Growth VP (Service Class).
Dreyfus Variable Investment Fund: Quality Bond Portfolio (Service Shares).	Transamerica JPMorgan Core Bond VP (Service Class).
Dreyfus Investment Portfolios: Core Value Portfolio (Service Shares) ...	Transamerica Barrow Hanley Dividend Focused VP (Initial Class).
The Dreyfus Socially Responsible Growth Fund, Inc. (Service Shares)	Transamerica WMC US Growth VP (Service Class).

7. The Applicants believe that the Replacement Funds have investment objectives, policies and risk profiles, as described in their prospectuses, that are substantially the same as, or sufficiently similar to, the corresponding Existing Funds to make those Replacement Funds appropriate candidates as substitutes. Applicants also state that the investment objectives and investment strategies of each Replacement Fund are similar to the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the Existing Fund, and therefore the fundamental objectives, risk, and performance expectations of those Contract owners with interests in sub-accounts of the Existing Funds will continue to be met after the Substitutions.

8. The investment objectives of each Existing Fund and its corresponding Replacement Fund are set forth below. Additional information for each Existing Fund and Replacement Fund, including principal investment strategies, principal risks, and comparative performance history, can be found in the application.

Existing fund	Replacement fund
Dreyfus Variable Investment Fund: Appreciation Portfolio seeks long-term capital growth consistent with the preservation of capital.	Transamerica WMC US Growth VP seeks to maximize long-term growth.
Dreyfus Variable Investment Fund: Quality Bond Portfolio seeks to maximize total return, consisting of capital appreciation and current income.	Transamerica JPMorgan Core Bond VP seeks total return, consisting of current income and capital appreciation.
Dreyfus Investment Portfolios: Core Value Portfolio seeks long-term growth of capital, with current income as a secondary objective.	Transamerica Barrow Hanley Dividend Focused VP seeks total return gained from the combination of dividend yield, growth of dividends and capital appreciation.
The Dreyfus Socially Responsible Growth Fund, Inc. seeks to provide capital growth, with current income as a secondary goal.	Transamerica WMC US Growth VP seeks to maximize long-term growth.

9. Applicants state that the Substitutions are designed to allow Contract owners to continue their investment in similar or better investment options without interruption and at no additional cost to them. Contract owners with sub-account balances invested through the Accounts in shares of the Replacement Funds will have the same or lower total expense ratios taking into account fund expenses (including Rule 12b–1 fees, if any). With respect to all of the proposed Substitutions, the combined management fee and Rule 12b–1 fees paid by the Replacement Fund are the same or lower than those of the corresponding Existing Fund. The application sets forth the fees and expenses of each Existing Fund and its corresponding Replacement Fund in greater detail.

10. Applicants represent that as of the effective date of the Substitutions (''Effective Date'') shares of the Existing Funds will be redeemed for cash. The Companies, on behalf of each Existing Fund sub-account of each relevant Account, will simultaneously place a redemption request with each Existing Fund and a purchase order with the corresponding Replacement Fund so that the purchase of Replacement Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times.

11. The Substitutions will take place at relative net asset value (in accordance with Rule 22c–1 under the 1940 Act) with no change in the amount of any affected Contract owner's contract value, cash value, accumulation value, account value or death benefit or in dollar value of his or her investment in the applicable Accounts. [2] No brokerage commissions or other fees will be paid by either the Existing Funds or the Replacement Funds or by the affected Contract owners in connection with the Substitutions.

12. The affected Contract owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including brokerage, legal, accounting, and other fees and expenses. The Substitutions will not cause the Contract fees and charges currently being paid by affected Contract owners to be greater after the Substitutions than before the Substitutions. Moreover, the Substitutions will not impose any tax liability on affected Contract owners.

13. As described in the application, after notification of the Substitution and for 30 days after the Effective Date, affected Contract owners may reallocate the sub-account value of an Existing Fund to any other investment option available under their Contract without incurring any transfer charges.

[2] Applicants state that, because the Substitutions will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitutions, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. Applicants also state that what effect the Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Funds and Replacement Funds, which Applicants cannot predict. Nevertheless, Applicants note that at the time of the Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

14. All Contract owners affected by the Substitutions will be notified of this application by means of supplements to the Contract prospectuses at least 30 days prior to the Effective Date. The notice will advise Contract owners that from the date of the notice until the Effective Date, owners are permitted to make one transfer of Contract value out of the Existing Fund sub-account to one or more other sub-accounts without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. Among other information, the notice will inform affected Contract owners that the Companies will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Effective Date.

15. If affected Contract owners reallocate account value during this 60 day period, there will be no charge for the reallocation of accumulated value from the Existing Fund sub-accounts and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. Additionally, all affected Contract owners will be sent prospectuses of the applicable Replacement Funds at least 30 days before the Effective Date.

16. Within five (5) business days after the Effective Date, affected Contract owners will be sent a written confirmation, which will include confirmation that the Substitutions were carried out as previously notified, a restatement of the information set forth in the pre-Substitution notice and values of the Contract owner's position in the Existing Fund before the Substitution and the Replacement Fund after the Substitution.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the Substitutions. Section 26(c) requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Section 26(c) requires the Commission to issue such an order if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the terms and conditions of the Substitutions meet the standards set forth in Section 26(c) and assert that the replacement of an Existing Fund with the corresponding Replacement Fund is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. As described in the application, for a period of two years following the Effective Date, the Companies or their affiliates will reimburse any Contract owner affected by the proposed Substitutions involving Transamerica Series Trust Replacement Funds and whose sub-account invests in the Replacement Fund to the extent a Replacement Fund's net annual operating expenses exceeds the net annual operating expenses of the corresponding Existing Fund. Applicants further assert that each Replacement Fund has similar investment objectives and investment strategies as the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the corresponding Existing Fund. Accordingly, Applicants believe that the fundamental investment objectives, risk and performance expectations of the Contract owners will continue to be met after the Substitutions.

3. Applicants also maintain that it is in the best interests of the Contract owners to substitute the Replacement Fund for its corresponding Existing Fund. Applicants anticipate that the substitution of an Existing Fund with the corresponding Replacement Fund will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products. The rights of affected Contract owners and the obligations of the Companies under the Contracts will not be altered by the Substitutions. Affected Contract owners will not incur any additional tax liability or any additional fees and expenses as a result of the Substitutions.

4. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of an open-end management investment company held by a sub-account of an Account.

5. Applicants also assert that none of the proposed Substitutions is of the type that Section 26(c) was designed to prevent. Unlike a traditional unit investment trust where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer account values into other sub-accounts. Moreover, the Contracts will offer affected Contract owners the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. The Substitution, therefore, will not result in the type of costly forced redemptions that Section 26(c) was designed to prevent. Applicants also maintain that the Substitutions are unlike the type of substitutions which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular registered management open-end investment company in which to invest their account values. They also select the specific type of insurance coverage offered by the Companies under their Contracts as well as other rights and privileges set forth in the Contracts.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The proposed Substitutions will not be effected unless the Companies determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitutions can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Contract owners to effect the Substitutions.

3. The proposed Substitutions will be effected at the relative net asset values of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

4. The proposed Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for affected Contract owners as a result of the Substitutions.

5. The rights or obligations of the Companies under the Contracts of

affected Contract owners will not be altered in any way.

6. Affected Contract owners will be permitted to make at least one transfer of Contract value from the sub-account investing in the Existing Fund (before the Effective Date) or the Replacement Fund (after the Effective Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Company will not exercise any right it may have under the Contract to impose restrictions on transfers between the sub-accounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date.

7. All affected Contract owners will be notified, at least 30 days before the Effective Date about: (a) The intended substitution of Existing Funds with the Replacement Funds; (b) the intended Effective Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Companies will deliver to all affected Contract owners, at least 30 days before the Effective Date, a prospectus for each applicable Replacement Fund.

8. The Companies will deliver to each affected Contract owner within five (5) business days of the Effective Date a written confirmation which will include: (a) A confirmation that the Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the pre-Substitution notice; and (c) values of the Contract owner's positions in the Existing Fund before the Substitution and the Replacement Fund after the Substitution.

9. After the Effective Date the Applicants agree not to change a Replacement Fund's sub- adviser without first obtaining shareholder approval of either (a) the sub-adviser change or (b) the parties' continued ability to rely on their manager-of-managers exemptive order.

10. For two years following the Effective Date the net annual expenses of each Replacement Fund that is a Transamerica Series Trust Fund will not exceed the net annual expenses of the corresponding Existing Fund as of the fund's most recent fiscal year. To achieve this limitation, the Replacement Fund's investment adviser will waive fees or reimburse the Replacement Fund in certain amounts to maintain expenses at or below the limit. Any adjustments will be made at least on a quarterly basis. In addition, the Companies will not increase the Contract fees and charges, including asset based charges such as mortality expense risk charges deducted from the sub-accounts that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Effective Date.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06245 Filed 3–29–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32571; File No. 812–14487]

Transamerica Financial Life Insurance Company, et al.

March 24, 2017.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or ''Act'').

APPLICANTS: Transamerica Financial Life Insurance Company (''TFLIC''), Transamerica Advisors Life Insurance Company (''TALIC'') (each a ''Company'' and together, the ''Companies''), Merrill Lynch Life Variable Annuity Separate Account D, and ML of New York Variable Annuity Separate Account D (each an ''Account'' and together, the ''Accounts''). The Companies and the Accounts collectively are referred to herein as the ''Applicants.''

SUMMARY OF APPLICATION: Applicants seeks an order pursuant to Section 26(c) of the 1940 Act, approving the substitution of shares issued by certain series of Transamerica Series Trust (the ''Replacement Funds'') for shares of certain registered investment companies currently held by sub-accounts of the Accounts (the ''Existing Funds''), to support certain variable annuity contracts (collectively, the ''Contracts'') issued by the Companies.

FILING DATE: The application was filed on June 15, 2015, and amended on December 8, 2015, July 1, 2016, and November 14, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 18, 2017, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Commission: Secretary, SEC, 100 F Street NE., Washington, DC 20549–1090. Applicants: Alison C. Ryan, Associate General Counsel, Transamerica, 1150 South Olive Street, T–27–01, Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. TALIC is the depositor of Merrill Lynch Variable Annuity Separate Account D. TFLIC is the depositor of ML of New York Variable Annuity Separate Account D. Each Company is an indirect wholly-owned subsidiary of AEGON N.V.

2. Each Account is a ''separate account'' as defined by rule 0–1(e) under the 1940 Act and each is registered under the 1940 Act as a unit investment trust. Each Account is divided into sub-accounts, which reflect the investment performance of certain registered investment companies, including Transamerica Series Trust. The Accounts are administered and accounted for as part of the general business of the Companies. The application sets forth the registration statement file numbers for the security interests under the Contracts and the Accounts.

3. The Contracts are individual and group variable annuity contracts. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of a registered open-end management investment company held by a sub-account of an Account.

4. Transamerica Series Trust is an open-end management investment company of the series type that is registered with the Commission under the 1940 Act (File No. 811–04419).[1] Shares of the series are registered under the Securities Act of 1933 (File No. 033–00507) and are sold to the separate accounts of life insurance companies to fund benefits under variable life policies or variable annuity contracts and to certain affiliated asset allocation funds.

5. Transamerica Asset Management, Inc. (''TAM''), an investment adviser that is registered with the Commission, has overall responsibility for the management of each Transamerica Series Trust Replacement Fund. TAM delegates to a sub-adviser the responsibility for day-to-day management of the investments of each Transamerica Series Trust Replacement Fund, subject to TAM's oversight. TAM may, in the future, determine to provide the day-to-day management of any Transamerica Series Trust Replacement Fund without the use of a sub-adviser.

6. Applicants propose, as set forth below, to substitute shares of the Replacement Funds for shares of the Existing Funds (''Substitutions'') to fund the Contracts:

Existing fund	Replacement fund
AllianzGI NFJ Mid-Cap Value Fund (A)	Transamerica JPMorgan Mid Cap Value VP (Service Class).
American Century Equity Income Fund (A)	Transamerica Barrow Hanley Dividend Focused VP (Service Class).
American Century Ultra Fund (A)	Transamerica Jennison Growth VP (Service Class).
Columbia Acorn USA (A)	Transamerica T. Rowe Price Small Cap VP (Service Class).
Columbia Acorn International (A)	Transamerica MFS International Equity VP (Initial Class).
Pioneer Emerging Markets Fund (A)	Transamerica TS&W International Equity VP (Service Class).
Templeton Foreign Fund (A)	Transamerica MFS International Equity VP (Initial Class).
Columbia Large Cap Growth Fund V (formerly known as Columbia Marsico Growth Fund) (A).	Transamerica WMC US Growth VP (Service Class).

7. The Applicants believe that the Replacement Funds have investment objectives, policies and risk profiles, as described in their prospectuses, that are substantially the same as, or sufficiently similar to, the corresponding Existing Funds to make those Replacement Funds appropriate candidates as substitutes. Applicants also state that the investment objectives and investment strategies of each Replacement Fund are similar to the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the Existing Fund and therefore the fundamental objectives, risk and performance expectations of those Contract owners with interests in sub-accounts of the Existing Funds will continue to be met after the Substitutions.

8. The investment objectives of each Existing Fund and its corresponding Replacement Fund are set forth below. Additional information for each Existing Fund and Replacement Fund, including principal investment strategies, principal risks and comparative performance history, can be found in the application.

Existing fund	Replacement fund
AllianzGI NFJ Mid-Cap Value Fund seeks long-term growth of capital and income.	Transamerica JPMorgan Mid Cap Value seeks growth from capital appreciation.
American Century Equity Income Fund seeks current income. Capital appreciation is a secondary objective.	Transamerica Barrow Hanley Dividend Focused VP Seeks total return gained from the combination of dividend yield, growth of dividends and capital appreciation.
American Century Ultra Fund seeks long-term growth of capital	Transamerica Jennison Growth VP seeks long-term growth of capital.
Columbia Acorn USA seeks long-term capital appreciation	Transamerica T. Rowe Price Small Cap VP seeks long-term growth of capital by investing primarily in common stocks of small growth companies.
Columbia Acorn International seeks long term capital appreciation	Transamerica MFS International Equity VP seeks capital growth.
Pioneer Emerging Markets Fund seeks long term growth of capital	Transamerica TS&W International Equity VP seeks maximum long-term total return, consistent with reasonable risk to principal, by investing in a diversified portfolio of common stocks of primarily non-U.S. issuers.
Templeton Foreign Fund seeks long-term capital growth	Transamerica MFS International Equity VP seeks capital growth.
Columbia Large Cap Growth Fund V seeks long-term growth of capital	Transamerica WMC US Growth VP seeks to maximize long-term growth.

9. Applicants state that the Substitutions are designed to allow Contract owners to continue their investment in similar or better investment options without interruption and at no additional cost to them. Contract owners with sub-account balances invested through the Accounts in shares of the Replacement Funds will have the same or lower total expense ratios taking into account fund expenses (including Rule 12b–1 fees, if any). With respect to all of the proposed Substitutions, the combined management fee and Rule 12b–1 fees

[1] Effective May 1, 2008, Transamerica Series Trust changed its name from AEGON/Transamerica Series Trust.

paid by the Replacement Fund are the same or lower than those of the corresponding Existing Fund. The application sets forth the fees and expenses of each Existing Fund and its corresponding Replacement Fund in greater detail.

10. Applicants represent that as of the effective date of the Substitutions (''Effective Date'') shares of the Existing Funds will be redeemed for cash. The Companies, on behalf of each Existing Fund sub-account of each relevant Account, will simultaneously place a redemption request with each Existing Fund and a purchase order with the corresponding Replacement Fund so that the purchase of Replacement Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times.

11. The Substitutions will take place at relative net asset value (in accordance with Rule 22c–1 under the 1940 Act) with no change in the amount of any affected Contract owner's contract value, cash value, accumulation value, account value or death benefit or in dollar value of his or her investment in the applicable Accounts.[2] No brokerage commissions or other fees will be paid by either the Existing Funds or the Replacement Funds or by the affected Contract owners in connection with the Substitutions.

12. The affected Contract owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including brokerage, legal, accounting, and other fees and expenses. The Substitutions will not cause the Contract fees and charges currently being paid by affected Contract owners to be greater after the Substitutions than before the Substitutions. Moreover, the Substitutions will not impose any tax liability on affected Contract owners.

13. As described in the application, after notification of the Substitution and for 30 days after the Effective Date, affected Contract owners may reallocate the sub-account value of an Existing Fund to any other investment option available under their Contract without incurring any transfer charges.

14. All Contract owners affected by the Substitutions will be notified of this application by means of supplements to the Contract prospectuses at least 30 days prior to the Effective Date. The notice will advise Contract owners that from the date of the notice until the Effective Date, owners are permitted to make one transfer of Contract value out of the Existing Fund sub-account to one or more other sub-accounts without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. Among other information, the notice will inform affected Contract owners that the Companies will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Effective Date.

15. If affected Contract owners reallocate account value during this 60 day period, there will be no charge for the reallocation of accumulated value from the Existing Fund sub-accounts and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. Additionally, all affected Contract owners will be sent prospectuses of the applicable Replacement Funds at least 30 days before the Effective Date.

16. Within five (5) business days after the Effective Date, affected Contract owners will be sent a written confirmation, which will include confirmation that the Substitutions were carried out as previously notified, a restatement of the information set forth in the pre-Substitution notice and values of the Contract owner's position in the Existing Fund before the Substitution and the Replacement Fund after the Substitution.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the Substitutions. Section 26(c) requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Section 26(c) requires the Commission to issue such an order if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the terms and conditions of the Substitutions meet the standards set forth in Section 26(c) and assert that the replacement of an Existing Fund with the corresponding Replacement Fund is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the l940 Act. As described in the application, for a period of two years following the Effective Date, the Companies or their affiliates will reimburse any Contract owner affected by the proposed Substitutions involving Transamerica Series Trust Replacement Funds and whose sub-account invests in the Replacement Fund to the extent a Replacement Fund's net annual operating expenses exceeds the net annual operating expenses of the corresponding Existing Fund. Applicants further assert that each Replacement Fund has similar investment objectives and investment strategies as the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the corresponding Existing Fund. Accordingly, Applicants believe that the fundamental investment objectives, risk and performance expectations of the Contract owners will continue to be met after the Substitutions.

3. Applicants also maintain that it is in the best interests of the Contract owners to substitute the Replacement Fund for its corresponding Existing Fund. Applicants anticipate that the substitution of an Existing Fund with the corresponding Replacement Fund will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products. The rights of affected Contract Owners and the obligations of the Companies under the Contracts will not be altered by the Substitutions. Affected Contract owners will not incur any additional tax liability or any additional fees and expenses as a result of the Substitutions.

4. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of an open-end management investment company held by a sub-account of an Account.

5. Applicants also assert that none of the proposed Substitutions is of the type that Section 26(c) was designed to prevent. Unlike a traditional unit investment trust where a depositor could only substitute an investment

[2] Applicants state that, because the Substitutions will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitutions, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. Applicants also state that what effect the Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Funds and Replacement Funds, which Applicants cannot predict. Nevertheless, Applicants note that at the time of the Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer account values into other sub-accounts. Moreover, the Contracts will offer affected Contract owners the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. The Substitution, therefore, will not result in the type of costly forced redemptions that Section 26(c) was designed to prevent. Applicants also maintain that the Substitutions are unlike the type of substitutions which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular registered management open-end investment company in which to invest their account values. They also select the specific type of insurance coverage offered by the Companies under their Contracts as well as other rights and privileges set forth in the Contracts.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The proposed Substitutions will not be effected unless the Companies determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitutions can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Contract owners to effect the Substitutions.

3. The proposed Substitutions will be effected at the relative net asset values of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

4. The proposed Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for affected Contract owners as a result of the Substitutions.

5. The rights or obligations of the Companies under the Contracts of affected Contract owners will not be altered in any way.

6. Affected Contract owners will be permitted to make at least one transfer of Contract value from the sub-account investing in the Existing Fund (before the Effective Date) or the Replacement Fund (after the Effective Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Company will not exercise any right it may have under the Contract to impose restrictions on transfers between the sub-accounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date.

7. All affected Contract owners will be notified, at least 30 days before the Effective Date about: (a) The intended substitution of Existing Funds with the Replacement Funds; (b) the intended Effective Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Companies will deliver to all affected Contract owners, at least 30 days before the Effective Date, a prospectus for each applicable Replacement Fund.

8. The Companies will deliver to each affected Contract owner within five (5) business days of the Effective Date a written confirmation which will include: (a) A confirmation that the Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the pre-Substitution notice; and (c) values of the Contract owner's positions in the Existing Fund before the Substitution and the Replacement Fund after the Substitution.

9. After the Effective Date the Applicants agree not to change a Replacement Fund's sub- adviser without first obtaining shareholder approval of either (a) the sub-adviser change or (b) the parties' continued ability to rely on their manager-of-managers exemptive order.

10. For two years following the Effective Date the net annual expenses of each Replacement Fund that is a Transamerica Series Trust Fund will not exceed the net annual expenses of the corresponding Existing Fund as of the fund's most recent fiscal year. To achieve this limitation, the Replacement Fund's investment adviser will waive fees or reimburse the Replacement Fund in certain amounts to maintain expenses at or below the limit. Any adjustments will be made at least on a quarterly basis. In addition, the Companies will not increase the Contract fees and charges, including asset based charges such as mortality expense risk charges deducted from the sub-accounts that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Effective Date.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06244 Filed 3–29–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80311; File No. SR–NYSE–2016–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Partial Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4, To Amend the Co-Location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

March 24, 2017.

I. Introduction

On July 29, 2016, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the co-location services offered by the Exchange to add certain access and connectivity fees, applicable to Users [3] in the Exchange's data center in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC (''NYSE MKT'') and NYSE Arca, Inc. (''NYSE Arca''). *See*

Continued

Mahwah, NJ (''Data Center''). The Exchange proposed to: (1) Provide additional information regarding access to the trading and execution systems of the Exchange and its affiliated SROs, and establish fees for connectivity to certain NYSE, NYSE Arca, and NYSE MKT market data feeds; and (2) provide and establish fees for connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds''); access to the trading and execution services of Third Party markets and other content service providers (''Third Party Systems''); connectivity to Depository Trust & Clearing Corporation (''DTCC'') services; connectivity to third party testing and certification feeds; and the use of virtual control circuits (''VCCs'').

The Commission published the proposed rule change for comment in the **Federal Register** on August 17, 2016.[4] On August 16, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which was published for comment in the **Federal Register** on September 26, 2016.[5] The Commission received one comment letter in response to the proposed rule change, as modified by Amendment No. 1, to which the Exchange responded on September 23, 2016.[6] On October 4, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 15, 2016.[7]

On November 2, 2016, the Exchange filed partial Amendment No. 2 to the proposed rule change.[8] On November 21, 2016, the Commission instituted proceedings (''Order Instituting Proceedings'' or ''OIP'') to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[9] The proposed rule change, as modified by Amendment Nos. 1 and 2, is referred to as the ''Prior Proposal.''

On December 9, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.[10] Amendment No. 3, which superseded and replaced the Prior Proposal in its entirety, was published for comment in the **Federal Register** on December 29, 2016.[11]

The Commission received seven additional comment letters following publication of the Order Instituting Proceedings.[12] Some of these comment letters addressed only the Prior Proposal, and some addressed the Prior Proposal, as modified by Amendment No. 3. The Exchange responded to the comment letters submitted after the OIP in letters dated January 17, 2017 and February 13, 2017.[13]

On February 7, 2017, the Exchange filed partial Amendment No. 4 to the proposed rule change.[14] On February 15, 2017, pursuant to Section 19(b)(2) of the Act,[15] the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment Nos. 1 through 4.[16] The Commission is publishing this notice to solicit comment on partial Amendment No. 4 and, and is approving the proposed rule change, as modified by Amendment Nos. 1 through 4, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4

A. Background: Prior Proposal and the Order Instituting Proceedings

In the proposed rule change, as modified by Amendment Nos. 1 through 4 (also referred to as the ''Current Proposal''), the Exchange proposes to amend the co-location services offered by the Exchange to add certain access and connectivity services and establish fees applicable to Users in the Data Center. Specifically, the Exchange proposes to provide and establish fees for connectivity to: (i) Third Party Data Feeds, (ii) Third Party Systems, (iii) DTCC services, (iv) third party testing and certification feeds; and for the use of VCCs.[17]

Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[4] *See* Securities Exchange Act Release No. 34–78556 (August 11, 2016), 81 FR 54877.

[5] *See* Securities Exchange Act Release No. 34–78887 (September 20, 2016), 81 FR 66095. (''First Amended Notice'').

Amendment No. 1 superseded and replaced the proposed rule change in its entirety, but notably: (i) Amended the third party data feed MSCI from 20 Gigabits (''Gb'') to 25 Gb and amended the price from $2000 to $1200; (ii) clarified the costs associated with providing a greater amount of bandwidth for Premium NYSE Data Products for a particular market as compared to the bandwidth requirements for the Included Data Products for that same market; (iii) provided further details on Premium NYSE Data Products, including their composition, product release dates, and further detail on the reasonableness of their applicable fees; (iv) added an explanation for the varying fee differences for the same Gb usage for third party data feeds, DTCC, and VCCs.

[6] *See* letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX I Letter''), dated September 9, 2016.

Responding to the IEX I Letter, *see* letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated September 23, 2016 (''Response Letter I''), available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-3.pdf.*

[7] *See* Securities Exchange Act Release No. 34–78966 (September 28, 2016), 81 FR 68475.

[8] In partial Amendment No. 2 the Exchange addressed (1) the benefits offered by the Premium NYSE Data Products that are not present in the Included Data Products (2) how Premium NYSE Data Products are related to the purpose of co-location, (3) the similarity of charging for connectivity to Third Party Systems and DTCC and charging for connectivity to Premium NYSE Data Products and (4) the costs incurred by the Exchange in providing connectivity to Premium NYSE Data Products to Users in the Data Center. Amendment No. 2 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-4.pdf.*

[9] *See* Securities Exchange Act Release 34–79316 (November 15, 2016), 81 FR 83303.

[10] Amendment No. 3, as filed by the Exchange, is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-5.pdf.*

[11] *See* Securities Exchange Act Release No. 34–79674 (December 22, 2016), 81 FR 96053 (''Notice of Amendment No. 3'').

[12] *See* letter to Brent J. Fields, Commission, from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated December 12, 2016 (''Citadel Letter''); letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated December 12, 2016 (''SIFMA I Letter''); letter to Brent J. Fields, Commission, from Joe Wald, Chief Executive Officer, Clearpool Group, dated December 16, 2016 (''Clearpool Letter''); letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, dated December 21, 2016 (''IEX II Letter''); letter to Brent J. Fields, Commission, from David L. Cavicke, Chief Legal Officer, Wolverine LLC (''Wolverine Letter''); letter to Bent J. Fields, Secretary, Commission, from Stefano Durdic, Managing Director, R2G Services, LLC, dated January 21, 2017 (''R2G Letter''); letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated February 6, 2017 (''SIFMA II Letter''). All comments received by the Commission on the proposed rule change are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645.shtml.*

[13] *See* letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated January 17, 2017; letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated February 13, 2017 (''Response Letter II'' and ''Response Letter III,'' respectively), available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645.shtml.*

[14] In partial Amendment No. 4 the Exchange proposes to (1) remove reference to the National Stock Exchange from its list of Third Party Systems, and (2) provide and establish fees for connectivity to three additional Third Party Data Feeds—ICE Data Services Consolidated Feed, ICE Data Services PRD, and ICE Data Services PRD CEP, which are feeds owned by the Exchange's ultimate parent, but not by the Exchange or its affiliated self-regulatory organizations, NYSE MKT or NYSE Arca. Partial Amendment No. 4 is available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-5.pdf.*

[15] 15 U.S.C. 78s(b)(2).

[16] *See* Securities Exchange Act Release No. 34–80002 (February 9, 2017), 82 FR 10827. The Commission designated April 14, 2017 as the date by which it should determine whether to disapprove the proposed rule change.

[17] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96054, and partial Amendment No. 4 *supra* note 14. A VCC is a unicast connection between two

In the Prior Proposal (*i.e.,* prior to filing Amendment No. 3), the Exchange also had proposed to provide additional information about access to NYSE, NYSE Arca, and NYSE MKT trading and execution services, and to establish fees for connectivity to certain proprietary market data feeds.[18] Specifically, the Exchange had proposed that connectivity to most of the Exchange's and its affiliated SROs' proprietary market data products would be included in the purchase price of an LCN/IP network connection in the Data Center, but that an additional connectivity fee (''Premium NYSE Product Connectivity Fee'') would apply to the NYSE Integrated Feed, NYSE Arca Integrated Feed, NYSE MKT Integrated Feed, and the NYSE Best Quote and Trades (BQT) feed (''Premium NYSE Data Products'').[19] As a result, the purchase of access to NYSE, NYSE Arca, and NYSE MKT trading and execution services, would not include connectivity to every purchased proprietary data product; and whereas the Exchange would charge no additional fees for connectivity to most of the Exchange's and its affiliated SROs' data products, it would charge additional fees for connectivity to Premium NYSE Data Products.

The Commission specifically requested comment on this aspect of the Prior Proposal in the OIP. In particular, in the OIP, the Commission expressed concern that the Exchange had not identified a distinction between the provision of connectivity to Premium NYSE Data Products and the Exchange's and its affiliated SROs' other data products, and noted that the Premium NYSE Data Products are similar to such other data products.[20] In addition, the Commission requested comment on whether charging fees for connectivity to Premium NYSE Data Products in a different manner from other Exchange and affiliated SRO proprietary market data products was consistent with Section 6(b)(4) of the Act.[21] The Commission also sought comment on whether Users would have viable alternatives to paying the Exchange a connectivity fee for the Premium NYSE Data Products.[22] As discussed below, several commenters stated that it was inequitable for the Exchange to charge a separate and additional connectivity fee for some Exchange and affiliated SRO proprietary market data products and not others, and that receiving the Premium NYSE Data Products from an alternative source was not a viable option.[23]

In Amendment No. 3, the Exchange eliminated the Premium NYSE Product Connectivity Fee from the Current Proposal, and that fee is therefore no longer presented to the Commission for consideration.

B. Description of the Current Proposal

As stated above and more fully described in the Notice of Amendment No. 3, as partially modified by Amendment No. 4, the Exchange proposes to provide and establish fees for connectivity to: (i) Third Party Data Feeds, (ii) Third Party Systems, (iii) DTCC services, (iv) third party testing and certification feeds; and for the use of VCCs.[24]

Regarding Third Party Data Feeds, the Exchange proposes to offer Users the option to connect to Third Party Data Feeds in the Data Center for a monthly connectivity fee per feed.[25] The Exchange states that it receives Third Party Data Feeds in the Data Center from multiple national securities exchanges and other content service providers which it then provides to requesting Users for a fee.[26] The Exchange states that its proposal to charge Users a monthly fee for connectivity to Third Party Data Feeds is consistent with the monthly connectivity fee Nasdaq charges its co-location customers for connectivity to third party data.[27] According to the Exchange, the proposed fees ''allow the Exchange to defray or cover the costs associated with offering Users connectivity to Third Party Data Feeds while providing Users the convenience of receiving such Third Party Data Feeds within co-location.'' [28] Additionally, the Exchange noted that some of the proposed fees vary depending on the bandwidth considerations and, in cases where the bandwidth requirements are the same as other proposed services such as Third Party Systems or VCCs, the prices reflect ''the competitive considerations and the costs the Exchange incurs in providing such connections.'' [29]

To connect to a Third Party Data Feed, a User must enter into a contract with the relevant third party market or content service provider, under which the third party market or content service provider charges the User for the data feed.[30] The Exchange receives these Third Party Data Feeds over its fiber optic network and, after the data provider and User enter into a contract and the Exchange receives authorization from the data provider, the Exchange re-transmits the data to the User's port.[31] Users only receive, and are only charged for, the feed(s) for which they have entered into contracts.[32] Additionally, the Exchange notes that Third Party Data Feeds do not provide access or order entry to its execution system or access to the execution system of the third party generating the feed.[33] The Exchange proposes to charge a set monthly recurring connectivity fee per Third Party Data Feed, as set forth in the proposed Price List.[34] A User is free to receive all or some of the feeds included in the Price List.[35] The Exchange notes that Third Party Data Feed providers may charge redistribution fees, such as Nasdaq's Extranet Access Fees and OTC Markets Group's Access Fees, which the Exchange will pass through to the User in addition to charging the applicable connectivity fee.[36]

The Exchange represents that ''as alternatives to using the [proposed connectivity to Third Party Data Feeds] provided by the Exchange, a User may access or connect to such . . . products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection

Users over dedicated bandwidth using the IP network. *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96057.

[18] For a detailed description of the Prior Proposal, *see* the First Amended Notice, *supra* note 5, and the OIP, discussing Amendment No. 2, *supra* note 9.

[19] *See* the First Amended Notice, *supra* note 5, and the OIP, discussing Amendment No. 2, *supra* note 9.

[20] *See* OIP, *supra* note 9, 81 FR at 83308.

[21] *See id.*

[22] *See id.* at 83307.

[23] *See infra* notes 70–72 and accompanying text.

[24] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96054 and partial Amendment No. 4 *supra* note 14.

[25] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96055.

[26] *See id.*

[27] *See id.* The Exchange notes that Nasdaq charges monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS data feeds, respectively, and of $2,500 for connectivity to EDGA or EDGX. *See id.*

[28] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96059; partial Amendment No. 4, *supra* note 14.

[29] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96059; partial Amendment No. 4, *supra* note 14.

[30] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96055.

[31] *See id.*

[32] *See id.*

[33] *See id.* at 96056. The Exchange notes that there is one exception to this for the ICE feeds which include both market data and trading and clearing services. In order to receive the ICE feeds, a User must receive authorization from ICE to receive both market data and trading and clearing services. *See id.*

[34] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96056, as modified by partial Amendment No. 4, *supra* note 14 (adding additional Third Party Data Feeds).

[35] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96056.

[36] *See id.*

through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.'' [37]

As more fully described in the Notice of Amendment No. 3, as modified by partial Amendment No. 4, the Exchange also proposes to provide and establish fees for connectivity (also referred to as ''Access'') to Third Party Systems,[38] to DTCC services,[39] and to third party certification and testing feeds, and charge a monthly recurring fee.[40] The Exchange proposes to amend the Price List to provide and establish fees for connectivity to these service providers and certification/testing feeds.[41] The Exchange states that connectivity is dependent on a User meeting the necessary technical requirements, paying the applicable fees, and the Exchange receiving authorization from the relevant third party service provider to make the connection.[42]

For each service, a User must execute a contract with the respective third party service provider pursuant to which a User pays each the associated fee(s) for their services.[43] Once the Exchange receives authorization from the third party service provider, the Exchange will enable a User to connect to the service provider and/or third party certification and testing feed(s) over the IP Network.[44] The proposed recurring monthly fees for connectivity to Third Party Systems and DTCC are based upon the bandwidth requirements per system.[45]

The Exchange represents that as alternatives to using the proposed connectivity to Third Party Systems, to DTCC services, and to third party certification and testing feeds offered by the Exchange, ''a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.'' [46]

Finally, as more fully described in the Notice of Amendment No. 3, as partially modified by partial Amendment No. 4, the Exchange also proposes to provide and establish fees for VCCs.[47] A VCC (previously called a ''peer to peer'' connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth using the IP network to be used for any purpose.[48] The proposed recurring monthly fees for VCCs are based upon the bandwidth requirements per VCC connection between two Users.[49] Connectivity to VCCs will similarly require permission from the other User before the Exchange will establish the connection.[50] As an alternative to using a VCC, Users can connect to other Users through a cross-connect.[51]

The Exchange states in reference to all of the proposed services that in adding the fees it seeks to defray or cover its costs in providing these voluntary services to Users, and that in order to provide these services it must, among other things, provide, maintain and operate the data center facility hardware and technology infrastructure; and handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues.[52] The Exchange also states that the fees charged for co-location services are constrained by the active competition for the order flow and other business from such market participants,[53] and that charging excessive fees would make it stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms.[54] Additionally, the Exchange states that Users have alternatives if they believe the fees are excessive.[55] Specifically, the Exchange notes that a User could terminate its co-location arrangement with the Exchange ''and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's [D]ata [C]enter (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with colocation.'' [56]

III. Summary of Comments Received and Exchange Responses

The Commission received eight comment letters from six commenters on the proposed rule change, as modified by Amendment Nos. 1 through 4.[57] The Exchange submitted three letters in response to the comments.[58]

A. Comment Submitted Prior to the OIP

The Commission received one comment letter prior to publication of the OIP.[59] The initial commenter requested that the Exchange provide additional information on the history of all of the proposed fees (which the commenter believed were already in effect), and the relationship between the fees and the Exchange's costs to maintain the Data Center and provide co-location services.[60] The commenter urged ''additive transparency'' to enable members to evaluate the fixed costs of exchange membership and whether fees were applied equitably.[61] This commenter also stated that broker-dealers ''may be practically required to buy and consume proprietary market data feeds directly from exchanges in order to provide competitive products for those clients, and that the trading environment ''imposes a form of trading tax on all members by offering different

[37] *See id.* at 96058.

[38] The Exchange states that it selects what connectivity to Third Party Systems to offer in the Data Center based on User demand. *See id.* at 96055. In partial Amendment No. 4, the Exchange removed the National Stock Exchange from the list of Third Party Systems, noting that it is now owned by the Exchange's parent. *See* partial Amendment No. 4, *supra* note 14. Establishing a User's access to a Third Party System does not give the Exchange any right to use the Third Party Systems; connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and a User's connection to a Third Party System is not through the Exchange's execution system. *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96055.

[39] The Exchange states that connectivity to DTCC ''is distinct from the access to shared data services for clearing and settlement services that a User receives when it purchases access to the LCN or IP network. The shared data services allow Users and other entities with access to the Trading Systems to post files for settlement and clearing services to access.'' *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96056 n. 25.

[40] Certification feeds certify that a User conforms to any of the relevant content service providers' requirements for accessing Third Party Systems or receiving Third Party Data, whereas testing feeds provide Users an environment in which to conduct system tests with non-live data. *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96056.

[41] *See* Notice of Amendment No. 3, *supra* note 11, 81 FR at 96055–96057.

[42] *See id.*

[43] *See id.*

[44] *See id.* For Third Party Systems, once the Exchange receives the authorization from the respective third party it establishes a unicast connection between the User and the relevant third party over the IP network. *See id.* at 96055. For the DTCC, ''[t]he Exchange receives the DTCC feed over its fiber optic network and, after DTCC and the User enter into the services contract and the Exchange receives authorization from DTCC, the Exchange provides connectivity to DTCC to the User over the User's IP network port.'' *See id.* at 96056–96057.

[45] *See id.* at 96055–96057.

[46] *See id.* at 96058.

[47] *See id.* at 96057.

[48] *See id.*

[49] *See id.*

[50] *See id.*

[51] *See id.* at 96058.

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See id.*

[57] *See supra* notes 6 and 12. In addition, one commenter noted that it filed a denial of access petition on the proposal. *See* SIFMA I Letter at 1 and SIFMA II Letter at 3.

[58] *See* Response Letters I, II, and III, *supra* notes 6 and 13.

[59] *See* IEX I Letter, *supra* note 6.

[60] *See id.* at 1–2.

[61] *See id.*

methods of access to different members.'' [62] The commenter questioned whether ''there are any true alternatives that are practically available to various types of participants who are seeking to compete with those who are paying exchanges for co-location and data services,'' and urged that the Exchange provide information and analysis on how its ability to set co-location fees is constrained by market forces for a ''comparable product.'' [63]

In response, the Exchange replied that historical information about the development of its product offerings is ''not required by the Act and is not relevant to [ ] the substance of the Proposal—which is, by definition, forward looking . . . .'' [64] The Exchange added that costs are not its only consideration in setting prices, but rather that prices ''include the competitive landscape; whether Users would be required to utilize a given service; the alternatives available to Users; and, significantly, the benefits Users obtain from the services.'' [65] In response to the commenter's argument regarding different methods of access to trading, the Exchange stated that ''it is a vendor of fair and non-discriminatory access, and like any vendor with multiple product offerings, different purchasers may make different choices regarding which products they wish to purchase.'' [66] The Exchange further stated that co-location fees are not fixed costs to members, but costs to any User who voluntarily chooses to purchase such services based upon ''[t]he form and latency of access and connectivity that bests suits a User's needs.'' [67] The Exchange added that Users do not require the Exchange's access or connectivity offerings in co-location to trade on the Exchange and can instead use alternative access and connectivity options for trading if they choose.[68]

B. Comments Following Publication of the OIP

(i) Comments on the Premium NYSE Product Connectivity Fee and Cumulative Fees Generally

As noted above, the Commission specifically requested comment on the Premium NYSE Product Connectivity Fee in the OIP.[69] In response, some commenters objected to the establishment of a separate connectivity fee for Premium NYSE Data Products as duplicative of fees already charged for bandwidth and access to the market data product itself, and therefore that this fee would result in an inequitable allocation of fees, inconsistent with Section 6(b)(4) of the Act.[70] Another commenter similarly objected to an additional connectivity/bandwidth charge for each Premium NYSE Data Product as an example of ''double dipping,'' and a fee having ''no merit'' on its own.[71] Additionally, some commenters objected to the reasonableness of the proposed Premium NYSE Product Connectivity Fee on the basis that there was no viable alternative to paying the fee to obtain connectivity to the Premium NYSE Data Products.[72]

In response to comments on the Premium NYSE Product Connectivity Fee, the Exchange noted that it was no longer proposing that fee and that the questions posed in the OIP about that fee were moot.[73]

Some commenters opposed to the Premium NYSE Product Connectivity Fee also expressed broader concern about ''layered'' and cumulative fees charged by the Exchange to access market data.[74] Some of these commenters believe that the rising costs related to the receipt of market data in co-location over time effectively impose a barrier to entry for smaller broker-dealers and new entrants, and are a burden on competition.[75] For example, Wolverine stated that it has an aggregate cost of ''$123,750 per month of fixed costs in co-location, port, and access fees today, solely for access to NYSE controlled markets,'' which is ''an amount which presents a steep barrier to entry for new participants.'' [76] Wolverine also estimated that its NYSE market data costs have increased ''over 700% over 8 years.'' [77] Citadel similarly stated that ''additive and layered fees are a persistent problem with exchange fees more generally,'' and urged scrutiny of the aggregate impact of fees, ''in particular with respect to market data products where exchanges have a monopoly as the initial distributors.'' [78]

Clearpool stated, among other things, that market participants are beholden to the exchanges for market data; that it is not feasible for broker-dealers with best execution obligations to rely on SIP data as an alternative to exchange proprietary data feeds; and that the role and cost of using SIP and proprietary feeds should be considered in connection with Commission proposals to improve Regulation NMS Rules 605 and 606 reporting.[79] Clearpool advocated for the Commission to ''thoroughly review the issues around market data'' and to ensure that it is priced more competitively and equitably for all market participants.[80] Clearpool also stated that high costs prevent new innovative technology services, including order routing, risk management, and transaction cost analysis services, from entering the market, and further, that increasing fees significantly reduce the margin that smaller broker-dealers can earn on a transaction, putting them at a disadvantage to larger firms that can absorb these costs.[81]

In response to these comments, the Exchange challenged Wolverine's assessment that Exchange fees have increased by 700% over the past eight years, explaining that it was a mischaracterization and did not represent a true comparison of the fees paid for particular data feeds in 2008 as compared to fees paid for those specific feeds today.[82] The Exchange also rejected Wolverine's argument that all of its costs–including the optional cage surrounding its cabinets, power, cross connects, network ports and connectivity—should be treated as costs related to market access.[83] The Exchange stated, that ''however self-servingly [Wolverine] tries to characterize them, these listed costs,

[62] *See id.* at 2.

[63] *See id.*

[64] *See* Response Letter I, *supra* note 6, at 3.

[65] *See id.*

[66] *See id.* at 5.

[67] *See id.* at 4.

[68] *See id.*

[69] *See* OIP, *supra* note 9 and Section II.A. *supra.*

[70] *See* Citadel Letter at 2; Clearpool Letter at 4.

[71] *See* Wolverine Letter at 3. *See also* Citadel Letter at 2; R2G Letter at 3 (each expressing concern about cumulative fees).

[72] *See* Citadel Letter at 3 (''there is no readily available substitute or equivalent means of access to the Premium NYSE Data Products''); Wolverine Letter at 3 (objecting to the statement ''the Exchange is not the exclusive method to connect to Premium NYSE Data Products'' noting that it is ''misleading at best.''). *See also* R2G Letter at 1–2 (stating, its view that the Prior Proposal ''raises serious concerns'' under the Exchange Act, but that ''Amendment No. 3 adequately addresses the original concerns,'' and adding that it would, however, object if the Exchange similarly sought to apply the logic of Amendment No. 3 regarding Third Party Systems to any ''NYSE Proprietary Product'').

[73] *See* Response Letter II at 4, 7–8. The Exchange also stated, as discussed further below, that it did not agree with commenters suggesting that a connectivity fee is indistinguishable from a market data fee.

[74] *See* Wolverine Letter at 1–3; Clearpool Letter at 3; Citadel Letter at 3; R2G Letter 1, 3–6.

[75] *See* Wolverine Letter at 1–3; Clearpool Letter at 3; Citadel Letter at 3.

[76] *See* Wolverine Letter at 3.

[77] *See id.* at 1 (also objecting to port and other charges (outside the scope of the Current Proposal) as unreasonable); *see also* R2G Letter at 3 (expressing agreement with Wolverine).

[78] *See* Citadel Letter at 2.

[79] *See* Clearpool Letter at 2–4.

[80] *See id.* at 1, 4.

[81] *See id.* at 3.

[82] *See* Response Letter II at 10 and n. 27.

[83] *See id.* at 10.

like rent and employee compensation and benefits, are simply costs associated with Wolverine's business activities. These business activities and Wolverine's business judgment—not the Exchange—determine the most effective way for Wolverine to select the products and services it uses.'' [84]

Regarding comments about market data and co-location fees more generally, the Exchange responded that a User that chooses to receive market data within co-location will incur several costs in addition to the cost a market data provider will charge for its data, including the costs associated with the LCN or IP network port, power, cross connects, and connectivity, but the need for equipment and connections to enable receipt of a market data feed within co-location does not convert the costs of such equipment and connections into market data fees.[85] The Exchange also stated that some commenters were using the Prior Proposal as a ''departure point to discuss broader issues related to market data.'' [86] The Exchange catalogued comments about exchange fees for proprietary market data products, the effect of Commission proposals to improve disclosure of order execution and order routing information under Rules 605 and 606 of Regulation NMS, and the payment of rebates for posted liquidity as comments beyond the scope of the Current Proposal, as well as the fees any one exchange might propose.[87]

The Exchange also stated that market participants are not required to co-locate with or subscribe to proprietary market data products from an exchange, emphasizing that firms using exchange market data products in co-location ''have chosen to build business models based on speed.'' [88]

(ii) Comments Regarding Competition and Alternatives to the Proposed Co-Location Services

Some commenters addressing both the Prior Proposal and Amendment No. 3 suggested that co-location services in general are not optional.[89] In the context of whether the Current Proposal's connectivity fees are reasonable, some of these commenters argued that there is a lack of competition for the Exchange's co-location and data services generally, and suggested a lack of viable alternatives to the Current Proposal's proposed connectivity services and fees in particular.[90] For instance, SIFMA argued that the Exchange's ability to set co-location fees is not constrained by market forces because there is ''no comparable connectivity or product,'' and low-latency alternatives to these services do not exist.[91] SIFMA stated that ''[a]ny alternative with severely increased latencies would not be a viable alternative.'' [92] Similarly, IEX argued that if co-location services are optional, and therefore need not be purchased if the fees are excessive, then the Exchange should demonstrate how firms are not placed at a competitive disadvantage if they elect to not receive such services from the Exchange.[93] In particular, IEX suggested that the Exchange provide data on the expected latency (or range of latencies) in receiving data or transmitting orders directly from the Exchange, compared to the equivalent latency (or range) for firms that rely on a third party access center.[94] IEX requested that the NYSE ''explain whether it believes that this difference would not affect the ability of electronic market makers and other trading firms and active agency brokers to compete with firms in the same businesses that have faster access, and if so how it reached this conclusion.'' [95] IEX also disputed that competition for order flow constrains pricing of co-location services, arguing that NYSE often displays protected quotes for certain stocks, a status it achieves by paying a high number of rebates for liquidity, and firms are forced to interact with it to avoid trade-throughs.[96] Both IEX and SIFMA argued that in the absence of competition for the proposed services and fees (which, in SIFMA's view are indistinguishable from market data fees), the Exchange should be required to discuss the relationship between the proposed fees and increasing Data Center costs, or detail how the fee increases relate to the costs of providing the service, in order to justify the proposed fees as reasonable.[97]

In contrast, two commenters acknowledged the existence of alternatives to some Exchange co-location services.[98] One of these commenters noted that alternatives are present for Third Party System connectivity as evidenced by the fact that it ''finds NYSE's third part[y] system costs out of line and does not subscribe to this NYSE offering, instead implementing this connectivity internally using a proprietary network.'' [99] Another commenter stated that it ''directly competes with NYSE for these [Third Party Systems] services and does so at prices significantly lower than the fees NYSE has proposed.'' [100]

In response to comments that competitive forces do not constrain co-location fees and that alternatives to co-location services are lacking, the Exchange defended its representations that the proposed services are offered as a convenience to Users, are voluntary, and that Users have viable alternatives to the proposed services.[101] The Exchange stated that additional latency in an alternative means of connectivity does not negate the viability of that alternative,[102] and that commenters arguing that only an ''equivalent'' latency alternative is a viable alternative are misguided.[103] The Exchange stated that, ''the Act does not require that there be at least one third party option available that has exactly the same characteristics as a proposed service before a national securities exchange can impose or change a fee for a service,'' adding that such a requirement would be ''untenable, as every exchange

[84] *See id.*

[85] *See id.* at 5.

[86] *See id.*

[87] *See id.* at 5–6. *See also infra* notes 117–127 discussing SIFMA's comments characterizing a variety of fees as market data fees and the Exchange's response.

[88] *See* Response Letter II at 11–12.

[89] *See* IEX I Letter at 2 (best execution requires broker-dealer to have ''effective access'' to exchanges); SIFMA II Letter at 4 (''brokers are legally obligated to seek best execution for their customers. They are required to consider the likelihood that a trade will be executed and whether there is an opportunity to obtain a price better than what is currently quoted.'') *See also* Citadel Letter at 3 (stating that ''competitive pressures oblige broker-dealers to seek the most efficient access to markets and market data to execute orders . . .,'' creating a risk for those firms that elect to trade with ''slower and less efficient access.''); R2G Letter at 3 (referring to an ''ever increasing need for speed''); Wolverine Letter at 1 (stating that it is ''required to subscribe to the lowest latency NYSE market data products and services'').

[90] *See* IEX I Letter at 2, IEX II Letter at 1–3, SIFMA I Letter at 2 and SIFMA II Letter at 2. *Compare* with comments alleging a lack of viable alternatives to connectivity to Premium NYSE Data Products, *supra* note 73.

[91] *See* SIFMA I Letter at 2. According to SIFMA, ''the mere presence of the IEX Letter in the comment file'' evidences of a lack of competitive market forces to constrain pricing, because IEX is a competitor to the Exchange. *See id.* at 3.

[92] *See* SIFMA I Letter at 3 (also stating ''different fees are charged for the different types of connectivity, with no rational basis, [is] unfairly discriminatory between customers.'')

[93] *See* IEX II Letter at 2.

[94] *See id.*

[95] *See id.*

[96] *See id.* at 3. *See also* SIFMA II Letter at 2 (expressing general agreement); *see also* SIFMA I Letter at 3 (stating that the presence of a comment letter from IEX cuts against the argument that competition for order flow constrains fees). *See also* Citadel Letter at 2 (urging greater transparency regarding the Exchange's Data Center costs).

[97] *See* IEX II Letter at 3; SIFMA II Letter at 2.

[98] *See* Wolverine Letter at 3; R2G Letter at 1–2.

[99] *See* Wolverine Letter at 3.

[100] *See* R2G Letter at 1–2.

[101] *See* Response Letter II at 6.

[102] *See id.* at 7–8.

[103] *See id.* at 7.

would have to have an exact duplicate before it could charge a fee.'' [104] Rather, the relevant question is whether a proposed fee would be ''an equitable allocation of reasonable dues, fees, and other charges among Users in the data center; does not unfairly discriminate between customers, issuers, brokers, or dealers; and does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.'' [105] The Exchange noted that it did not represent that the connectivity alternatives available to co-located Users (including alternatives for connectivity to Premium NYSE Data Products) are exactly the same as those proposed, but rather that the cited alternatives show that Users have the option ''to receive the same market data, or make the same trades, in other manners.'' [106] The Exchange added that its cited alternatives ''offer distinct services and pricing structures that some Users may find more attractive than those proposed by the Exchange,'' and that these alternatives are ''real,'' even if not all Users will find them equally attractive for their individual business model.[107] The Exchange stated that the viability of alternatives is ''underscored by the Wolverine Letter, which explicitly states that it does not object to the proposed fees for access to Third Party Systems in the Current Proposal on the basis that firms may contract with other parties or contract directly with network providers.'' [108] The Exchange added that, ''[I]t is the Exchange's understanding that a User could access Third Party Systems and connect to Third Party Data Feeds, third party testing and certification feeds, and DTCC using one or more of the listed alternatives without increasing its latency levels—and, in many cases, the alternatives would offer lower latency.'' [109]

Further, the Exchange emphasized that while some commenters focus exclusively on latency as the only relevant consideration, ''Users with different investment strategies or business models may focus on other characteristics, including redundancy, resiliency, cost, and the services that third parties offer but the Exchange does not, such as managed services.'' [110] The Exchange stated that alternatives exist as evidenced by the fact that ''there are at least six Users within the co-location hall that offer other Users or hosted customers access to trading or connectivity to market data, including the two other exchanges that are co-located with the Exchange, as well as the fact that Users may contract with any of the 15 telecommunication providers—including five third party wireless networks—available to Users to connect to third party vendors.'' [111] The Exchange also noted that the alternatives are possible in part because the Exchange voluntarily allows Users to provide services to other Users and third parties out of the Exchange's co-location facility—that is, to compete with the Exchange using the Exchange's own facilities.[112] For example, according to the Exchange, ''a User that wished to receive Nasdaq market data could connect directly to the Nasdaq server within co-location.'' [113] Therefore, the Exchange believes that contrary to commenters' beliefs, the Exchange's cited alternatives offer comparable services that can be used in lieu of receiving Exchange offered services, and that there are competitive forces constraining pricing.[114]

SIFMA raised additional arguments. SIFMA urged that ''[t]he proposed connectivity fees should be reviewed in a manner consistent with the decisions of the United States Court of Appeals for the District of Columbia Circuit'' in *NetCoalition* v. *SEC,* because says SIFMA, they are market data fees.[115] SIFMA took the position that under NetCoalition I (615 F.3d 525 (D.C. Cir. 2010)) an exchange's assertion that order flow competition constrains pricing of data is insufficient.[116] More specifically, in SIFMA's view ''port, power, cross connect, connectivity and cage fees, which are necessary in order to obtain the market data from NYSE,'' ''however labeled, are market data fees.'' [117] SIFMA also noted that it had submitted a ''properly filed 19(d) denial of access petition on the proposal,'' but had requested that it be ''held in abeyance pending the decision in the *NetCoalition* follow-on proceedings . . . .'' [118] SIFMA urged however, that such petition, despite its abeyance, not be ignored.[119]

In response to SIFMA on these points, the Exchange stated that, ''*NetCoalition* addressed the standards governing proprietary market data fees,'' and that it is ''incorrect'' to characterize the Current Proposal as establishing market data fees.[120] The Exchange stated:

> the fact that a User needs to have a port, power, and connectivity in place in order to be able to receive a market data feed *within co-location* does not convert the costs of such equipment and connections into market data fees. Rather, they are costs associated with the User's business activities. If a User opts to put a cage around its servers in the colocation hall, the cage fee it pays is a cost it chooses to incur in connection with the way it has chosen to do business, not a market data fee.[121]

The Exchange distinguished the services and fees proposed in the Current Proposal from market data fees, emphasizing that they are connectivity fees or access fees applicable when a User chooses to utilize connectivity or access services within co-location.[122] The Exchange noted that two of the proposed fees are for services that facilitate Users' trading activities, and have nothing to do with market data: a proposed fee for access within co-location to the execution systems of third party markets and other content service providers, and a proposed fee for connectivity within co-location to DTCC services, such as clearing, fund transfer, insurance, and settlement services.[123] The Exchange similarly distinguished the proposed connectivity fee for third party testing and certification feeds as not equivalent to providing a customer

[104] *See id.* at 8.

[105] *See id.*

[106] *See id.* The Exchange also noted that Clearpool is not a co-location customer of the Exchange, which the Exchange believes illustrates that market participants can and do avail themselves of alternatives for connecting to NYSE market data products. *See id.*

[107] *See id.* In addition, in response to IEX's suggestion that the Exchange provide data on the expected latency (or range of latencies) in receiving data or transmitting orders directly from the Data Center, compared to the expected latency (or range) for firms that rely on a third party access center, the Exchange stated it could not do so without having access to the latency data of third parties, or each User's specific system configuration and latency needs and therefore could not satisfy IEX's ''deliberately impossible requirement.'' *See id.* at 7.

[108] *See id.* at 9. The Exchange did not similarly address the R2G Letter.

[109] *See id.* at 9–10.

[110] *See id.* at 8 n.16.

[111] *See id.* at 9.

[112] *See id.*

[113] *See id.* at 10 n.24.

[114] *See id.* at 9.

[115] *See* SIFMA II Letter at 2–3 (citing *NetCoalition I,* 615 F.3d 525 (D.C. Cir. 2010); *NetCoalition II,* 715 F.3d 342 (D.C. Cir. 2013)).

[116] SIFMA I Letter at 3 (noting that ''[t]he Court's *NetCoalition* decisions, the controlling law on this subject, rejected this order flow argument because, like here, there was no support for the assertion that order flow competition constrained the ability of the exchange to charge supracompetitive prices for data.'').

[117] *See* SIFMA II Letter at 3. *See also* SIFMA I Letter at 4 (stating that market data fees, port fees, hardware fees and connectivity fees are all ''within the ambit of the *NetCoalition* decisions.'')

[118] *See* SIFMA I Letter at 1; SIFMA II Letter at 3.

[119] *See* SIFMA II Letter at 3.

[120] *See* Response Letter III at 3–4.

[121] *See id.* at 4 (emphasis in original).

[122] *See id.* at 5–6. The Exchange noted that SIFMA did not address VCC fees. *See id.* at 5, n. 17.

[123] *See id.* at 5–6 (also noting that fees for Third Party System and DTCC connectivity vary by bandwidth and are generally proportional to the bandwidth required).

with market data.[124] Addressing the proposed connectivity fee for Third Party Data Feeds within co-location, the Exchange noted that this proposed fee ''has more often been mistaken for a market data fee,'' but distinguished the service of providing a User with connectivity to Third Party Data Feeds from the service that the third party providing the market data provides by sending the data over the connection, noting that the third party content service provider charges the User the market data fee.[125]

The Exchange did not agree with SIFMA's contention that the Current Proposal would establish market data fees, nor agree that *NetCoalition* standard was applicable to the Current Proposal,[126] but instead stated, ''[t]here is significant competition for the connectivity relevant to the Current Proposal;'' and ''even if the NetCoalition standard did apply, the Current Proposal satisfies it.'' [127]

Regarding SIFMA's denial of access petition, the Exchange responded that a denial of access petition is not a comment letter, and should not be treated as such given that SIFMA itself has requested that its denial of access petition on fee filings be held in abeyance pending a decision in the *NetCoalition* follow-on proceedings.[128]

IV. Discussion and Commission Findings

After careful consideration of the proposed rule change, as modified by Amendment Nos. 1 through 4, the comments received, and the Exchange's responses to the comments, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 through 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[129] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities; Section 6(b)(5) of the Act,[130] which requires that the rules of an exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and Section 6(b)(8) of the Act,[131] which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.[132]

As discussed more fully above, some commenters oppose the proposed co-location fees on the basis that viable alternatives to the Exchange's co-location services are lacking, and particularly that similar low-latency alternatives to the Exchange's co-location services do not exist.[133] According to these commenters, the lack of viable alternatives means that competitive forces do not constrain Exchange pricing of co-location services, and the Exchange's proposed fees should be subject to a cost-based assessment.[134]

In response to these comments, the Exchange counters that co-location Users have several alternatives to the Exchange's proposed services, both inside and outside the Data Center. The Exchange explains that as alternatives to using the access to Third Party Systems, and connectivity to Third Party Data Feeds, third party testing and certification feeds, and DTCC, provided by the Exchange, a User may access or connect to such services and products through an Exchange access center, third party access center, or a third party vendor outside the Data Center, and may do so using a third party telecommunication provider, a third party wireless network, the Secure Financial Transaction Infrastructure (SFTI) network, or a combination thereof.[135] Furthermore, the Exchange points out that alternatives to the Exchange's access and connectivity services also exist inside the Data Center, as evidenced by the fact that ''there are at least six Users within the co-location hall that offer other Users or hosted customers access to trading or connectivity to market data, including the two other exchanges that are co-located with the Exchange, as well as the fact that Users may contract with any of the 15 telecommunication providers—including five third party wireless networks—available to Users to connect to third party vendors.'' [136] The Exchange notes that these alternatives are possible because the Exchange allows Users to provide services to other Users and third parties out of the Exchange's co-location facility—that is, to compete with the Exchange using the Exchange's own facilities.[137]

The Commission has carefully considered the comments and the Exchange's response concerning the availability of alternatives to the Exchange's proposed access and connectivity services. In addition, the Commission notes that two commenters expressed the view that viable alternative means of accessing Third Party Systems are available.[138] The Commission believes that viable alternatives to the Exchange's proposed co-location services are available which bring competitive forces to bear on the fees set forth in the Current Proposal.[139]

Also, as discussed above, some commenters expressed concern that the proposed fees would impose a barrier to

[124] *See id.* at 5 (also noting that fees for connectivity to third party testing and certification feeds reflect that bandwidth requirements are generally not large, and the relatively low fee may encourage Users to conduct tests and certify conformance, which the Exchange believes generally benefits the markets).

[125] *See id.* at 5–6 (also noting that the fees for Third Party Data Feeds vary because Third Party Data Feeds vary in bandwidth; proximity to the Exchange, requiring different circuit lengths; fees charged by the third party provider, such as port feeds; and levels of User demand).

[126] *See id.* at 3. *See also* Response Letter II at 13.

[127] *See* Response Letter III at 3. *See also* Response Letter II at 13.

[128] *See* Response Letter III at 3. *See also* Response Letter II at 13; SIFMA Letter II at 3 (noting that ''SIFMA's 19(d)s will be held in abeyance pending the decision in the NetCoalition follow-on proceedings . . .'').

[129] 15 U.S.C. 78f(b)(4).

[130] 15 U.S.C. 78f(b)(5).

[131] 15 U.S.C. 78f(b)(8).

[132] 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).

[133] *See supra* notes 63, 89–95, and accompanying text.

[134] *See supra* notes 60, 97, 115–117 and accompanying text.

[135] *See* Response Letter II at 6.

[136] *See id.* at 9.

[137] *See id.*

[138] *See supra* notes 98–100. One of these commenters also stated its view that Amendment No. 3 addressed the concerns raised in the OIP. *See supra* note 72. Furthermore, the Exchange's proposal with respect to connectivity to Third Party Data Feeds is not novel, given that Nasdaq similarly charges connectivity fees for third party data feeds, as reflected on its co-location fee schedule. *See* Nasdaq Rule 7034.

[139] *See also* Securities Exchange Act Release No. 34–62397 (June 28, 2010); Securities Exchange Act Release No. 34–66013 (December 20, 2011), 76 FR 80992 (December 27, 2011) (noting ''that members may choose not to obtain low latency network connectivity through the Exchange and instead negotiate connectivity options separately through other vendors on site''); Securities Exchange Act Release No. 34–76748 (finding the establishment of an exclusive wireless connection consistent with the Act because, among other reasons, the alternatives suggested provided the same or similar speeds as compared to the NYSE's wireless connectivity); Securities Exchange Act Release No. 34–68735 (finding the establishment of an exclusive wireless connection consistent with the Act because, among other reasons, the alternatives suggested provided the same or similar speeds as compared to Nasdaq's wireless connectivity).

entry on smaller broker-dealers and new entrants, and a burden on competition.[140] The Commission does not believe that the Current Proposal would impose a burden on competition inconsistent with the Act because, as discussed above, viable alternatives to the Exchange's proposed services exist, both inside and outside the Data Center.

Finally, the Commission notes that several commenters believed the originally proposed NYSE Premium Connectivity Fee to be duplicative and an inequitable allocation of fees.[141] Because the Exchange eliminated that fee in Amendment No. 3, the Commission believes that these concerns have been addressed.[142]

Accordingly, the Commission finds that the Current Proposal is consistent with the Act.

V. Solicitation of Comments on Partial Amendment No. 4

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether partial Amendment No. 4 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–45. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–45 and should be submitted on or before April 20, 2017.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1–4

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1–4, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. The revisions made to the proposal in partial Amendment No. 4 [143] (1) removed reference to the National Stock Exchange (NSX) from its list of Third Party Systems, (2) added three additional Third Party Data Feeds—ICE Data Services Consolidated Feed, ICE Data Services PRD, and ICE Data Services PRD CEP, (3) added connectivity fees for each of the newly added Third Party Data feeds. With respect to NSX, the Exchange represents that NSX was acquired by the NYSE Group on January 31, 2017, making it no longer a Third Party System. The Commission believes this characterization is consistent with the NYSE Group's similarly situated affiliated exchanges, NYSEArca and NYSEMKT, which, like NSX are solely within the NYSE Group's control. Regarding the ICE Data Services feeds, the Exchange notes that it has an indirect interest in these feeds because ICE Data Services is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc. As represented in partial Amendment No. 4, the Exchange considers the ICE Data Services Consolidated Feed (like the NYSE Global Index feed), a Third Party Data Feed because it includes third party market data rather than exclusively the proprietary market data of the Exchange and its affiliated SROs, NYSE MKT and NYSE Arca.[144] The Commission believes that partial Amendment No. 4 does not raise issues not previously raised in the proposed rule change, as modified Amendment Nos. 1–3, and addressed in Exchange Response Letters I, II, and III. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[145] to approve the proposed rule change, as modified by Amendment Nos. 1–4, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[146] that the proposed rule change (SR–NYSE–2016–45) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[147]

Eduardo A. Aleman,

Assistant Secretary.

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[140] *See supra* notes 75–81 and accompanying text.

[141] *See supra* notes 70–72 and accompanying text.

[142] The Commission believes that comments expressing concerns about proprietary market data fees more generally are outside the scope of the Current Proposal.

[143] *See* partial Amendment No. 4, *supra* note 14.

[144] *See id.*

[145] 15 U.S.C. 78s(b)(2).

[146] *See id.*

[147] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80303; File No. SR–FICC–2017–005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish the Centrally Cleared Institutional Triparty Service and Make Other Changes

March 24, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2017, Fixed Income Clearing Corporation (''FICC'') 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 clearing agency.[3] The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 9, 2017, FICC filed this proposed rule change as an advance notice (SR–FICC–2017–803) with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Government Securities Division (''GSD'') Rulebook (''GSD Rules'')[4] that would (i) establish the ''Centrally Cleared Institutional Triparty Service'' or the ''CCIT™ Service''[5] and thereby make central clearing available to the institutional tri-party repurchase agreement (''repo'') market[6] and (ii) make other amendments and clarifications to the GSD Rules, as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would, among other things, make central clearing available to the institutional tri-party repo market through the proposed CCIT Service.

The proposed CCIT Service would allow the submission of tri-party repo transactions in GCF Repo®[7] Securities between Netting Members that participate in the GCF Repo Service[8] and institutional counterparties (other than investment companies registered under the Investment Company Act of 1940, as amended[9] (''RICs'')), where the institutional counterparties are the cash lenders in the transactions submitted to GSD. The proposed CCIT Service would create a new GSD limited service membership type for such institutional cash lenders, each referred to as a ''Centrally Cleared Institutional Triparty Member'' or ''CCIT Member.''[10]

This filing also contains proposed rule changes that are not related to the proposed CCIT Service that provide specificity, clarity and additional transparency to the GSD Rules.

(i) Background on the Proposed CCIT Service

FICC believes that the tri-party repo market is critical to the stability of the U.S. financial system. The tri-party repo market creates market liquidity and price transparency for U.S. government and corporate securities, is interconnected with other payment clearing and settlement services that are central to the U.S. financial market, and serves as a critical source of funding for systemically important broker-dealers that make markets in U.S. government and corporate obligations.[11] At its peak in 2008, about $2.8 trillion of securities were funded by tri-party repos.[12] Volumes shrank to $1.6 trillion in the second half of the recent financial crisis and have been relatively steady around that level since then.[13] Nonetheless, FICC believes the tri-party repo market remains a critical source of funding for broker-dealers and an important cash management tool for institutional counterparties.

In response to the 2008 financial crisis, regulators asked tri-party repo market participants to identify ways to reduce reliance on intraday credit, make risk management practices more robust to a broad range of events, and take steps to reduce the risk that a dealer's default could prompt destabilizing fire sales[14] of its collateral by its lenders, with the goal of enhancing the tri-party repo market's ability to navigate stressed market conditions by implementing solutions that help mitigate risk and better safeguard the U.S. financial market.

Currently, FICC provides central clearing to a portion of the tri-party repo market. Specifically, GSD's GCF Repo Service provides central clearing to sell-side entities, such as dealers that enter into tri-party repo transactions in GCF Repo Securities with each other.[15] There is currently no U.S. clearing organization that novates tri-party repos between sell-side firms and institutional counterparties.

FICC believes that central clearing of eligible tri-party repo transactions between GSD Netting Members and institutional counterparties through the proposed CCIT Service would help to safeguard the tri-party repo market in a number of ways. For example, the proposed CCIT Service would permit institutional firms that are eligible to participate in FICC as CCIT Members to benefit from FICC's guaranty of completion of settlement of their eligible tri-party repo transactions with Netting Members. FICC believes this would mitigate the risk of a large-scale exit by these institutional firms from the U.S. financial market in a stress scenario and therefore lower the risk of a liquidity drain in such a scenario. Specifically, to the extent institutional firms would otherwise be engaging in the same type of eligible tri-party repo trading activity outside of a central counterparty, having such activity novated to FICC and subject to FICC's guaranty of completion of settlement would reduce the risk that such institutional firms discontinue such trading activity in a Netting Member default situation.

Similarly, FICC believes that broadening the pool of tri-party repos eligible for central clearing at FICC through the proposed CCIT Service to institutional activity as well as sell-side activity would also reduce the potential for market disruption from fire sales by virtue of FICC's ability to centralize and control the liquidation of the portfolio

[4] Capitalized terms not defined herein are defined in the GSD Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[5] CCIT is a trademark of The Depository Trust & Clearing Corporation. Pursuant to this filing, ''Centrally Cleared Institutional Triparty Service'' or ''CCIT Service'' would be defined as ''the service offered by the Corporation to clear institutional triparty repurchase agreement transactions, as more fully described in Rule 3B.'' Proposed GSD Rule 1, Definitions.

[6] The proposed rule changes with respect to the establishment of the proposed CCIT Service are reflected in proposed GSD Rule 3B, and conforming changes are proposed to GSD Rules 1, 2, 2A (Section 2), 4 (Sections 1a and 7), 5, 22C, 24, 30 and 49.

[7] GCF Repo is a registered trademark of FICC.

[8] Pursuant to this filing, ''GCF Repo Service'' would be defined as ''the service offered by the Corporation to compare, net and settle GCF Repo Transactions.'' Proposed GSD Rule 1, Definitions.

[9] 15 U.S.C. 80a–1 *et seq.*

[10] Pursuant to this filing, the term ''Centrally Cleared Institutional Triparty Member'' or ''CCIT Member'' would be defined as ''a legal entity other than a Registered Investment Company approved to participate in the Corporation's CCIT Service as a cash lender.'' Proposed GSD Rule 1, Definitions.

[11] *See* Federal Reserve Bank of New York, Tri-Party Repo Infrastructure Reform, *https://www.newyorkfed.org/banking/tpr_infr_reform.html* (last visited Mar. 6, 2017).

[12] *See* A. Copeland et al., *The Tri-Party Repo Market before the 2010 Reforms,* Federal Reserve Bank of New York Staff Report No. 477 (Nov. 2010), *https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr477.pdf.*

[13] *See* Federal Reserve Bank of New York, Tri-Party Repo Volume, *https://www.newyorkfed.org/data-and-statistics/data-visualization/tri-party-repo/index.html#interactive/volume/collateral_value* (last visited Mar. 6, 2017).

[14] Fire sale risk is the risk of rapid asset sales of securities held by cash lenders when a dealer defaults. This rapid sale has the potential to create a market crisis because cash lenders are likely to sell large amounts of securities in a short period of time, which could dramatically reduce the price of such securities that such lenders are looking to sell.

[15] According to FICC's data, during 2016, the average daily dollar value of compared GCF Repo Transactions was approximately $114 billion.

of a defaulted Netting Member. Specifically, in a Netting Member default situation, the more institutional firms participate in FICC as CCIT Members, the more trading activity with the defaulted Netting Member could be centrally liquidated in an orderly manner by FICC rather by individual counterparties in potential fire sale conditions.

Moreover, FICC believes that the proposed CCIT Service would decrease settlement and operational risk in the U.S. tri-party repo market as more tri-party repos for a greater number of Members would be eligible to be netted and subject to guaranteed settlement, novation, and independent risk management through FICC.

Depending on the nature of their GSD-cleared portfolios and the purposes for which Netting Members borrow cash from institutional tri-party money lenders through the proposed CCIT Service, the proposed CCIT Service would also provide Netting Members with the potential for more efficient use of collateral.[16] Novation of tri-party repo borrowing activity to FICC through the proposed CCIT Service may also afford Netting Members the ability to offset on their balance sheets their obligations to FICC on CCIT Transactions against their obligations to FICC on other eligible FICC-cleared activity, as well as take lesser capital charges than would be required to the extent they engaged in the same borrowing activity outside of a central counterparty.[17] By potentially alleviating balance sheet and capital constraints on their Netting Member counterparties, participation in FICC as CCIT Members may afford eligible institutional firms increased lending capacity and income.

[16] The potential for more efficient use of collateral by Netting Members relates to the fact that, to the extent they borrow cash today via tri-party repo, Netting Members are required to collateralize their tri-party cash lenders, typically to a 102 percent haircut for GSD eligible securities. *See* SIFMA, US Repo Market Fact Sheet 2016, p. 3, *https://www.sifma.org/WorkArea/DownloadAsset.aspx?id=8589961606* (last visited Mar. 6, 2017). Such collateral is separate and apart from the Clearing Fund that Netting Members are required to post to FICC to support their sell-side activity in the same asset classes. If a Netting Member's tri-party borrowing activity were novated to FICC through the proposed CCIT Service, its Clearing Fund requirement to FICC could potentially be reduced to the extent it has offsetting cash lending activity within GSD.

[17] Netting Members interested in such relief should discuss this matter with their accounting and regulatory capital experts.

(ii) Detailed Description of the Proposed Rule Changes Related to the Proposed CCIT Service

A. Proposed Changes to GSD Rule 1 (Definitions)

FICC is proposing to amend the ''Applicant Questionnaire'' definition to delete the reference to ''Rule 2'' because this questionnaire is not mentioned in GSD Rule 2; however, it is mentioned in other GSD Rules, including, but not limited to, proposed GSD Rule 3B. In light of the fact that proposed GSD Rule 3B would provide that references to a ''Member'' in other GSD Rules would not apply to CCIT Members unless specifically noted as such in proposed GSD Rule 3B or in such other GSD Rules, FICC is also proposing to amend the ''Applicant Questionnaire'' definition to specifically refer to CCIT Members.

FICC is proposing to add the following defined terms, which relate to the proposed CCIT Service: ''CCIT,'' ''CCIT Account,'' ''CCIT Daily Repo Interest,'' ''CCIT MRA Account,'' ''CCIT Transaction,'' ''Centrally Cleared Institutional Triparty Member or CCIT Member,'' ''Centrally Cleared Institutional Triparty Service or CCIT Service,'' ''Joint Account,'' ''Joint Account Submitter'' and ''Joint Account Submitter Agreement.''

FICC is proposing to amend the definition of ''Contract Value'' to refer to a CCIT Transaction. FICC is also proposing to make a grammatical correction to this definition.

FICC is proposing to amend the definition of ''Controlling Management'' in order to incorporate concepts that apply to CCIT Members and Registered Investment Company Netting Members and applicants to become such.

FICC is proposing to amend the definition of ''GCF Net Funds Borrower Position'' to refer to CCIT Transactions and to add an explicit definition for the term ''GCF Net Funds Borrower.''

FICC is proposing to amend the definition of ''GCF Net Funds Lender Position'' to refer to CCIT Members and CCIT Transactions and to include an explicit definition for the term ''GCF Net Funds Lender,'' which would include a Netting Member or a CCIT Member, as applicable.

FICC is proposing to amend the definition of ''GCF Net Settlement Position'' and ''GCF Repo Security'' to refer to CCIT Transactions.

FICC is proposing to include ''GCF Repo Service'' as a defined term in order to facilitate the drafting of proposed GSD Rule 3B, which covers the proposed CCIT Service.

FICC is proposing to amend the definitions of ''Invoice Amount,'' ''Member,'' ''Miscellaneous Adjustment Amount'' and ''Net Assets'' to refer to a CCIT Member.

FICC is also proposing to amend the definition of a ''Tier Two Member'' (previously referred to in the GSD Rules as a ''Tier Two Netting Member'') to include a CCIT Member.

B. Proposed Changes to GSD Rule 2 (Members)

FICC is proposing to amend GSD Rule 2 (Members) to include CCIT Members as a membership type and to make conforming changes that accommodate this inclusion.

C. Proposed Changes to GSD Rule 2A (Initial Membership Requirements)

FICC is proposing to amend Section 2 of GSD Rule 2A (Initial Membership Requirements) to make conforming changes to accommodate the revised term ''Tier Two Member.''

D. Proposed GSD Rule 3B (Centrally Cleared Institutional Triparty Service)

FICC is proposing to add GSD Rule 3B, entitled ''Centrally Cleared Institutional Triparty Service.'' This new rule would govern the proposed CCIT Service and would be comprised of 17 sections, each of which is described immediately below.

Proposed GSD Rule 3B, Section 1 (General)

Section 1 of proposed GSD Rule 3B would be a general provision regarding the GSD Rules applicable to CCIT Members and to Netting Members that participate in the proposed CCIT Service.

Section 1 of proposed GSD Rule 3B would establish that CCIT Members would be governed by proposed GSD Rule 3B, and that references to the term ''Member'' in other GSD Rules would not apply to CCIT Members unless specifically noted as such in proposed GSD Rule 3B or in such other GSD Rules. Section 1 of proposed GSD Rule 3B would also make clear that a Netting Member must be a participant of the GCF Repo Service in order to be a counterparty to a CCIT Member in a CCIT Transaction and that, in addition to the GSD Rules governing Netting Members, Netting Members that submit CCIT Transactions would also be subject to the provisions of proposed GSD Rule 3B and other GSD Rules applicable to CCIT Transactions.

Proposed GSD Rule 3B, Section 2 (Eligibility for Membership: CCIT Member)

Section 2 of proposed GSD Rule 3B would establish the initial membership eligibility requirements for applicants that wish to become CCIT Members.

Under Section 2 of proposed GSD Rule 3B, a legal entity would be eligible to apply to become a CCIT Member if it satisfies the following requirements: (i) Financial responsibility and ability to pay anticipated fees pursuant to the GSD Rules, including having minimum Net Assets [18] of $100 million, or a prescribed multiplier of $100 million in the case of applicants whose financial statements are prepared other than in accordance with U.S. generally accepted accounting principles; [19] (ii) operational capability (applicable to a Joint Account Submitter, if relevant) to communicate with FICC and fulfill anticipated commitments to and meet other operational requirements of FICC; (iii) provision of an opinion of counsel acceptable to FICC that the GSD Rules would be enforceable against such applicant if it were to become a CCIT Member; and (iv) provision of an opinion of counsel (if required by FICC in its sole discretion) acceptable to FICC that, in the event FICC were to cease to act for the applicant after such applicant becomes a CCIT Member, FICC would be able to exercise the remedies described in the GSD Rules.

In addition, FICC would have the sole discretion to determine whether the applicability of any enumerated Disqualification Criteria (as set forth in Section 2 of proposed GSD Rule 3B) should be the basis for denial of the membership application.

Section 2 of proposed GSD Rule 3B also states that FICC would retain the right to deny membership to an applicant if FICC becomes aware of any factor or circumstance about the applicant or its Controlling Management [20] which may affect the suitability of that particular applicant as a Member of GSD. Further, applicants would be required to inform FICC as to any member of their Controlling Management that is or becomes subject to Statutory Disqualification.

Section 2 of proposed GSD Rule 3B also includes provisions that would allow CCIT Members to be represented by a Joint Account.[21]

In the market today, some institutional cash lenders submit trades as a ''joint account'' rather than at the individual legal entity level. This means that two or more institutional cash lenders create a joint account and have a submitter (such as their agent lender) conduct the trading on their behalf. The proposed rule changes would accommodate this structure and would provide that two or more approved CCIT Members may be represented by a Joint Account Submitter,[22] provided that the applicable CCIT Members enter into a Joint Account Submitter Agreement with FICC. This agreement would permit CCIT Transactions to be submitted through a Joint Account on behalf of the CCIT Members. If FICC terminates a Joint Account Submitter Agreement, such Joint Account Submitter would no longer be permitted to represent the CCIT Members in the Joint Account. Each such CCIT Member would then be required to assume the duties of the Joint Account Submitter or appoint a new Joint Account Submitter subject to the requirements of the GSD Rules.

Proposed GSD Rule 3B, Section 3 (Membership Application Process To Become a CCIT Member)

Section 3 of proposed GSD Rule 3B would establish the membership application process that would be required of each applicant to become a CCIT Member.

Under Section 3 of proposed GSD Rule 3B, each applicant would be required to complete all documents and it or its Joint Account Submitter, as applicable, would be required to fulfill, within the timeframes established by FICC, any operational testing requirements and related reporting requirements that may be imposed by FICC to ensure the operational capability of the applicant. In addition, each applicant would be required to complete and deliver a FATCA Certification to FICC, and if the applicant is an FFI Member,[23] the applicant would also be required to certify and periodically recertify that it is FATCA Compliant, unless such requirements have been explicitly waived in writing by FICC, and no such waiver would be issued if it would cause FICC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property. The applicant would also be required to indemnify FICC as a result of its failing to be FATCA Compliant. Section 3 of proposed GSD Rule 3B would also provide for confidential treatment of information furnished to FICC pursuant to proposed GSD Rule 3B.

In connection with FICC's evaluation of an applicant, FICC would be able to: (i) If applicable, contact the applicant's primary regulatory authority, other examining authority or regulator, or any self-regulatory organization of which the applicant is a member and request from such authority or organization any records, reports or other information that, in their judgment, may be relevant to the application; (ii) examine the books, records and operational procedures of, and inspect the premises of, the applicant or its Controlling Management as they may be related to the business to be conducted through GSD; and (iii) take such other evidence or make such other inquiries as is necessary, including sworn or unsworn testimony, to ascertain relevant facts bearing upon the applicant's qualifications.

Section 3 of proposed GSD Rule 3B would make clear that, notwithstanding that FICC has approved an application to become a CCIT Member, if a material change in the condition of the applicant

[18] Pursuant to the GSD Rules, the term ''Net Assets'' means ''the difference between the total assets and the total liabilities of a Netting Member.'' GSD Rule 1, Definitions. This filing would amend this definition to include CCIT Members. With respect to a CCIT Member applicant, the determination as to whether the applicant satisfies the minimum Net Asset requirement under Section 2 of proposed GSD Rule 3B would be based on financial disclosures provided by the applicant as part of the membership application process.

[19] FICC may impose greater standards on the applicant based upon the level of the anticipated positions and obligations of the applicant, the anticipated risk associated with the volume and types of transactions the applicant proposes to process through FICC and the overall financial condition of the applicant. Proposed GSD Rule 3B, Section 2.

[20] Pursuant to this filing, the term ''Controlling Management'' would be revised to mean ''the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant or Member or such other individuals or entities with direct or indirect control over the applicant or Member; provided that with respect to a Registered Investment Company Netting Member or an applicant to become a Registered Investment Company Netting Member, the term 'Controlling Management' shall include the investment manager.'' Proposed GSD Rule 1, Definitions.

[21] Pursuant to this filing, ''Joint Account'' would be defined as ''two or more CCIT Members represented by a Joint Account Submitter.'' Proposed GSD Rule 1, Definitions.

[22] Pursuant to this filing, the term ''Joint Account Submitter'' would be defined as ''an authorized entity that (i) is acting as agent for two or more CCIT Members that are trading and submitting CCIT Transactions as a Joint Account and (ii) has been appointed by each such CCIT Member pursuant to a Joint Account Submitter Agreement.'' Proposed GSD Rule 1, Definitions.

[23] Pursuant to GSD Rule 1, the term ''FFI Member'' means ''any Person that is treated as a non-U.S. entity for U.S. federal income tax purposes.'' For the avoidance of doubt, the term FFI Member also includes ''any Member that is a U.S. branch of an entity that is treated as a non-U.S. entity for U.S. federal income tax purposes.'' GSD Rules, *supra* note 4.

or its Controlling Management were to occur, which in the judgment of FICC could bring into question the applicant's ability to perform as a CCIT Member, and such material change were to become known to FICC prior to the applicant's commencing use of GSD's services, FICC would have the right to stay commencement of the applicant's use of GSD's services until a reconsideration by FICC of the applicant's financial responsibility and operational capability could be completed. As a result of such reconsideration, FICC could determine to withdraw approval of an application to become a CCIT Member or condition the approval upon the furnishing of additional information or assurances.

Section 3 of proposed GSD Rule 3B would also state that FICC could deny an application to become a CCIT Member upon FICC's determination that FICC does not have adequate personnel, space, data processing capacity, or other operational capability at that time to perform its services for the applicant without impairing the ability of FICC to provide services for its existing Members (including CCIT Members), to assure the prompt, accurate, and orderly processing and settlement of securities transactions or to otherwise carry out its functions; provided, however, that any such applications which are denied pursuant to this provision would be approved as promptly as the capabilities of FICC permit.

Upon FICC's denial of an application to become a CCIT Member, FICC would furnish the applicant with a concise written statement setting forth the specific grounds under consideration upon which any such denial may be based and would notify the applicant of its right to request a hearing, such request to be filed by the applicant with FICC pursuant to GSD Rule 37 (Hearing Procedures).

Proposed GSD Rule 3B, Section 4 (Membership Agreement)

Section 4 of proposed GSD Rule 3B would govern the agreements that CCIT Member applicants would be required to sign and deliver to FICC.

Section 4 of proposed GSD Rule 3B would describe the terms of the membership agreement that every CCIT Member applicant would be required to execute with FICC and, in the case of CCIT Member applicants that intend to participate in the proposed CCIT Service through a Joint Account, this section would require that such applicants also execute a Joint Account Submitter Agreement with FICC. This section would also specify the rights, obligations, and liability that a CCIT Member that participates in the proposed CCIT Service would have vis-à-vis its Joint Account Submitter, as well as the conditions under which FICC would be able to terminate the Joint Account Submitter Agreement. It should be noted that the Joint Account Submitter in its capacity as such would not be a Member.

Proposed GSD Rule 3B, Section 5 (On-Going Membership Requirements)

Section 5 of proposed GSD Rule 3B would establish on-going membership requirements and would make clear that the initial eligibility qualifications and standards for CCIT membership would be continuing membership requirements. Additional on-going membership requirements would also apply to CCIT Members as described below.

Each CCIT Member would be required to submit the following to FICC: (i) Disclosure on at least an annual basis regarding such CCIT Member's Net Assets, and (ii) any financial statements the CCIT Member makes publicly available. In addition, each CCIT Member would be required to submit such other reports, financial, and other information as FICC from time to time may reasonably require. The time periods prescribed for submission of required disclosure would be set forth in notices posted to FICC's Web site and/or distributed by FICC from time to time. It would be the CCIT Member's responsibility to retrieve all notices daily from FICC's Web site.

In addition, a CCIT Member would be required to submit written notice of any CCIT Reportable Event [24] at least 90 calendar days prior to the effective date of such CCIT Reportable Event, unless the CCIT Member demonstrates that it could not have reasonably done so, and provides notice, both orally and in writing, to FICC as soon as possible.

CCIT Members that are FFI Members would also be subject to FATCA-related reporting requirements.

Section 5 of proposed GSD Rule 3B would provide that a CCIT Member that fails to submit required information within the prescribed timeframes and in the manner requested by FICC would be subject to the applicable fines noted under ''Failure to Timely Provide Financial and Related Information'' and ''Reportable Events—Fine for Failure of Timely Notification,'' as applicable, in the *Fine Schedules* of the GSD Rules.

FICC could, from time to time, require CCIT Members or their Joint Account Submitters, as applicable, to fulfill certain operational testing requirements and related reporting requirements to ensure the continuing operational capability of the CCIT Members. FICC would assess a fine or terminate the membership of any CCIT Member that does not fulfill any such operational testing and related reporting requirements within the timeframes established by FICC. If a Joint Account Submitter does not fulfill any such operational testing and related reporting requirements within the timeframes established by FICC, FICC could terminate the Joint Account Submitter Agreements for any or all CCIT Members that such Joint Account Submitter represents.

A CCIT Member would also be required to promptly inform FICC, both orally and in writing, if it no longer is in compliance with any of the relevant qualifications and standards for admission to membership set forth in proposed GSD Rule 3B. Notification would be required within two Business Days from the date on which the CCIT Member first learns of its non-compliance. FICC would assess a $1,000.00 fine against any CCIT Member that fails to notify FICC. In addition, a CCIT Member would be required to notify FICC within two Business Days of learning that an investigation or proceeding to which it is or is becoming the subject of would cause the CCIT Member to fall out of compliance with any of the relevant qualifications and standards for membership set forth in proposed GSD Rule 3B. However, the CCIT Member would not be required to notify FICC if doing so would cause the CCIT Member to violate an applicable law, rule, or regulation.

If with respect to a CCIT Member: (i) The CCIT Member fails to maintain the relevant standards and qualifications for admission to membership, including, but not limited to, minimum capital standards, operational testing, and related reporting requirements imposed by FICC from time to time; (ii) the CCIT Member violates any GSD Rule or other agreement with FICC; (iii) the CCIT Member fails to satisfy in a timely manner any obligation to FICC; (iv) there is any CCIT Reportable Event relating to such Member; or (v) FICC otherwise deems it necessary or advisable, in order to (a) protect FICC,

[24] Proposed GSD Rule 3B would define a ''CCIT Reportable Event'' as ''(i) an event that would, after giving effect thereto, cause a material change in the control, ownership or management of the CCIT Member, or that could have a material impact on such CCIT Member's business and/or financial condition; (ii) material changes in the CCIT Member's business lines, including new business lines undertaken; or (iii) any litigation which could reasonably be anticipated to have a material negative effect on the CCIT Member's financial condition or ability to conduct business.'' Proposed GSD Rule 3B, Section 5(c).

its Members (including CCIT Members), or its creditors or investors; (b) safeguard securities and funds in the custody or control of FICC or for which FICC is responsible; or (c) promote the prompt and accurate processing, clearance or settlement of securities transactions, FICC would undertake appropriate action to determine the status of the CCIT Member and its continued eligibility. In addition, FICC could review the financial responsibility and operational capability of the CCIT Member and/or its Controlling Management to the extent provided in the GSD Rules and otherwise require from the CCIT Member additional reporting of its financial or operational condition at such intervals and in such detail as FICC determines, and would make a determination as to whether such CCIT Member should be placed on the Watch List by FICC consistent with the provisions of Section 5 of proposed GSD Rule 3B (described below).

In addition, if FICC has reason to believe that a CCIT Member may fail to comply with any of the GSD Rules, FICC could require the CCIT Member to provide FICC, within such timeframe, in such detail, and pursuant to such manner as FICC determines, with assurances in writing of a credible nature that the CCIT Member shall not, in fact, violate the GSD Rules. Each CCIT Member, or any applicant to become such, would be required to furnish to FICC such adequate assurances of the CCIT Member's financial responsibility and operational capability as FICC could at any time or from time to time deem necessary or advisable in order to (i) protect FICC, its Members (including CCIT Members), or its creditors or investors; (ii) safeguard securities and funds in the custody or control of FICC or for which FICC is responsible; or (iii) promote the prompt and accurate processing, clearance or settlement of securities transactions. Upon the request of a CCIT Member or applicant to become such, FICC could choose to confer with the CCIT Member or applicant before or after requiring it to furnish adequate assurances pursuant to this proposed GSD Rule 3B.

Adequate assurances of financial responsibility or operational capability of a CCIT Member or applicant to become such, as could be required by FICC pursuant to proposed GSD Rule 3B, could include, but would not be limited to, as appropriate in the context of the CCIT Member's use of GSD's services: (i) Imposing restrictions or modifications on the CCIT Member's use of GSD's services (whether generally, or with respect to certain transactions); or (ii) requiring additional reporting by the CCIT Member of its financial or operational condition at such intervals and in such detail as FICC determines.

Section 5 of proposed GSD Rule 3B would provide that in the event that a CCIT Member fails to satisfy the relevant requirements of any GSD Rules, FICC would cease to act for the CCIT Member, unless the CCIT Member requests that such action not be taken and FICC determines that it is appropriate instead to establish a time period (the ''Noncompliance Time Period''), which would be no longer than 30 calendar days (unless otherwise determined by FICC), during which the CCIT Member would be required to resume compliance with such requirements. In the event that the CCIT Member is unable to satisfy such requirements within the Noncompliance Time Period, FICC would cease to act for the CCIT Member. If FICC takes any cease to act action pursuant to this provision, it would be required to promptly file with its records and with the Commission a full report of such actions, and the reasons thereof. Notwithstanding anything to the contrary in Section 5 of proposed GSD Rule 3B, if FICC, in its sole discretion, determines that a CCIT Member's financial condition has significantly deteriorated during a Noncompliance Time Period, FICC could immediately cease to act for the CCIT Member.

Section 5 of proposed GSD Rule 3B would require that CCIT Members and their Joint Account Submitters, as applicable, comply with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions regulations in connection with their use of GSD's services. As part of their compliance with global sanctions regulations, all CCIT Members and their Joint Account Submitters would be prohibited from conducting any transaction or activity through FICC which they know to violate global sanctions regulations. CCIT Members subject to the jurisdiction of the U.S. would be required to periodically confirm that they and their Joint Account Submitters, as applicable, have implemented a risk-based program reasonably designed to comply with applicable sanctions regulations issued by the Office of Foreign Assets Control. Failure to do so in the manner and timeframes set forth by FICC from time to time would result in a $5,000.00 fine.

Section 5 of proposed GSD Rule 3B would also prohibit a CCIT Member that is an FFI Member from conducting CCIT Transactions or activity through FICC if such CCIT Member is not FATCA Compliant, unless such requirement has been explicitly waived in writing by FICC with respect to the specific CCIT Member. In addition, CCIT Members that are FFI Members would be required, as applicable under FATCA, to certify and periodically recertify to FICC that they are FATCA Compliant by providing to FICC a FATCA Certification. Failure to do so in the manner and timeframes set forth by FICC from time to time would result in a fine, unless such requirement has been explicitly waived in writing by FICC with respect to the specific CCIT Member. Nevertheless, no waiver would be issued if it would cause FICC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property. A CCIT Member that is an FFI Member would also be required to indemnify FICC for losses, liabilities, or expenses sustained by FICC as a result of such CCIT Member failing to be FATCA Compliant.

Section 5 of proposed GSD Rule 3B would also provide that a CCIT Member and its Controlling Management's books and records, insofar as they relate to such CCIT Member's transactions processed through FICC, would be required to be open to the inspection of the duly authorized representatives of FICC upon reasonable prior notice and during the CCIT Member's or its Controlling Management's normal business hours. Each CCIT Member would be required to furnish to FICC all such information about the CCIT Member's and its Controlling Management's business and transactions as FICC may require; provided that (i) the aforesaid rights of FICC would be subject to any applicable laws, rules, or regulations of regulatory bodies having jurisdiction over the CCIT Member or its Controlling Management that relate to the confidentiality of records; and (ii) if the CCIT Member ceases membership, FICC would have no right to inspect the CCIT Member's or its Controlling Management's books and records or to require information relating to transactions wholly subsequent to the time when the CCIT Member ceases membership.

Section 5 of proposed GSD Rule 3B would also provide that a CCIT Member could be monitored for financial and/or operational factors as FICC deems necessary to protect FICC and its Members from undue risk. CCIT Members would not be assigned a rating from the Credit Risk Rating Matrix; however, they could be included on the Watch List at FICC's discretion. Placement on the Watch List would result in a more thorough monitoring of the CCIT Member's financial and/or

operational condition, as applicable, and activities by FICC. FICC could require CCIT Members placed on the Watch List to make more frequent financial disclosures, possibly including interim and/or pro forma reports. A CCIT Member would be placed on the Watch List if FICC takes any action against such CCIT Member pursuant to Section 5(f) of proposed GSD Rule 3B. A CCIT Member would continue to be included on the Watch List until the condition(s) that resulted in its placement on the Watch List improved to the point where the condition(s) are no longer present or a determination is made by FICC that close monitoring is no longer warranted.

Proposed GSD Rule 3B, Section 6 (Voluntary Termination)

Section 6 of proposed GSD Rule 3B would establish the requirements regarding a CCIT Member's election to voluntarily terminate its GSD membership.

A CCIT Member would be permitted to elect to terminate its membership by providing FICC with 10 Business Days' written notice of such termination; however, FICC, in its discretion, could accept such termination within a shorter notice period. FICC's acceptance, which would be no later than 10 Business Days after receipt of the written notice, would be evidenced by a notice to Members (including CCIT Members) announcing the CCIT Member's termination and the effective date of the termination of the CCIT Member (the ''Termination Date''). As of the Termination Date, a CCIT Member that terminates its membership in GSD would no longer be eligible or required to submit to FICC data on trades and would no longer be eligible to have its trade data submitted by a Joint Account Submitter, unless the Board determines otherwise in order to ensure an orderly liquidation of the CCIT Member's positions. Section 6 of proposed GSD Rule 3B would provide that a CCIT Member's voluntary termination of membership would not affect its obligations to FICC, or the rights of FICC, with respect to transactions submitted to FICC before the Termination Date.

Proposed GSD Rule 3B, Section 7 (Loss Allocation Obligations of CCIT Members)

CCIT Members would only be permitted to participate in the proposed CCIT Service as cash lenders, and FICC would have a perfected security interest in each CCIT Member's underlying repo securities. In the event that a CCIT Member defaults or becomes insolvent, FICC would obtain and deliver the underlying repo securities to the Netting Member with whom the defaulted CCIT Member had open CCIT Transactions. As a result of FICC's perfected security interest, CCIT Members would not present market risk because FICC would not be required to take market action in order to obtain the underlying repo securities. In light of the foregoing, FICC believes it is appropriate from a risk management perspective not to require a Required Fund Deposit from CCIT Members.

However, FICC does propose to establish loss allocation obligations for CCIT Members, and Section 7 of proposed GSD Rule 3B would set forth such obligations.

In particular, Section 7 of proposed GSD Rule 3B provides that Section 7 of GSD Rule 4 (Clearing Fund and Loss Allocation), which covers loss allocation generally, would apply to CCIT Members as Tier Two Members. Section 7 of proposed GSD Rule 3B and Section 7 of GSD Rule 4, together, would provide that CCIT Members would be responsible for the total amount of loss allocated to them. With respect to CCIT Members with a Joint Account Submitter, loss allocation would be calculated at the Joint Account level and then applied pro rata to each CCIT Member within the Joint Account based on the trade settlement allocation instructions. If, at the time FICC calculates loss allocation, the trade settlement allocation instructions to the individual CCIT Member level have not yet been received by FICC, the CCIT Members in the Joint Account would be required to provide the allocation to FICC within the timeframes set by FICC in its discretion.

Proposed GSD Rule 3B, Section 8 (Obligations Under Rule 4 Regarding Netting Members That Participate in the CCIT Service)

Section 8 of proposed GSD Rule 3B would establish the applicability of GSD Rule 4 (Clearing Fund and Loss Allocation) to Netting Members with respect to their CCIT Transactions.

Section 8 of proposed GSD Rule 3B would provide that the provisions of GSD Rule 4 would apply to the CCIT Service activity of Netting Members in the same manner that such provisions apply to Netting Members' GCF Repo Transaction activity.

Proposed GSD Rule 3B, Section 9 (Trade Submission and the Comparison System)

Section 9 of proposed GSD Rule 3B would establish trade submission and comparison requirements for CCIT Transactions.

With respect to trade submission, Section 9 of proposed GSD Rule 3B would permit CCIT Members (whether submitting individually or through a Joint Account) to submit only CCIT Transactions to FICC. FICC would leverage its existing GCF Repo Service infrastructure and operations to process CCIT Transactions, subject to certain differences given the nature of the CCIT Transactions and certain industry conventions applicable to such transactions, which FICC wishes to accommodate in its processing. CCIT Transactions would be required to be in Generic CUSIP Numbers approved by FICC for the GCF Repo Service.

Each CCIT Member would be required to maintain two accounts at the GCF Clearing Agent Bank(s) at which Netting Members with whom the CCIT Member enters into CCIT Transactions maintain accounts. CCIT Members acting through a Joint Account would be required to cause the Joint Account Submitter to maintain two accounts for the Joint Account activity at the GCF Clearing Agent Bank(s) at which the Netting Members with whom the CCIT Members enter into CCIT Transactions maintain accounts. One account at each such GCF Clearing Agent Bank would be designated for the CCIT Member's activity with FICC, and the second account would be designated for purposes of the committed liquidity facility to which the CCIT Member would be subject. This facility is described in Section 14 of proposed GSD Rule 3B.

With respect to trade comparison, Section 9 of proposed GSD Rule 3B would provide that the provisions of GSD Rule 5 (Comparison System) would apply to CCIT Transactions, subject to the following: (i) ''Member,'' when used in GSD Rule 5 (Comparison System), would include a CCIT Member or a Joint Account Submitter acting on behalf of a CCIT Member, as applicable; (ii) with respect to Section 3 (Trade Submission Communication Methods) of GSD Rule 5, CCIT Transactions could only be submitted using the Interactive Submission Method or FICC's web interface; and (iii) with respect to Section 4 (Submission Size Alternatives) of GSD Rule 5, CCIT Transactions would be required to be submitted exactly as executed.

Also with respect to trade comparison, FICC would permit CCIT Transactions to be submitted for either Bilateral Comparison or Locked-In Comparison. Currently, in the GCF Repo Service (which the CCIT Service would be leveraging), transactions are submitted for Locked-In Comparison. Because institutional tri-party repo

transactions are typically transacted on a bilateral basis, FICC wishes to accommodate this convention and allow CCIT Transactions to be submitted for either Bilateral Comparison or Locked-In Comparison.

Section 9 of proposed GSD Rule 3B would provide that GSD Rule 6A (Bilateral Comparison) would govern the comparison of CCIT Transactions that are submitted for Bilateral Comparison, subject to the following:

(i) ''Member,'' when used in GSD Rule 6A, would include a CCIT Member or a Joint Account Submitter acting on behalf of a CCIT Member, as applicable;

(ii) with respect to Section 1 (General) of GSD Rule 6A, the *Schedule of Required and Other Data Submission Items for GCF Repo Transactions* would apply to CCIT Transactions. The *Schedule of Required Match Data* and the *Schedule of Money Tolerances* would not apply to CCIT Transactions. With respect to the *Schedule of Required and Other Data Submission Items for GCF Repo Transactions,* the fields requiring Broker information would not apply; and

(iii) with respect to Section 2 (Submission Method Requirements) of GSD Rule 6A, CCIT Transactions could only be submitted using the Interactive Submission Method or FICC's web interface.

Section 9 of proposed GSD Rule 3B would provide that the following provisions of GSD Rule 6C (Locked-In Comparison) would govern the comparison of CCIT Transactions that are submitted on a Locked-In Trade basis: Section 1 (General), Section 2 (Authorizations of Transmission to and Receipt by the Corporation of Data on Locked-In Trades), the first sentence in Section 4 (Submission Requirements), Section 5 (GCF Repo Transactions), Section 7 (Reporting of Locked-In Trades), Section 8 (Discretion to not Accept Data), Section 9 (Binding Nature of Comparison System Output on Locked-In Trades), Section 12 (Affirmation, Cancellation and Modification Requirements for Data on GCF Repo Transactions) and Section 13 (Timing of Comparison). For purposes of the application of these provisions to CCIT Transactions, CCIT Transactions would be treated as GCF Repo Transactions. ''Member,'' when used in applicable parts of GSD Rule 6C, would include a CCIT Member or, as applicable, a Joint Account Submitter acting on behalf of a CCIT Member.

Section 9 of proposed GSD Rule 3B states that the *Schedule of GCF Timeframes* would apply to CCIT Transactions (whether submitted for Bilateral Comparison or Locked-In Comparison) and CCIT Members would be subject to any applicable late fees (applied at the Joint Account level if applicable) noted in the *Fee Structure* for failure to meet applicable deadlines. CCIT Members would be subject to all consequences for not meeting the deadlines in the schedules noted in GSD Rule 20 (Special Provisions for GCF Repo Transactions) in the same manner that such consequences apply to Netting Members.

Proposed GSD Rule 3B, Section 10 (Forward Trades)

Section 10 of proposed GSD Rule 3B would apply to CCIT Transactions that are Forward Trades.

Section 10 of proposed GSD Rule 3B would provide that the provisions of GSD Rule 14 (Forward Trades) would apply to CCIT Transactions in the same way such provisions apply to GCF Repo Transactions.

Proposed GSD Rule 3B, Section 11 (Netting System and Settlement of CCIT Transactions)

Section 11 of proposed GSD Rule 3B would govern the netting and settlement of CCIT Transactions.

Section 11 of proposed GSD Rule 3B would provide that GSD Rule 20 (Special Provisions for GCF Repo Transactions) would apply to the netting and settlement obligations of FICC and each party to a CCIT Transaction in the same manner in which such provisions apply to GCF Repo Transactions, subject to the following: (i) When used, ''Netting Member'' would include a CCIT Member or, as applicable, a Joint Account; (ii) CCIT Members (whether acting individually or through a Joint Account) would always be GCF Net Funds Lenders; (iii) CCIT Members would not be Interbank Pledging Members; [25] (iv) CCIT Members would not be initiators of requests for collateral substitutions but would be the recipients of such collateral substitutions; [26] and (v) the CCIT Transaction activity of Netting Members would be netted with such Netting Members' GCF Repo Service activity for one net obligation per GCF Repo Service Generic CUSIP Number.

Section 11 of proposed GSD Rule 3B would also provide that on each Business Day, CCIT Members submitting CCIT Transactions through a Joint Account would be required to cause their Joint Account Submitter to submit the trade settlement allocation with respect to trades settled by the Joint Account during that Business Day.

In the event that FICC ceases to act for a CCIT Member, FICC would need to obtain the underlying securities collateral to avoid having to take market action to purchase such securities. To address this concern, Section 11 of proposed GSD Rule 3B would provide that each CCIT Member grants to FICC a security interest in the underlying securities as security for the CCIT Member's performance of its obligations under each CCIT Transaction. Section 11 of proposed GSD Rule 3B would further provide that in the event a CCIT Transaction were re-characterized as a loan, the securities delivered to the CCIT Member would be deemed pledged to such Member as security for the performance of FICC's obligations. In such circumstances, FICC would not be considered to have a security interest in the securities but as owning the securities. In addition, Section 11 of proposed GSD Rule 3B would provide that if FICC ceases to act for a CCIT Member, FICC could instruct the relevant GCF Clearing Agent Bank to deliver to FICC the Eligible Securities that the CCIT Member is obligated to return to FICC against payment by FICC of the Contract Value.

Proposed GSD Rule 3B, Section 12 (Compared Trades)

Section 12 of proposed GSD Rule 3B would establish FICC's guaranty of settlement of CCIT Transactions.

Section 12 of proposed GSD Rule 3B would provide that GSD Rule 11B (Guaranty of Settlement) would apply to CCIT Transactions that are Compared Trades.

Proposed GSD Rule 3B, Section 13 (Funds-Only Settlement)

Section 13 of proposed GSD Rule 3B would establish the funds-only settlement obligations that would apply to CCIT Members and to Netting Members that are parties to CCIT Transactions.

FICC proposes that CCIT Members would have Funds-Only Settlement Amount obligations as set forth in GSD Rule 13 (Funds-Only Settlement), and that GSD Rule 13 would apply in its entirety to CCIT Members in the same manner as it applies to Netting

[25] Interbank processing is not a feature of the CCIT Service because CCIT Members would be required to have accounts at each GCF Clearing Agent Bank at which Netting Members with whom the CCIT Members enter into CCIT Transactions maintain accounts. The net cash requirement for each account would be settled at the applicable bank, thereby eliminating the need for interbank processing.

[26] Because CCIT Members would be cash lenders in CCIT Transactions, they would not initiate collateral substitutions, as collateral substitution is a market practice initiated by cash borrowers in repo transactions.

Members, except that only the following components of Section 1 (General) of GSD Rule 13 would apply to CCIT Members: (i) The Invoice Amount,[27] and (ii) the Miscellaneous Adjustment Amount.[28] FICC proposes to not collect/pay the remaining funds-only settlement components included in Section 1 of GSD Rule 13 from/to CCIT Members in order to align with current market practice for institutional cash lenders in the tri-party repo market. Such modified approach to the funds-only settlement process would be appropriate for FICC to take with respect to CCIT Members in light of the fact that no market action would be required by FICC in the event of a CCIT Member's default due to the perfected security interest FICC would have in such CCIT Member's underlying repo securities.

For Netting Members that are parties to CCIT Transactions, FICC proposes that the Invoice Amount, the Miscellaneous Adjustment Amount, and the Transaction Adjustment Payment components of Section 1 of GSD Rule 13 would apply (inclusive of their CCIT Transactions) in the same manner that such components are currently applied to their GSD funds-only settlement obligations.

However, the GCF Interest Rate Mark and Interest Rate Mark components of Section 1 of GSD Rule 13 would apply in a different manner with respect to Netting Members' CCIT Transactions than such components are currently applied to their GSD funds-only settlement obligations. Specifically, if the GCF Interest Rate Mark funds-only settlement component (for a CCIT Transaction for which the Start Leg has settled) or the Interest Rate Mark funds-only settlement component (for a CCIT Transaction that is a Forward Trade, during such CCIT Transaction's Forward-Starting Period) result in a debit to the Netting Member, such debit amount would be collected and held by FICC overnight and then returned to the Netting Member the following day in a credit for the same amount, plus a use of funds amount (Interest Rate Market Adjustment Payment). FICC proposes to collect and hold debit amounts reflecting Netting Members' GCF Interest Rate Mark or Interest Rate Mark, as applicable, overnight to mitigate the interest rate risk that FICC faces from a Netting Member's default with respect to its CCIT Transactions. However, if the GCF Interest Rate Mark or the Interest Rate Mark component, as applicable, results in a credit to a Netting Member, the Netting Member would not be paid the credit because the related debit would not be collected from the CCIT Member for the reasons described above.

In addition, FICC proposes to apply a new funds-only settlement component to CCIT Transactions, which would be referred to as ''CCIT Daily Repo Interest.'' CCIT Daily Repo Interest would reflect the daily interest earned on a CCIT Transaction and would be collected by FICC on each Business Day during the course of a CCIT Transaction from the cash borrowing Netting Member party to a CCIT Transaction (other than on the Actual Settlement Date of the CCIT Transactions on which it would be treated as a Transaction Adjustment Payment) and paid through by FICC on the same day to the cash lending CCIT Member as part of the funds-only settlement process, unless the parties enter into a negative rate CCIT Transaction, in which case the debits and credits would be reversed. It should be noted that a Netting Member would not receive any use of funds amount credit from FICC on any CCIT Daily Repo Interest collected from such Netting Member during the course of a CCIT Transaction because the related debit would not be collected from the CCIT Member in order to align with current market practice for institutional cash lenders in the tri-party repo market.

Proposed GSD Rule 3B, Section 14 (Liquidity Requirements of CCIT Members)

Section 14 of proposed GSD Rule 3B would establish a rules-based committed liquidity facility for CCIT Members.

The September 1996 Securities Industry and Financial Markets Association Master Repurchase Agreement (without the referenced annexes) (the ''SIFMA MRA'') would be incorporated by reference into the GSD Rules as a master repurchase agreement between FICC as seller and each CCIT Member as buyer (the ''CCIT MRA'').

The CCIT MRA could be invoked by FICC in the event that FICC ceases to act for a Netting Member that engaged in CCIT Transactions (the ''Defaulting Member''), and would require CCIT Members that have open trades with the Defaulting Member to enter into repo transactions subject to the CCIT MRA (each, a ''CCIT MRA Transaction''). Only CCIT Members that have outstanding CCIT Transactions with the Defaulting Member would be required to enter into CCIT MRA Transactions, and the aggregate total purchase price of a CCIT Member's CCIT MRA Transactions would be limited to no more than the aggregate total principal dollar amount of such CCIT Member's outstanding CCIT Transactions with the Defaulting Member. The securities posted to the CCIT Members under CCIT MRA Transactions would have a market value of 102 percent of the aggregate purchase price, and the pricing rate in respect of each CCIT MRA Transaction would be the rate published on FICC's Web site at the time that FICC initiates such CCIT MRA Transaction, corresponding to: (A) U.S. Treasury 30-year maturity (CUSIP: 371487AE9) if the underlying securities are U.S. Treasury securities; (B) Non-Mortgage Backed U.S. Agency Securities (CUSIP: 371487AH2) if the underlying securities are non-mortgage-backed U.S. agency securities; or (C) Fannie Mae and Freddie Mac Fixed Rate MBS (CUSIP: 371487AL3) if the underlying securities are mortgage-backed securities, or, if the relevant foregoing rate is unavailable, a rate that FICC reasonably determines approximates the average daily interest rate paid by a seller of the underlying securities under a cleared repo transaction.

CCIT MRA Transactions would be terminable only by demand of FICC, except in the following circumstances: (i) A Corporation Default occurs during the term of a CCIT MRA Transaction; or (ii) if FICC is not able to settle a CCIT MRA Transaction by (x) the 30th calendar day following the entry into such CCIT MRA Transaction where the underlying securities are non-mortgage-backed U.S. agency securities or U.S. Treasury securities, or (y) the 60th calendar day following the entry into such CCIT MRA Transaction where the underlying securities are mortgage-backed securities (any such day, a ''CCIT MRA Termination Date''). In either of the aforementioned circumstances, the affected CCIT Member would have the right to terminate the CCIT MRA Transaction and sell the underlying securities.

Section 14 of proposed GSD Rule 3B would also make clear that all delivery obligations with respect to an original CCIT Transaction would be deemed satisfied by operation of Section 14, and settlement of any original CCIT Transaction between FICC and any CCIT

[27] Pursuant to the GSD Rules, the term ''Invoice Amount'' means ''all fee amounts due and owing from a Netting Member to the Corporation on a particular Business Day.'' GSD Rule 1, Definitions. This filing would amend this definition to include CCIT Members.

[28] Pursuant to the GSD Rules, the ''Miscellaneous Adjustment Amount'' means ''the net total of all miscellaneous funds-only amounts that, on a particular Business Day, are required to be paid by a Netting Member to the Corporation and/or are entitled to be collected by a Member from the Corporation.'' GSD Rule 1, Definitions. This filing would amend this definition to include CCIT Members.

Member would be final, notwithstanding that the relevant Eligible Securities are not required to be delivered to FICC in connection with such original CCIT Transaction by the CCIT Member that was a buyer in the original CCIT Transaction (such delivery being netted against delivery to the buyer under the CCIT MRA).

In addition to the above, Section 14 of proposed GSD Rule 3B also provides for uncommitted liquidity repurchase transactions between each CCIT Member as Buyer and FICC as Seller under the SIFMA MRA that would also be incorporated by reference in the GSD Rules.

Proposed GSD Rule 3B, Section 15 (Restrictions on Access to Services by a CCIT Member, Insolvency of a CCIT Member and Wind-Down of a CCIT Member)

Section 15 of proposed GSD Rule 3B would govern (i) the rights of FICC to restrict a CCIT Member's access to its services, (ii) FICC's rights in the event of an insolvency of a CCIT Member, and (iii) the winding down of a CCIT Member's CCIT activity.

Section 15 of proposed GSD Rule 3B would provide that the provisions of GSD Rule 21 (Restrictions on Access to Services), GSD Rule 21A (Wind-Down of a Netting Member) and GSD Rule 22 (Insolvency of a Member) would apply to CCIT Members in the same manner as such provisions apply to Netting Members.

Proposed GSD Rule 3B, Section 16 (Procedures for When the Corporation Ceases To Act for a CCIT Member)

Section 16 of proposed GSD Rule 3B would establish FICC's procedures for when it ceases to act for a CCIT Member.

Section 16 of proposed GSD Rule 3B would provide that GSD Rule 22A (Procedures for When the Corporation Ceases to Act) would apply when FICC ceases to act for a CCIT Member in the same manner as such rule applies to Netting Members, except that with respect to Section 2(b) of GSD Rule 22A, the CCIT Member for whom FICC has ceased to act would be required to return each Eligible Security that the CCIT Member is obligated to return to FICC against payment by FICC of the Contract Value.

Proposed GSD Rule 3B, Section 17 (Other Applicable Rules, Schedules, Interpretations and Statements)

Section 17 of proposed GSD Rule 3B would establish certain other GSD Rules as being applicable to CCIT Members in the same manner that such rules apply to Netting Members.

Section 17 of proposed GSD Rule 3B would provide that GSD Rule 1 (Definitions), GSD Rule 22B (Corporation Default), proposed GSD Rule 22C (Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991), GSD Rule 23 (Fine Payments), GSD Rule 25 (Bills Rendered), GSD Rule 27 (Admission to Premises of the Corporation, Powers of Attorney, Etc.), GSD Rule 28 (Forms), GSD Rule 29 (Release of Clearing Data), GSD Rule 31 (Distribution Facilities), GSD Rule 32 (Signatures), GSD Rule 33 (Procedures), GSD Rule 34 (Insurance), GSD Rule 35 (Financial Reports), GSD Rule 36 (Rule Changes), GSD Rule 37 (Hearing Procedures), GSD Rule 38 (Governing Law and Captions), GSD Rule 39 (Limitations of Liability), GSD Rule 40 (General Provisions), GSD Rule 41 (Cross-Guaranty Agreements), GSD Rule 42 (Suspension of Rules), GSD Rule 44 (Action by the Corporation), GSD Rule 45 (Notices), GSD Rule 46 (Interpretation of Terms), GSD Rule 47 (Interpretation of Rules) and GSD Rule 48 (Disciplinary Proceedings) would apply to CCIT Members in the same manner that such rules apply to Netting Members.

Section 17 of proposed GSD Rule 3B would provide that CCIT Members would be Voluntary Purchaser Participants within the meaning of the Shareholders Agreement of DTCC, dated as of November 4, 1999, as heretofore or hereafter amended and restated.[29] In addition, Section 17 of proposed GSD Rule 3B would provide that all schedules cited in or pertaining to the GSD Rules which are cited in proposed GSD Rule 3B would apply to CCIT Members and that the Statements of Policy or Interpretation contained in the GSD Rules as applicable to the CCIT Service would also be applicable to CCIT Members.

E. Proposed Changes to GSD Rule 4 (Clearing Fund and Loss Allocation)

The proposed changes to GSD Rule 4 (Clearing Fund and Loss Allocation) would provide that CCIT Members would be treated as Tier Two Members for purposes of default loss allocation.

Unlike Tier One Netting Members, which are subject to default loss mutualization, a Tier Two Member is only subject to loss allocation as a result of the default of a Netting Member with whom it had open FICC-cleared transactions at the time of such Netting Member's default. FICC assesses Tier Two Members ratably based upon their open trading activity with the Defaulting Member that resulted in a loss. Tier Two Members whose trades with the Defaulting Member result in a bilateral liquidation profit are not allocated any portion of a Remaining Loss.

In light of the fact that a CCIT Member would only provide liquidity as a cash lender in the proposed CCIT Service and would not present market risk to FICC due to the perfected security interest FICC would have in such CCIT Member's underlying repo securities, FICC believes it is appropriate to treat CCIT Members as Tier Two Members and subject them to default loss allocation obligations with respect to the default of a Netting Member with whom they had open CCIT Transactions at the time of such Netting Member's default, but not loss mutualization obligations as is required for Tier One Netting Members as described above. Specifically, the proposed changes to GSD Rule 4 would provide that loss would be assessed against CCIT Members as Tier Two Members ratably based upon a percentage of loss attributable to each CCIT Member's specific Generic CUSIP Number that it had open with the Defaulting Member.

Conforming changes would also be made to GSD Rule 4 to refer to the defined term ''Tier Two Member'' (previously referred to in the GSD Rules as a ''Tier Two Netting Member''), which defined term would be revised by this filing to include a CCIT Member.

F. Proposed Changes to GSD Rule 5 (Comparison System)

Conforming changes would be made to GSD Rule 5 (Comparison System) to reference obligations between a Netting Member and a CCIT Member (or Joint Account, as applicable) with respect to novation.

G. Proposed Changes to GSD Rule 22C (Interpretation in Relation to the Federal Deposit Insurance Corporation Act of 1991)

Conforming changes would be made to GSD Rule 22C, formerly GSD Rule 22B Section (c), in order to establish that any actions taken under Section 11(e) of proposed GSD Rule 3B constitute remedies under a ''security agreement or arrangement or other credit enhancement.'' [30]

H. Proposed Changes to GSD Rule 24 (Charges for Services Rendered)

Conforming changes would be made to GSD Rule 24 (Charges for Services

[29] GSD Rule 49, DTCC Shareholders Agreement.

[30] Certain other proposed changes to GSD Rule 22B unrelated to the establishment of the proposed CCIT Service are described below in Item II(A)1(iv).

Rendered) to provide that CCIT Members would be responsible for all fees pertaining to their CCIT Member activity as set forth in the *Fee Structure.* Such fees would be applied at the Joint Account level where applicable.

I. Proposed Changes to GSD Rule 30 (Lists to be Maintained)

Conforming changes would be made to GSD Rule 30 (Lists to be Maintained) to reflect that FICC would maintain lists of all CCIT Members (and their Joint Account Submitters, as applicable) and that such lists would be made available to Members upon request.

J. Proposed Changes to GSD Rule 49 (DTCC Shareholders Agreement)

The proposed changes to Section 3 of GSD Rule 49 (DTCC Shareholders Agreement) would provide that all Tier Two Members, including CCIT Members and Netting Members whose membership type has been designated as a ''Tier Two Member'' type by FICC pursuant to GSD Rule 2A (Initial Membership Requirements), are Voluntary Purchaser Participants.

(iii) Impact of the Proposed CCIT Service on Various Persons

The proposed CCIT Service would be voluntary. Institutional cash lenders that wish to become CCIT Members and Netting Members that wish to participate in the proposed CCIT Service would have an opportunity to review the proposed rule change and determine if they would like to participate. Choosing to participate would make these entities subject to all of the rule changes that would be applicable to the proposed CCIT Service as described below.

The proposed CCIT Service would affect institutional cash lenders that choose to become CCIT Members because it would impose various requirements on them. These requirements include, but are not limited to, the following sections of proposed GSD Rule 3B: (1) Eligibility and initial application requirements as specified in Sections 1, 2, 3 and 4; (2) on-going membership requirements as specified in Section 5; (3) loss allocation requirements as specified in Section 7; (4) trade submission requirements as specified in Section 9; (5) netting and settlement requirements as specified in Section 11; (6) funds-only settlement requirements as specified in Section 13; and (7) liquidity requirements in the event of a default of a Netting Member with whom such CCIT Member has traded as specified in Section 14.

Specific details on the requirements and the manner in which the proposed CCIT Service would affect institutional cash lenders that choose to become CCIT Members can be found above in *Section (ii)—Detailed Description of the Proposed Rule Changes Related to the Proposed CCIT Service.*

The proposed CCIT Service would affect Netting Members that choose to participate in the service because it would impose various requirements on them. These requirements include, but are not limited to, the funds-only settlement requirements as specified in Section 13 of proposed GSD Rule 3B.

Specific details on these requirements and the manner in which the proposed CCIT Service would affect Netting Members that choose to participate in the proposed CCIT Service are described above in *Section (ii)—Detailed Description of the Proposed Rule Changes Related to the Proposed CCIT Service.*

(iv) Other Proposed Rule Changes

This filing contains proposed rule changes that are in addition to the ones related to the establishment of the proposed CCIT Service. The proposed rule changes that are not related to the proposed CCIT Service would provide specificity, clarity and additional transparency to the GSD Rules as described below.

A. Proposed Changes to GSD Rule 2A (Initial Membership Requirements)

Section 3 of GSD Rule 2A governs the admission criteria and membership qualifications and standards for Comparison-Only Members.

FICC is proposing to amend Section 3(a) of GSD Rule 2A because FICC interprets this Section as applying specifically to the operational capability requirement for applicants to become Comparison-Only Members, but the existing rule text is more broadly written. In order to align the rule text with FICC's interpretation of the requirement of this Section, FICC is proposing to amend the rule text to provide that it applies only with respect to the operational capability requirement for applicants that wish to become Comparison-Only Members.[31]

B. Proposed Changes to GSD Rule 3 (Ongoing Membership Requirements)

GSD Rule 3 governs ongoing standards for Members.[32]

Section 7 of GSD Rule 3 relates to a Member's ongoing obligation to inform FICC, both orally and in writing, if it is no longer in compliance with any of the relevant qualifications. This includes, but is not limited to, a Member's ongoing obligation to notify FICC within two business days of learning of an investigation or proceeding to which it is or is becoming the subject of that would cause the Member to fall out of compliance with any of the relevant qualifications and standards for membership set forth in GSD Rules 2, 2A and 3. FICC is proposing to change the rule text in order clarify that this obligation to notify FICC arises at the point in time that such Member learns that an investigation or proceeding would cause it to fall out of compliance (and not before such time). FICC believes that the proposed change provides Members with clarity on the point in time at which a Member is required to notify FICC. Certain other conforming and typographical changes would also be made to this Section.

Section 10 of GSD Rule 3 provides that a Member's books and records, insofar as they relate to such Member's transactions processed through FICC, would be required to be open to the inspection of the duly authorized representatives of FICC in accordance with the provisions of this Section. In light of the fact that Registered Investment Companies are permitted to be Netting Members under GSD Rule 3, and Registered Investment Company trading activity is typically controlled by a separate investment adviser, FICC proposes to amend Section 10 to require that, in addition to having access to the books and records of the Registered Investment Company Netting Member itself (as is required under current GSD Rule 3), that FICC also have access to the books and records of the Controlling Management of a Registered Investment Company Netting Member in accordance with the provisions of this Section.

Section 13 of GSD Rule 3 governs Comparison-Only Members' and Netting Members', as applicable, election to terminate their GSD membership. Currently, this rule states that a Comparison-Only Member's or Netting Member's, as applicable, request to terminate its GSD membership will not be effective until accepted by FICC. Because the existing rule is open-ended with respect to FICC's duty to accept such Member's request to terminate its

[31] The operational capability requirement is also applicable to applicants to become Netting Members, pursuant to GSD Rule 2A, Section 4. GSD Rule 2A, Initial Membership Requirements.

[32] Pursuant to the GSD Rules, the term ''Member'' means a ''Comparison-Only Member'' or a ''Netting Member.'' The term ''Member'' also includes a Sponsoring Member in its capacity as a Sponsoring Member and a Sponsored Member, each to the extent specified in GSD Rule 3A. GSD Rule 1, Definitions. This filing would amend this definition to include CCIT Members to the extent specified in proposed GSD Rule 3B.

membership and such open-endedness could create uncertainty for a Member that wishes to terminate its GSD membership as to when such termination will be effective, FICC is proposing to amend this section to provide that a Member's written notice of its termination would not be effective until accepted by FICC, which acceptance could be no later than 10 Business Days after the receipt of the written notice from such Member.

C. Proposed Changes to GSD Rule 4 (Clearing Fund and Loss Allocation)

Section 5 of GSD Rule 4 governs FICC's use of Clearing Fund deposits. FICC proposes to correct an out-of-date cross-reference and make a typographical correction to this section.

D. Proposed Changes to GSD Rule 20 (Special Provisions For GCF Repo Transactions) and the Schedule of GCF Timeframes

Section 3 of GSD Rule 20 governs FICC's collateral allocation requirements for each Netting Member in a GCF Net Funds Borrower Position or GCF Net Funds Lender Position.

FICC proposes to amend Section 3 of GSD Rule 20 to require that all GCF Repo Transactions be fully collateralized at the time established by FICC in the *Schedule of GCF Timeframes*,[33] and to amend the *Schedule of GCF Timeframes* to establish 9:00 New York Time as the deadline for satisfaction of such requirement. FICC also proposes to amend Section 3 of GSD Rule 20 to prohibit a Member that receives collateral in the GCF Repo process (*i.e.,* a Member with a Collateral Allocation Entitlement) from withdrawing the securities or cash collateral that such Member receives.

E. Proposed Changes to GSD Rule 22B (Corporation Default)

GSD Rule 22B describes specific events that would cause a Corporation Default [34] and the effect of this default on Transactions that have been submitted to FICC.

FICC proposes to amend GSD Rule 22B to specify the steps that Members would need to take in the event of a Corporation Default. The proposed rule changes to subsection (a) of GSD Rule 22B would state that upon the immediate termination of the open Transactions between Members that have been novated to FICC, such Members would be required to promptly take market action to close out such positions. Each Member would then report the results of the market action to the Board. FICC believes that the proposed change would be helpful to Members and would promote clarity and transparency with respect to the process surrounding a Corporation Default.

F. Proposed Changes to GSD Rule 35 (Financial Reports)

FICC proposes to amend GSD Rule 35 (Financial Reports) to add a provision to reflect FICC's current practice of having its independent public accountants conduct an annual study and evaluation of FICC's system of internal accounting controls with respect to the safeguarding of participants' assets, prompt and accurate clearance and settlement of securities transactions, and the reliability of related records. Such study and evaluation is conducted in accordance with the standards established by the American Institute of Certified Public Accountants and is made available to all Members within a reasonable time upon receipt from FICC's independent accountants.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the GSD Rules be designed to (i) ''promote the prompt and accurate clearance and settlement of securities transactions'' [35] and (ii) ''remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.'' [36] By expanding the availability of GSD's infrastructure to institutional cash lenders, FICC believes that the proposed rule change would help to safeguard the tri-party repo market, as the proposed rule change to establish the proposed CCIT Service would (i) decrease settlement and operational risk (by making a greater number of transactions eligible to be netted and subject to guaranteed settlement, novation, and independent risk management through FICC), (ii) lower the risk of liquidity drain in the tri-party repo market (through FICC's guaranty of completion of settlement for a greater number of eligible tri-party repo transactions), and (iii) protect against fire sale risk (through FICC's ability to centralize and control the liquidation of a greater portion of a failed counterparty's portfolio). By decreasing settlement and operational risk, FICC believes the proposed rule change would ''promote the prompt and accurate clearance and settlement of securities transactions'' and ''remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions'' consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above. By lowering the risk of liquidity drain in the tri-party repo market and protecting against fire sale risk, FICC believes the proposed rule change would ''protect investors and the public interest,'' consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

Section 17A(b)(3)(F) of the Act requires, in part, that the GSD Rules be designed to ''assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.'' [37] By providing for sufficient liquidity resources for FICC to settle the obligations of a CCIT Member's defaulted Netting Member pre-novation counterparty in the form of the CCIT MRA and by protecting FICC from market risk in the event of a CCIT Member's default in the form of the perfected security interest in FICC's favor in each CCIT Member's underlying repo securities, the proposed CCIT Service would provide for prudent risk management of CCIT Transactions and CCIT Members by FICC and would contribute to FICC's financial stability. Therefore, FICC believes the proposed rule change would ''assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible,'' consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

Section 17A(b)(3)(G) of the Act requires that the GSD Rules ''provide that . . . [the clearing agency's] participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.'' [38] Section 17A(b)(3)(H) of the Act requires, in part, that the GSD Rules ''provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services

[33] The *Schedule of GCF Timeframes* is an appendix to the GSD Rules.

[34] Subsection (b) of GSD Rule 22B describes the events that would cause FICC to be in default to its Members. GSD Rule 22B, Corporation Default.

[35] 15 U.S.C. 78q–1(b)(3)(F).

[36] *Id.*

[37] *Id.*

[38] 15 U.S.C. 78q–1(b)(3)(G).

offered by the clearing agency.'' [39] By subjecting CCIT Members, and applicants that wish to become CCIT Members, to comparable admission requirements [40] and the same disciplinary requirements (and related due process procedures) as those applicable to Netting Members, and applicants that wish to become Netting Members, the proposed CCIT Service would establish an appropriate framework for the admission and disciplining of CCIT Members. Such framework for the admission and disciplining of CCIT Members would be appropriate in light of the fact that CCIT Members would enjoy rights and privileges vis-à-vis FICC that are similar to those rights and privileges enjoyed by Netting Members. Therefore, FICC believes the proposed rule change would ''provide that . . . its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction,'' and also ''provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency,'' consistent with the requirements of the Act, in particular Sections 17A(b)(3)(G) and 17A(b)(3)(H), cited above.

The proposal is also consistent with Rules 17Ad–22(d)(2) and (d)(9), promulgated under the Act. Rule 17Ad–22(d)(2) requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to ''require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency.'' [41] Rule 17Ad–22(d)(9) requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to ''provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services.'' [42] In connection with the establishment of the proposed CCIT Service, FICC would make certain modifications to the GSD Rules (as described above) in order to create the requirements that would be applicable to CCIT Members, including initial and on-going financial responsibility and operational capacity requirements, as well as the requirements that would be applicable to Netting Members with respect to their participation in the proposed CCIT Service. If approved, the requirements applicable to the proposed CCIT Service would become part of the GSD Rules, which are publicly available on The Depository Trust & Clearing Corporation's Web site (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in the proposed CCIT Service. Therefore, FICC believes the proposed rule change would ''require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency'' and ''provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services,'' consistent with the requirements of Rules 17Ad–22(d)(2) and (d)(9), cited above.

As stated above, Section 17A(b)(3)(F) of the Act requires, in part, that the GSD Rules be designed to (i) ''promote the prompt and accurate clearance and settlement of securities transactions'' [43] and (ii) ''remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.'' [44] By providing specificity, clarity and additional transparency to the GSD Rules, the proposed rule changes to Section 3(a) of GSD Rule 2A (Initial Membership Requirements), Sections 7, 10 and 13 of GSD Rule 3 (Ongoing Membership Requirements), Section 5 of GSD Rule 4 (Clearing Fund and Loss Allocation), Section 3 of GSD Rule 20 (Special Provisions for GCF Repo Transactions) and the *Schedule of GCF Timeframes,* Subsection (a) of GSD Rule 22B (Corporation Default), and GSD Rule 35 (Financial Reports) that are unrelated to the proposed CCIT Service, would provide Members with a better understanding of the GSD Rules, making errors in the performance of their responsibilities to FICC less likely to occur and thereby ensuring that FICC's clearing and settlement system works efficiently. Therefore, FICC believes the proposed rule change would ''promote the prompt and accurate clearance and settlement of securities transactions'' by FICC and also ''remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions,'' consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed rule change to establish the proposed CCIT Service would promote competition by increasing the types of entities that may participate in FICC and therefore permit more market participants to utilize FICC's services.

At the same time, the proposed rule change may impose a burden on competition by limiting participation in the proposed CCIT Service to institutional cash lenders and Netting Members that are eligible to participate in the service. However, FICC believes any burden on competition that may result from the proposed rule change would not be significant and would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of

[39] 15 U.S.C. 78q–1(b)(3)(H).

[40] There would be certain differences between the admission requirements applicable to CCIT Members under proposed GSD Rule 3B and those applicable to Netting Members under GSD Rule 2A. For example, under proposed GSD Rule 3B, FICC proposes to require that CCIT Member applicants provide certain opinions of counsel in connection with their applications to become CCIT Members (as described above) to which Netting Member applicants are not subject. In addition, CCIT Member applicants would not be subject to the same requirements regarding business history as Netting Member applicants are subject to.

FICC believes that these differences in the admission requirements between CCIT Member applicants and Netting Member applicants are appropriate and consistent with the requirements of the Act (in particular Section 17A(b)(3)(H), cited above), in light of the differences between the proposed CCIT Service and services available to Netting Members.

With respect to the opinion of counsel requirements for CCIT Member applicants, because FICC is anticipating that many of the firms that would apply to become CCIT Members would be of legal entity types that are not otherwise eligible to become Netting Members, FICC believes the opinion of counsel requirements are necessary in order to establish an appropriate framework for the admission of CCIT Members because they ensure that FICC is able to obtain the same level of legal comfort with respect to its rights vis-à-vis CCIT Members as it has with respect to its Netting Members. With respect to the business history requirements, FICC believes that it is not necessary to establish the same requirements for CCIT Members as it has for Netting Members because CCIT Members do not present FICC with the credit and market risk exposure that Netting Members do in light of the fact that CCIT Members (i) would only be allowed to lend cash into GSD and (ii) would be required to grant FICC an enforceable and perfected security interest in the securities collateral posted to them under CCIT Transactions, which FICC would be able to foreclose upon in the event of a CCIT Member's default in order to complete settlement without having to take market action.

[41] 17 CFR 240.17Ad–22(d)(2).

[42] 17 CFR 240.17Ad–22(d)(9).

[43] 15 U.S.C. 78q–1(b)(3)(F).

[44] *Id.*

the Act,[45] for the reasons described below.

First, although the proposal would limit the legal entities that would be eligible to participate in the proposed CCIT Service as CCIT Members to non-RICs, and this limitation may impact RICs by excluding them from being able to novate their tri-party repo lending activity in GCF Repo eligible asset classes to FICC (and avail themselves of the commensurate benefits described in *Section (i)—Background on the Proposed CCIT Service* above), FICC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act in light of the fact that the legal ability of RICs to participate in the proposed CCIT Service is uncertain in light of the regulatory requirements applicable to them under the Investment Company Act of 1940 (including, for example, liquid asset requirements and counterparty diversification requirements), and therefore it is necessary and appropriate in furtherance of the purposes of the Act to exclude them, at this time, from the proposed CCIT Service until such legal uncertainty can be resolved. Moreover, FICC believes any related burden on competition would not be significant because, as described in *Section (iii)—Impact of the Proposed CCIT Service on Various Persons* above, the proposed CCIT Service would be voluntary and would not restrict the ability of RICs to enter into tri-party repo transactions with Netting Members in GCF Repo eligible asset classes outside of GSD.

Second, although the proposal would limit participation in the proposed CCIT Service as CCIT Members to legal entities that are able to satisfy the eligibility requirements specified in proposed GSD Rule 3B, and this limitation may impact institutional cash lenders that are unable to satisfy such eligibility requirements by excluding them from being able to novate their tri-party repo lending activity in GCF Repo eligible asset classes to FICC (and avail themselves of the commensurate benefits described in *Section (i)—Background on the Proposed CCIT Service* above), FICC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act in light of the fact that such eligibility requirements are designed to allow FICC to prudently manage the risks associated with CCIT Members' participation in the proposed CCIT Service. For example, the proposed minimum Net Asset requirements of $100 million or more and credit monitoring requirements for CCIT Members included in the proposed GSD Rule 3B are designed to allow FICC to manage the credit risk associated with CCIT Members' participation in the proposed CCIT Service. The requirement that CCIT Members grant FICC an enforceable and perfected security interest in the securities collateral posted to them under CCIT Transactions is designed to allow FICC to manage the market risk associated with CCIT Members' participation in the proposed CCIT Service. Moreover, the requirement that CCIT Members provide FICC with a committed liquidity facility in the event FICC ceases to act for a Netting Member with whom they have open CCIT Transactions is designed to allow FICC to manage the liquidity risk associated with CCIT Members' participation in the proposed CCIT Service. Furthermore, FICC believes any related burden on competition would not be significant because, as described in *Section (iii)—Impact of the Proposed CCIT Service on Various Persons* above and in the preceding paragraph, the proposed CCIT Service would be voluntary and would not restrict the ability of institutional cash lenders to enter into tri-party repo transactions with Netting Members in GCF Repo eligible asset classes outside of GSD.

Third, although the proposal would limit participation in the proposed CCIT Service to Netting Members that are participants in the GCF Repo Service, and this limitation may impact Netting Members that do not participate in the GCF Repo Service by excluding them from being able to novate their institutional tri-party repo borrowing activity in GCF Repo eligible asset classes to FICC (and avail themselves of the commensurate benefits described in *Section (i)—Background on the Proposed CCIT Service* above), FICC believes that any related burden on competition is necessary and appropriate in furtherance of the purposes of the Act in light of the fact that all Netting Members that fulfill the application requirements, including but not limited to completing the necessary documentation, are eligible to become GCF Repo participants and would therefore be eligible to participate in the proposed CCIT Service. Moreover, FICC believes any related burden on competition would not be significant because, as described in *Section (iii)—Impact of the Proposed CCIT Service on Various Persons* above and in the preceding paragraphs, participation in the proposed CCIT Service would be voluntary and would not restrict the ability of Netting Members to enter into tri-party repo borrowing transactions with institutional counterparties in GCF Repo eligible asset classes outside of GSD.

FICC believes that the proposed changes to Section 3(a) of GSD Rule 2A (Initial Membership Requirements), Sections 7, 10 and 13 of GSD Rule 3 (Ongoing Membership Requirements), Section 5 of GSD Rule 4 (Clearing Fund and Loss Allocation), Section 3 of GSD Rule 20 (Special Provisions for GCF Repo Transactions) and the *Schedule of GCF Timeframes,* Subsection (a) of GSD Rule 22B (Corporation Default), and GSD Rule 35 (Financial Reports) that are unrelated to the proposed CCIT Service would not have an impact, nor impose any burden, on competition because each of such proposed changes are designed to provide specificity, clarity, and additional transparency within the GSD Rules.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[45] 15 U.S.C. 78q–1(b)(3)(I).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2017–005 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–2017–005. 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 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–2017–005 and should be submitted on or before April 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06241 Filed 3–29–17; 8:45 am]

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[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80310; File No. SR–NYSEArca–2016–89]

Self-Regulatory Organizations; NYSE Arca, Inc; Notice of Filing of Partial Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4, To Amend the Co-Location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

March 24, 2017.

I. Introduction

On August 16, 2016, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the co-location services offered by the Exchange to add certain access and connectivity fees, applicable to Users [3] in the Exchange's data center in Mahwah, NJ (''Data Center''). The Exchange proposed to: (1) Provide additional information regarding access to the trading and execution systems of the Exchange and its affiliated SROs, and establish fees for connectivity to certain NYSE, NYSE Arca, and NYSE MKT market data feeds; and (2) provide and establish fees for connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds''); access to the trading and execution services of Third Party markets and other content service providers (''Third Party Systems''); connectivity to Depository Trust & Clearing Corporation (''DTCC'') services; connectivity to third party testing and certification feeds; and the use of virtual control circuits (''VCCs'').

The Commission published the proposed rule change for comment in the **Federal Register** on August 26, 2016.[4] The Commission received no comments in response to the proposed rule change.[5] On October 4, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 24, 2016.[6]

On November 2, 2016, the Exchange filed partial Amendment No. 1 to the proposed rule change.[7] On November 29, 2016, the Commission instituted proceedings (''Order Instituting Proceedings'' or ''OIP'') to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The proposed rule change, as modified by Amendment No. 1, is referred to as the ''Prior Proposal.''

On December 9, 2016, the Exchange filed Amendment No. 2 to the proposed rule change and on December 13, 2016 also filed Amendment No. 3 to the proposed rule change.[9] Amendment Nos. 2 and 3, which together superseded and replaced the Prior Proposal in its entirety, were published for comment in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[4] *See* Securities Exchange Act Release No. 34–78628 (August 22, 2016), 81 FR 59004 (''Notice'').

[5] The Commission notes that it received one comment letter on a related filing by NYSE (NYSE–2016–45, the ''NYSE Companion Filing''),which is equally relevant to this filing. *See* letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated September 9, 2016 (''IEX I Letter'').

Responding to the IEX I Letter, *see* letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated September 23, 2016 (''Response Letter I''), available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-3.pdf.* In note 3 of Response Letter I, the NYSE states that its response is also applicable to the Exchange's filing, Securities Exchange Act Release No. 78628 (August 22, 2016), 81 FR 59004 (August 26, 2016) (SR–NYSEArca–2016–89). Accordingly, Response Letter I is referred to as the Exchange's response.

[6] *See* Securities Exchange Act Release No. 34–78967 (September 28, 2016), 81 FR 68480.

[7] In partial Amendment No. 1 the Exchange addressed (1) the benefits offered by the Premium NYSE Data Products that are not present in the Included Data Products (2) how Premium NYSE Data Products are related to the purpose of co-location, (3) the similarity of charging for connectivity to Third Party Systems and DTCC and charging for connectivity to Premium NYSE Data Products and (4) the costs incurred by the Exchange in providing connectivity to Premium NYSE Data Products to Users in the Data Center. Amendment No. 1 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysearca-2016-89/nysearca201689-1.pdf.*

[8] *See* Securities Exchange Act Release 34–79379 (November 22, 2016), 81 FR 86036.

[9] The Commission notes that the Exhibit 5 filed with Amendment No. 2 contained erroneous rule text and therefore was corrected in Amendment No. 3. Amendment Nos. 2 and 3 are available at *https://www.sec.gov/comments/sr-nysearca-2016-89/nysearca201689.shtml.*

the **Federal Register** on December 29, 2016.[10]

The Commission received additional comment letters following publication of the Order Instituting Proceedings.[11] Some of these comment letters addressed only the Prior Proposal, and some addressed the Prior Proposal, as modified by Amendment Nos. 2 and 3. NYSE, on behalf of the Exchange, responded to the comment letters submitted after the OIP in letters dated January 17, 2017 and February 13, 2017.[12] On February 7, 2017, the Exchange filed partial Amendment No. 4 to the proposed rule change.[13] On February 27, 2017, pursuant to Section 19(b)(2) of the Act,[14] the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment Nos. 1 through 4.[15] The Commission is publishing this notice to solicit comment on partial Amendment No. 4 and, and is approving the proposed rule change, as modified by Amendment Nos. 1 through 4, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4

A. Background: Prior Proposal and the Order Instituting Proceedings

In the proposed rule change, as modified by Amendment Nos. 1 through 4 (also referred to as the ''Current Proposal''), the Exchange proposes to amend the co-location services offered by the Exchange to add certain access and connectivity services and establish fees applicable to Users in the Data Center. Specifically, the Exchange proposes to provide and establish fees for connectivity to: (i) Third Party Data Feeds, (ii) Third Party Systems, (iii) DTCC services, (iv) third party testing and certification feeds; and for the use of VCCs.[16]

In the Prior Proposal (*i.e.,* prior to filing Amendment Nos. 2 and 3), the Exchange also had proposed to provide additional information about access to NYSE, NYSE Arca, and NYSE MKT trading and execution services, and to establish fees for connectivity to certain proprietary market data feeds.[17] Specifically, the Exchange had proposed that connectivity to most of the Exchange's and its affiliated SROs' proprietary market data products would be included in the purchase price of an LCN/IP network connection in the Data Center, but that an additional connectivity fee (''Premium NYSE Product Connectivity Fee'') would apply to the NYSE Integrated Feed, NYSE Arca Integrated Feed, NYSE MKT Integrated Feed, and the NYSE Best Quote and Trades (BQT) feed (''Premium NYSE Data Products'').[18] As a result, the purchase of access to NYSE, NYSE Arca, and NYSE MKT trading and execution services, would not include connectivity to every purchased proprietary data product; and whereas the Exchange would charge no additional fees for connectivity to most of the Exchange's and its affiliated SROs' data products, it would charge additional fees for connectivity to Premium NYSE Data Products.

The Commission specifically requested comment on this aspect of the Prior Proposal in the OIP. In particular, in the OIP, the Commission expressed concern that the Exchange had not identified a distinction between the provision of connectivity to Premium NYSE Data Products and the Exchange's and its affiliated SROs' other data products, and noted that the Premium NYSE Data Products are similar to such other data products.[19] In addition, the Commission requested comment on whether charging fees for connectivity to Premium NYSE Data Products in a different manner from other Exchange and affiliated SRO proprietary market data products was consistent with Section 6(b)(4) of the Act.[20] The Commission also sought comment on whether Users would have viable alternatives to paying the Exchange a connectivity fee for the Premium NYSE Data Products.[21] As discussed below, several commenters stated that it was inequitable for the Exchange to charge a separate and additional connectivity fee for some Exchange and affiliated SRO proprietary market data products and not others, and that receiving the Premium NYSE Data Products from an alternative source was not a viable option.[22]

In Amendment Nos. 2 and 3, the Exchange eliminated the Premium NYSE Product Connectivity Fee from the Current Proposal, and that fee is therefore no longer presented to the Commission for consideration.

B. Description of the Current Proposal

As stated above and more fully described in the Notice of Amendment Nos. 2 and 3, as partially modified by Amendment No. 4, the Exchange proposes to provide and establish fees for connectivity to: (i) Third Party Data Feeds, (ii) Third Party Systems, (iii)

[10] *See* Securities Exchange Act Release No. 34–79673 (December 22, 2016), 81 FR 96107 (''Notice of Amendment Nos. 2 and 3'').

[11] *See* letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated December 12, 2016 (''SIFMA I Letter''); letter to Brent J. Fields, Commission, from Joe Wald, Chief Executive Officer, Clearpool Group, dated December 16, 2016 (''Clearpool Letter''); letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated December 21, 2016 (''IEX II Letter''); letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated February 6, 2017 (''SIFMA II Letter''). All comments received by the Commission on the proposed rule change are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2016-89/nysearca201689.shtml.*

The Commission received additional comment letters on the NYSE Companion Filing which are equally relevant to this filing. *See* letter to Brent J. Fields, Commission, from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated December 12, 2016 (''Citadel Letter''); letter to Brent J. Fields, Commission, from David L. Cavicke, Chief Legal Officer, Wolverine LLC (''Wolverine Letter''); letter to Bent J. Fields, Secretary, Commission, from Stefano Durdic, Managing Director, R2G Services, LLC, dated January 21, 2017 (''R2G Letter''). All comments received by the Commission on the NYSE Companion Filing are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645.shtml.*

[12] *See* letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated January 17, 2017; letter to Brent J. Fields, Commission, from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, dated February 13, 2017 (''Response Letter II'' and ''Response Letter III,'' respectively), available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645.shtml.* In Response Letter II, note 4, and Response Letter III, note 2, respectively, the NYSE states that its response to comments on the NYSE Companion Filing are equally applicable to this filing. Accordingly, Response Letters II and III are referred to as the Exchange's response.

[13] In partial Amendment No. 4 the Exchange proposes to (1) remove reference to the National Stock Exchange from its list of Third Party Systems, and (2) provide and establish fees for connectivity to three additional Third Party Data Feeds—ICE Data Services Consolidated Feed, ICE Data Services PRD, and ICE Data Services PRD CEP, which are feeds owned by the Exchange's ultimate parent, but not by the Exchange or its affiliated self-regulatory organizations, NYSE MKT or NYSE. Partial Amendment No. 4, as filed by the Exchange, is available at *https://www.sec.gov/comments/sr-nysearca-2016-89/nysearca201689-1570736-131691.pdf.*

[14] 15 U.S.C. 78s(b)(2).

[15] *See* Securities Exchange Act Release No. 34–80076 (February 22, 2017), 82 FR 11951. The Commission designated April 23, 2017 as the date by which it should determine whether to disapprove the proposed rule change.

[16] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96108, and partial Amendment No. 4 *supra* note 13. A VCC is a unicast connection between two Users over dedicated bandwidth using the IP network. *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96108.

[17] For a detailed description of the Prior Proposal, *see* the Notice, *supra* note 4, and the OIP, discussing Amendment No. 1, *supra* note 8.

[18] *See* the Notice, *supra* note 4, and the OIP, discussing Amendment No. 1, *supra* note 8.

[19] *See* OIP, *supra* note 8, 81 FR at 86040.

[20] *See id.*

[21] *See id.*

[22] *See infra* notes 69–71 and accompanying text.

DTCC services, (iv) third party testing and certification feeds; and for the use of VCCs. [23]

Regarding Third Party Data Feeds, the Exchange proposes to offer Users the option to connect to Third Party Data Feeds in the Data Center for a monthly connectivity fee per feed.[24] The Exchange states that it receives Third Party Data Feeds in the Data Center from multiple national securities exchanges and other content service providers which it then provides to requesting Users for a fee.[25] The Exchange states that its proposal to charge Users a monthly fee for connectivity to Third Party Data Feeds is consistent with the monthly connectivity fee Nasdaq charges its co-location customers for connectivity to third party data.[26] According to the Exchange, the proposed fees ''allow the Exchange to defray or cover the costs associated with offering Users connectivity to Third Party Data Feeds while providing Users the convenience of receiving such Third Party Data Feeds within co-location.''[27] Additionally, the Exchange noted that some of the proposed fees vary depending on the bandwidth considerations and, in cases where the bandwidth requirements are the same as other proposed services such as Third Party Systems or VCCs, the prices reflect ''the competitive considerations and the costs the Exchange incurs in providing such connections.''[28]

To connect to a Third Party Data Feed, a User must enter into a contract with the relevant third party market or content service provider, under which the third party market or content service provider charges the User for the data feed.[29] The Exchange receives these Third Party Data Feeds over its fiber optic network and, after the data provider and User enter into a contract and the Exchange receives authorization from the data provider, the Exchange re-transmits the data to the User's port.[30] Users only receive, and are only charged for, the feed(s) for which they have entered into contracts.[31] Additionally, the Exchange notes that Third Party Data Feeds do not provide access or order entry to its execution system or access to the execution system of the third party generating the feed.[32] The Exchange proposes to charge a set monthly recurring connectivity fee per Third Party Data Feed, as set forth in its proposed Fee Schedules.[33] A User is free to receive all or some of the feeds included in its Fee Schedules.[34] The Exchange notes that Third Party Data Feed providers may charge redistribution fees, such as Nasdaq's Extranet Access Fees and OTC Markets Group's Access Fees, which the Exchange will pass through to the User in addition to charging the applicable connectivity fee.[35]

The Exchange represents that ''as alternatives to using the [proposed connectivity to Third Party Data Feeds] provided by the Exchange, a User may access or connect to such . . . products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.'' [36]

As more fully described in the Notice of Amendment Nos. 2 and 3, as modified by partial Amendment No. 4, the Exchange also proposes to provide and establish fees for connectivity (also referred to as ''Access'') to Third Party Systems,[37] to DTCC services,[38] and to third party certification and testing feeds, and charge a monthly recurring fee.[39] The Exchange proposes to amend its Fee Schedules to provide and establish fees for connectivity to these service providers and certification/testing feeds.[40] The Exchange states that connectivity is dependent on a User meeting the necessary technical requirements, paying the applicable fees, and the Exchange receiving authorization from the relevant third party service provider to make the connection.[41]

For each service, a User must execute a contract with the respective third party service provider pursuant to which a User pays each the associated fee(s) for their services.[42] Once the Exchange receives authorization from the third party service provider, the Exchange will enable a User to connect to the service provider and/or third party certification and testing feed(s) over the IP Network.[43] The proposed recurring monthly fees for connectivity to Third Party Systems and DTCC are

[23] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96108, and partial Amendment No. 4 *supra* note 13.

[24] *See* Notice of Amendment Nos. 2 and3, *supra* note 10, 81 FR at 96109.

[25] *See id.*

[26] *See id.* The Exchange notes that Nasdaq charges monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS data feeds, respectively, and of $2,500 for connectivity to EDGA or EDGX. *See id.*

[27] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96113; partial Amendment No. 4, *supra* note 13.

[28] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96113; partial Amendment No. 4, *supra* note 13.

[29] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96109.

[30] *See id.*

[31] *See id.*

[32] *See id.* The Exchange notes that there is one exception to this for the ICE feeds which include both market data and trading and clearing services. In order to receive the ICE feeds, a User must receive authorization from ICE to receive both market data and trading and clearing services. *See id.*

[33] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96110, as modified by partial Amendment No. 4, *supra* note 13 (adding additional Third Party Data Feeds).

[34] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96110.

[35] *See id.*

[36] *See id.* at 96112.

[37] The Exchange states that it selects what connectivity to Third Party Systems to offer in the Data Center based on User demand. *See id.* at 96108. In partial Amendment No. 4, the Exchange removed the National Stock Exchange from the list of Third Party Systems, noting that it is now owned by the Exchange's parent. *See* partial Amendment No. 4, *supra* note 13. Establishing a User's access to a Third Party System does not give the Exchange any right to use the Third Party Systems; connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and a User's connection to a Third Party System is not through the Exchange's execution system. *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96108.

[38] The Exchange states that connectivity to DTCC ''is distinct from the access to shared data services for clearing and settlement services that a User receives when it purchases access to the LCN or IP network. The shared data services allow Users and other entities with access to the Trading Systems to post files for settlement and clearing services to access.'' *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96112 n. 25.

[39] Certification feeds certify that a User conforms to any of the relevant content service providers' requirements for accessing Third Party Systems or receiving Third Party Data, whereas testing feeds provide Users an environment in which to conduct system tests with non-live data. *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96110.

[40] *See* Notice of Amendment Nos. 2 and 3, *supra* note 10, 81 FR at 96109–96111.

[41] *See id.*

[42] *See id.*

[43] *See id.* For Third Party Systems, once the Exchange receives the authorization from the respective third party it establishes a unicast connection between the User and the relevant third party over the IP network. *See id.* at 96108. For the DTCC, ''[t]he Exchange receives the DTCC feed over its fiber optic network and, after DTCC and the User enter into the services contract and the Exchange receives authorization from DTCC, the Exchange provides connectivity to DTCC to the User over the User's IP network port.'' *See id.* at 96111.

based upon the bandwidth requirements per system.[44]

The Exchange represents that as alternatives to using the proposed connectivity to Third Party Systems, to DTCC services, and to third party certification and testing feeds offered by the Exchange, ''a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.'' [45]

Finally, as more fully described in the Notice of Amendment Nos. 2 and 3, as partially modified by partial Amendment No. 4, the Exchange also proposes to provide and establish fees for VCCs.[46] A VCC (previously called a ''peer to peer'' connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth using the IP network to be used for any purpose.[47] The proposed recurring monthly fees for VCCs are based upon the bandwidth requirements per VCC connection between two Users.[48] Connectivity to VCCs will similarly require permission from the other User before the Exchange will establish the connection.[49] As an alternative to using a VCC, Users can connect to other Users through a cross-connect.[50]

The Exchange states in reference to all of the proposed services that in adding the fees it seeks to defray or cover its costs in providing these voluntary services to Users, and that in order to provide these services it must, among other things, provide, maintain and operate the data center facility hardware and technology infrastructure; and handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues.[51] The Exchange also states that the fees charged for co-location services are constrained by the active competition for the order flow and other business from such market participants,[52] and that charging excessive fees would make it stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms.[53] Additionally, the Exchange states that Users have alternatives if they believe the fees are excessive.[54] Specifically, the Exchange notes that a User could terminate its co-location arrangement with the Exchange ''and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's [D]ata [C]enter (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with colocation.'' [55]

III. Summary of Comments Received and Exchange Responses

The Commission received four comment letters on the proposed rule change, as modified by Amendment Nos. 1 through 4, and an additional four comment letters on the NYSE Companion Filing.[56] The Exchange submitted three letters in response to the comments.[57]

A. Comment Submitted Prior to the OIP

The Commission received one comment letter prior to publication of the OIP.[58] The initial commenter requested that the Exchange provide additional information on the history of all of the proposed fees (which the commenter believed were already in effect), and the relationship between the fees and the Exchange's costs to maintain the Data Center and provide co-location services.[59] The commenter urged ''additive transparency'' to enable members to evaluate the fixed costs of exchange membership and whether fees were applied equitably.[60] This commenter also stated that broker-dealers ''may be practically required to buy and consume proprietary market data feeds directly from exchanges in order to provide competitive products for those clients, and that the trading environment ''imposes a form of trading tax on all members by offering different methods of access to different members.'' [61] The commenter questioned whether ''there are any true alternatives that are practically available to various types of participants who are seeking to compete with those who are paying exchanges for co-location and data services,'' and urged that the Exchange provide information and analysis on how its ability to set co-location fees is constrained by market forces for a ''comparable product.'' [62]

In response, the Exchange replied that historical information about the development of its product offerings is ''not required by the Act and is not relevant to [ ] the substance of the Proposal–which is, by definition, forward looking . . . .'' [63] The Exchange added that costs are not its only consideration in setting prices, but rather that prices ''include the competitive landscape; whether Users would be required to utilize a given service; the alternatives available to Users; and, significantly, the benefits Users obtain from the services.'' [64] In response to the commenter's argument regarding different methods of access to trading, the Exchange stated that ''it is a vendor of fair and non-discriminatory access, and like any vendor with multiple product offerings, different purchasers may make different choices regarding which products they wish to purchase.'' [65] The Exchange further stated that co-location fees are not fixed costs to members, but costs to any User who voluntarily chooses to purchase such services based upon ''[t]he form and latency of access and connectivity that bests suits a User's needs.'' [66] The Exchange added that Users do not require the Exchange's access or connectivity offerings in co-location to trade on the Exchange and can instead use alternative access and connectivity options for trading if they choose.[67]

B. Comments Following Publication of the OIP

(i) Comments on the Premium NYSE Product Connectivity Fee and Cumulative Fees Generally

As noted above, the Commission specifically requested comment on the Premium NYSE Product Connectivity Fee in the OIP.[68] In response, some commenters objected to the establishment of a separate connectivity fee for Premium NYSE Data Products as

[44] *See id.* at 96108–96111.
[45] *See id.* at 96112.
[46] *See id.* at 96111.
[47] *See id.*
[48] *See id.*
[49] *See id.*
[50] *See id.* at 96112.
[51] *See id.* at 96113.
[52] *See id.* at 96112.
[53] *See id.*
[54] *See id.*
[55] *See id.*
[56] *See supra* notes 5 and 11. Because the additional letters on NYSE Companion Filing address the same issues, all eight letters are considered as submitted in response to the proposed rule change, as modified by Amendment Nos. 1 through 4, and are discussed herein. In addition, one commenter noted that it filed a denial of access petition on the proposal. *See* SIFMA I Letter at 1 and SIFMA II Letter at 3.
[57] *See* Response Letters I, II, and III, *supra* notes 5 and 12.
[58] *See* IEX I Letter, *supra* note 5.
[59] *See id.* at 1–2.
[60] *See id.*
[61] *See id.* at 2.
[62] *See id.*
[63] *See* Response Letter I, *supra* note 5, at 3.
[64] *See id.*
[65] *See id.* at 5.
[66] *See id.* at 4.
[67] *See id.*
[68] *See* OIP, *supra* note 8 and Section II.A. *supra.*

duplicative of fees already charged for bandwidth and access to the market data product itself, and therefore that this fee would result in an inequitable allocation of fees, inconsistent with Section 6(b)(4) of the Act.[69] Another commenter similarly objected to an additional connectivity/bandwidth charge for each Premium NYSE Data Product as an example of ''double dipping,'' and a fee having ''no merit'' on its own.[70] Additionally, some commenters objected to the reasonableness of the proposed Premium NYSE Product Connectivity Fee on the basis that there was no viable alternative to paying the fee to obtain connectivity to the Premium NYSE Data Products.[71]

In response to comments on the Premium NYSE Product Connectivity Fee, the Exchange noted that it was no longer proposing that fee and that the questions posed in the OIP about that fee were moot.[72]

Some commenters opposed to the Premium NYSE Product Connectivity Fee also expressed broader concern about ''layered'' and cumulative fees charged by the Exchange to access market data.[73] Some of these commenters believe that the rising costs related to the receipt of market data in co-location over time effectively impose a barrier to entry for smaller broker-dealers and new entrants, and are a burden on competition.[74] For example, Wolverine stated that it has an aggregate cost of ''$123,750 per month of fixed costs in co-location, port, and access fees today, solely for access to NYSE controlled markets,'' which is ''an amount which presents a steep barrier to entry for new participants.'' [75] Wolverine also estimated that its NYSE market data costs have increased ''over 700% over 8 years.'' [76] Citadel similarly stated that ''additive and layered fees are a persistent problem with exchange fees more generally,'' and urged scrutiny of the aggregate impact of fees, ''in particular with respect to market data products where exchanges have a monopoly as the initial distributors.'' [77]

Clearpool stated, among other things, that market participants are beholden to the exchanges for market data; that it is not feasible for broker-dealers with best execution obligations to rely on SIP data as an alternative to exchange proprietary data feeds; and that the role and cost of using SIP and proprietary feeds should be considered in connection with Commission proposals to improve Regulation NMS Rules 605 and 606 reporting.[78] Clearpool advocated for the Commission to ''thoroughly review the issues around market data'' and to ensure that it is priced more competitively and equitably for all market participants.[79] Clearpool also stated that high costs prevent new innovative technology services, including order routing, risk management, and transaction cost analysis services, from entering the market, and further, that increasing fees significantly reduce the margin that smaller broker-dealers can earn on a transaction, putting them at a disadvantage to larger firms that can absorb these costs.[80]

In response to these comments, the Exchange challenged Wolverine's assessment that Exchange fees have increased by 700% over the past eight years, explaining that it was a mischaracterization and did not represent a true comparison of the fees paid for particular data feeds in 2008 as compared to fees paid for those specific feeds today.[81] The Exchange also rejected Wolverine's argument that all of its costs–including the optional cage surrounding its cabinets, power, cross connects, network ports and connectivity—should be treated as costs related to market access.[82] The Exchange stated, that ''however self-servingly [Wolverine] tries to characterize them, these listed costs, like rent and employee compensation and benefits, are simply costs associated with Wolverine's business activities. These business activities and Wolverine's business judgment—not the Exchange—determine the most effective way for Wolverine to select the products and services it uses.'' [83]

Regarding comments about market data and co-location fees more generally, the Exchange responded that a User that chooses to receive market data within co-location will incur several costs in addition to the cost a market data provider will charge for its data, including the costs associated with the LCN or IP network port, power, cross connects, and connectivity, but the need for equipment and connections to enable receipt of a market data feed within co-location does not convert the costs of such equipment and connections into market data fees.[84] The Exchange also stated that some commenters were using the Prior Proposal as a ''departure point to discuss broader issues related to market data.'' [85] The Exchange catalogued comments about exchange fees for proprietary market data products, the effect of Commission proposals to improve disclosure of order execution and order routing information under Rules 605 and 606 of Regulation NMS, and the payment of rebates for posted liquidity as comments beyond the scope of the Current Proposal, as well as the fees any one exchange might propose.[86]

The Exchange also stated that market participants are not required to co-locate with or subscribe to proprietary market data products from an exchange, emphasizing that firms using exchange market data products in co-location ''have chosen to build business models based on speed.'' [87]

(ii) Comments Regarding Competition and Alternatives to the Proposed Co-Location Services

Some commenters addressing both the Prior Proposal and Amendment Nos. 2 and 3 suggested that co-location services in general are not optional.[88] In

[69] *See* Citadel Letter at 2; Clearpool Letter at 4.

[70] *See* Wolverine Letter at 3. *See also* Citadel Letter at 2; R2G Letter at 3 (each expressing concern about cumulative fees).

[71] *See* Citadel Letter at 3 (''there is no readily available substitute or equivalent means of access to the Premium NYSE Data Products''); Wolverine Letter at 3 (objecting to the statement ''the Exchange is not the exclusive method to connect to Premium NYSE Data Products'' noting that it is ''misleading at best.''). *See also* R2G Letter at 1–2 (stating, its view that the Prior Proposal ''raises serious concerns'' under the Exchange Act, but that ''Amendment No. 3 adequately addresses the original concerns,'' and adding that it would, however, object if the Exchange similarly sought to apply the logic of Amendment No. 3 regarding Third Party Systems to any ''NYSE Proprietary Product'').

[72] *See* Response Letter II at 4, 7–8. The Exchange also stated, as discussed further below, that it did not agree with commenters suggesting that a connectivity fee is indistinguishable from a market data fee.

[73] *See* Wolverine Letter at 1–3; Clearpool Letter at 3; Citadel Letter at 3; R2G Letter 1, 3–6.

[74] *See* Wolverine Letter at 1–3; Clearpool Letter at 3; Citadel Letter at 3.

[75] *See* Wolverine Letter at 3.

[76] *See id*. at 1 (also objecting to port and other charges (outside the scope of the Current Proposal) as unreasonable); *see also* R2G Letter at 3 (expressing agreement with Wolverine).

[77] *See* Citadel Letter at 2.

[78] *See* Clearpool Letter at 2–4.

[79] *See id*. at 1, 4.

[80] *See id*. at 3.

[81] *See* Response Letter II at 10 and n.27.

[82] *See id*. at 10.

[83] *See id*.

[84] *See id*. at 5.

[85] *See id*.

[86] *See id*. at 5–6. *See also infra* notes 114–127, discussing SIFMA's comments characterizing a variety of fees as market data fees and the Exchange's response.

[87] *See* Response Letter II at 11–12.

[88] *See* IEX I Letter at 2 (best execution requires broker-dealer to have ''effective access'' to exchanges); SIFMA II Letter at 4 (''brokers are legally obligated to seek best execution for their customers. They are required to consider the likelihood that a trade will be executed and whether there is an opportunity to obtain a price better than what is currently quoted.'') *See also* Citadel Letter at 3 (stating that ''competitive pressures oblige broker-dealers to seek the most

Continued

the context of whether the Current Proposal's connectivity fees are reasonable, some of these commenters argued that there is a lack of competition for the Exchange's co-location and data services generally, and suggested a lack of viable alternatives to the Current Proposal's proposed connectivity services and fees in particular.[89] For instance, SIFMA argued that the Exchange's ability to set co-location fees is not constrained by market forces because there is ''no comparable connectivity or product,'' and low-latency alternatives to these services do not exist.[90] SIFMA stated that ''[a]ny alternative with severely increased latencies would not be a viable alternative.'' [91] Similarly, IEX argued that if co-location services are optional, and therefore need not be purchased if the fees are excessive, then the Exchange should demonstrate how firms are not placed at a competitive disadvantage if they elect to not receive such services from the Exchange.[92] In particular, IEX suggested that the Exchange provide data on the expected latency (or range of latencies) in receiving data or transmitting orders directly from the Exchange, compared to the equivalent latency (or range) for firms that rely on a third party access center. [93] IEX requested that the NYSE ''explain whether it believes that this difference would not affect the ability of electronic market makers and other trading firms and active agency brokers to compete with firms in the same businesses that have faster access, and if so how it reached this conclusion.'' [94] IEX also disputed that competition for order flow constrains pricing of co-location services, arguing that NYSE often displays protected quotes for certain stocks, a status it achieves by paying a high number of rebates for liquidity, and firms are forced to interact with it to avoid trade-throughs.[95] Both IEX and SIFMA argued that in the absence of competition for the proposed services and fees (which, in SIFMA's view are indistinguishable from market data fees), the Exchange should be required to discuss the relationship between the proposed fees and increasing Data Center costs, or detail how the fee increases relate to the costs of providing the service, in order to justify the proposed fees as reasonable.[96]

In contrast, two commenters acknowledged the existence of alternatives to some Exchange co-location services.[97] One of these commenters noted that alternatives are present for Third Party System connectivity as evidenced by the fact that it ''finds NYSE's third part[y] system costs out of line and does not subscribe to this NYSE offering, instead implementing this connectivity internally using a proprietary network.'' [98] Another commenter stated that it ''directly competes with NYSE for these [Third Party Systems] services and does so at prices significantly lower than the fees NYSE has proposed.'' [99]

In response to comments that competitive forces do not constrain co-location fees and that alternatives to co-location services are lacking, the Exchange defended its representations that the proposed services are offered as a convenience to Users, are voluntary, and that Users have viable alternatives to the proposed services.[100] The Exchange stated that additional latency in an alternative means of connectivity does not negate the viability of that alternative,[101] and that commenters arguing that only an ''equivalent'' latency alternative is a viable alternative are misguided.[102] The Exchange stated that, ''the Act does not require that there be at least one third party option available that has exactly the same characteristics as a proposed service before a national securities exchange can impose or change a fee for a service,'' adding that such a requirement would be ''untenable, as every exchange would have to have an exact duplicate before it could charge a fee.'' [103] Rather, the relevant question is whether a proposed fee would be ''an equitable allocation of reasonable dues, fees, and other charges among Users in the data center; does not unfairly discriminate between customers, issuers, brokers, or dealers; and does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.'' [104] The Exchange noted that it did not represent that the connectivity alternatives available to co-located Users (including alternatives for connectivity to Premium NYSE Data Products) are exactly the same as those proposed, but rather that the cited alternatives show that Users have the option ''to receive the same market data, or make the same trades, in other manners.'' [105] The Exchange added that its cited alternatives ''offer distinct services and pricing structures that some Users may find more attractive than those proposed by the Exchange,'' and that these alternatives are ''real,'' even if not all Users will find them equally attractive for their individual business model.[106] The Exchange stated that the viability of alternatives is ''underscored by the Wolverine Letter, which explicitly states that it does not object to the proposed fees for access to Third Party Systems in the Current Proposal on the basis that firms may contract with other parties or contract directly with network providers.'' [107] The Exchange added that, ''[I]t is the Exchange's understanding that a User could access Third Party Systems and connect to Third Party Data Feeds, third party testing and certification feeds, and DTCC using one or more of the listed alternatives without increasing its latency levels—and, in many cases, the alternatives would offer lower latency.'' [108]

Further, the Exchange emphasized that while some commenters focus

efficient access to markets and market data to execute orders . . .,'' creating a risk for those firms that elect to trade with ''slower and less efficient access.''); R2G Letter at 3 (referring to an ''ever increasing need for speed''); Wolverine Letter at 1 (stating that it is ''required to subscribe to the lowest latency NYSE market data products and services'').

[89] *See* IEX I Letter at 2, IEX II Letter at 1–3, SIFMA I Letter at 2 and SIFMA II Letter at 2. *Compare* with comments alleging a lack of viable alternatives to connectivity to Premium NYSE Data Products, *supra* note 73.

[90] *See* SIFMA I Letter at 2. According to SIFMA, ''the mere presence of the IEX Letter in the comment file'' evidences of a lack of competitive market forces to constrain pricing, because IEX is a competitor to the Exchange. *See id.* at 3.

[91] *See* SIFMA I Letter at 3 (also stating ''different fees are charged for the different types of connectivity, with no rational basis, [is] unfairly discriminatory between customers.'')

[92] *See* IEX II Letter at 2.

[93] *See id.*

[94] *See id.*

[95] *See id.* at 3. *See also* SIFMA II Letter at 2 (expressing general agreement); *see also* SIFMA I Letter at 3 (stating that the presence of a comment letter from IEX cuts against the argument that competition for order flow constrains fees). *See also* Citadel Letter at 2 (urging greater transparency regarding the Exchange's Data Center costs).

[96] *See* IEX II Letter at 3; SIFMA II Letter at 2.

[97] *See* Wolverine Letter at 3; R2G Letter at 1–2.

[98] *See* Wolverine Letter at 3.

[99] *See* R2G Letter at 1–2.

[100] *See* Response Letter II at 6.

[101] *See id.* at 7–8.

[102] *See id.* at 7.

[103] *See id.* at 8.

[104] *See id.*

[105] *See id.* The Exchange also noted that Clearpool is not a co-location customer of the Exchange, which the Exchange believes illustrates that market participants can and do avail themselves of alternatives for connecting to NYSE market data products. *See id.*

[106] *See id.* In addition, in response to IEX's suggestion that the Exchange provide data on the expected latency (or range of latencies) in receiving data or transmitting orders directly from the Data Center, compared to the expected latency (or range) for firms that rely on a third party access center, the Exchange stated it could not do so without having access to the latency data of third parties, or each User's specific system configuration and latency needs and therefore could not satisfy IEX's ''deliberately impossible requirement.'' *See id.* at 7.

[107] *See id.* at 9. The Exchange did not similarly address the R2G Letter.

[108] *See id.* at 9–10.

exclusively on latency as the only relevant consideration, ''Users with different investment strategies or business models may focus on other characteristics, including redundancy, resiliency, cost, and the services that third parties offer but the Exchange does not, such as managed services.'' [109] The Exchange stated that alternatives exist as evidenced by the fact that ''there are at least six Users within the co-location hall that offer other Users or hosted customers access to trading or connectivity to market data, including the two other exchanges that are co-located with the Exchange, as well as the fact that Users may contract with any of the 15 telecommunication providers—including five third party wireless networks—available to Users to connect to third party vendors.'' [110] The Exchange also noted that the alternatives are possible in part because the Exchange voluntarily allows Users to provide services to other Users and third parties out of the Exchange's co-location facility—that is, to compete with the Exchange using the Exchange's own facilities.[111] For example, according to the Exchange, ''a User that wished to receive Nasdaq market data could connect directly to the Nasdaq server within co-location.'' [112] Therefore, the Exchange believes that contrary to commenters' beliefs, the Exchange's cited alternatives offer comparable services that can be used in lieu of receiving Exchange offered services, and that there are competitive forces constraining pricing.[113]

SIFMA raised additional arguments. SIFMA urged that ''[t]he proposed connectivity fees should be reviewed in a manner consistent with the decisions of the United States Court of Appeals for the District of Columbia Circuit'' in *NetCoalition* v. *SEC,* because says SIFMA, they are market data fees.[114] SIFMA took the position that under NetCoalition I (615 F.3d 525 (D.C. Cir. 2010)) an exchange's assertion that order flow competition constrains pricing of data is insufficient.[115] More specifically, in SIFMA's view ''port, power, cross connect, connectivity and cage fees, which are necessary in order to obtain the market data from NYSE,'' ''however labeled, are market data fees.'' [116] SIFMA also noted that it had submitted a ''properly filed 19(d) denial of access petition on the proposal,'' but had requested that it be ''held in abeyance pending the decision in the *NetCoalition* follow-on proceedings. . . .'' [117] SIFMA urged however, that such petition, despite its abeyance, not be ignored.[118]

In response to SIFMA on these points, the Exchange stated that, ''*NetCoalition* addressed the standards governing proprietary market data fees,'' and that it is ''incorrect'' to characterize the Current Proposal as establishing market data fees.[119] The Exchange stated:

> the fact that a User needs to have a port, power, and connectivity in place in order to be able to receive a market data feed *within co-location* does not convert the costs of such equipment and connections into market data fees. Rather, they are costs associated with the User's business activities. If a User opts to put a cage around its servers in the colocation hall, the cage fee it pays is a cost it chooses to incur in connection with the way it has chosen to do business, not a market data fee.[120]

The Exchange distinguished the services and fees proposed in the Current Proposal from market data fees, emphasizing that they are connectivity fees or access fees applicable when a User chooses to utilize connectivity or access services within co-location.[121] The Exchange noted that two of the proposed fees are for services that facilitate Users' trading activities, and have nothing to do with market data: A proposed fee for access within co-location to the execution systems of third party markets and other content service providers, and a proposed fee for connectivity within co-location to DTCC services, such as clearing, fund transfer, insurance, and settlement services.[122] The Exchange similarly distinguished the proposed connectivity fee for third party testing and certification feeds as not equivalent to providing a customer with market data.[123] Addressing the proposed connectivity fee for Third Party Data Feeds within co-location, the Exchange noted that this proposed fee ''has more often been mistaken for a market data fee,'' but distinguished the service of providing a User with connectivity to Third Party Data Feeds from the service that the third party providing the market data provides by sending the data over the connection, noting that the third party content service provider charges the User the market data fee.[124]

The Exchange did not agree with SIFMA's contention that the Current Proposal would establish market data fees, nor agree that *NetCoalition* standard was applicable to the Current Proposal,[125] but instead stated, ''[t]here is significant competition for the connectivity relevant to the Current Proposal;'' and ''even if the NetCoalition standard did apply, the Current Proposal satisfies it.'' [126]

Regarding SIFMA's denial of access petition, the Exchange responded that a denial of access petition is not a comment letter, and should not be treated as such given that SIFMA itself has requested that its denial of access petition on fee filings be held in abeyance pending a decision in the *NetCoalition* follow-on proceedings.[127]

IV. Discussion and Commission Findings

After careful consideration of the proposed rule change, as modified by Amendment Nos. 1 through 4, the comments received, and the Exchange's responses to the comments, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 through 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[128] which

[109] *See id.* at 8 n.16.

[110] *See id.* at 9.

[111] *See id.*

[112] *See id.* at 10 n.24.

[113] *See id.* at 9.

[114] *See* SIFMA II Letter at 2–3 (citing *NetCoalition I,* 615 F.3d 525 (D.C. Cir. 2010); *NetCoalition II,* 715 F.3d 342 (D.C. Cir. 2013)).

[115] SIFMA I Letter at 3 (noting that ''[t]he Court's *NetCoalition* decisions, the controlling law on this subject, rejected this order flow argument because, like here, there was no support for the assertion that order flow competition constrained the ability of the exchange to charge supracompetitive prices for data.'').

[116] *See* SIFMA II Letter at 3. *See also* SIFMA I Letter at 4 (stating that market data fees, port fees, hardware fees and connectivity fees are all ''within the ambit of the *NetCoalition* decisions.'')

[117] *See* SIFMA I Letter at 1; SIFMA II Letter at 3.

[118] *See* SIFMA II Letter at 3.

[119] *See* Response Letter III at 3–4.

[120] *See id.* at 4 (emphasis in original).

[121] *See id.* at 5–6. The Exchange noted that SIFMA did not address VCC fees. *See id.* at 5, n. 17.

[122] *See id.* at 5–6 (also noting that fees for Third Party System and DTCC connectivity vary by bandwidth and are generally proportional to the bandwidth required).

[123] *See id.* at 5 (also noting that fees for connectivity to third party testing and certification feeds reflect that bandwidth requirements are generally not large, and the relatively low fee may encourage Users to conduct tests and certify conformance, which the Exchange believes generally benefits the markets).

[124] *See id.* at 5–6 (also noting that the fees for Third Party Data Feeds vary because Third Party Data Feeds vary in bandwidth; proximity to the Exchange, requiring different circuit lengths; fees charged by the third party provider, such as port feeds; and levels of User demand).

[125] *See id.* at 3. *See also* Response Letter II at 13.

[126] *See* Response Letter III at 3. *See also* Response Letter II at 13.

[127] *See* Response Letter III at 3. *See also* Response Letter II at 13; SIFMA Letter II at 3 (noting that ''SIFMA's 19(d)s will be held in abeyance pending the decision in the NetCoalition follow-on proceedings . . .'').

[128] 15 U.S.C. 78f(b)(4).

requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities; Section 6(b)(5) of the Act,[129] which requires that the rules of an exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and Section 6(b)(8) of the Act,[130] which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.[131]

As discussed more fully above, some commenters oppose the proposed co-location fees on the basis that viable alternatives to the Exchange's co-location services are lacking, and particularly that similar low-latency alternatives to the Exchange's co-location services do not exist.[132] According to these commenters, the lack of viable alternatives means that competitive forces do not constrain Exchange pricing of co-location services, and the Exchange's proposed fees should be subject to a cost-based assessment.[133]

In response to these comments, the Exchange counters that co-location Users have several alternatives to the Exchange's proposed services, both inside and outside the Data Center. The Exchange explains that as alternatives to using the access to Third Party Systems, and connectivity to Third Party Data Feeds, third party testing and certification feeds, and DTCC, provided by the Exchange, a User may access or connect to such services and products through an Exchange access center, third party access center, or a third party vendor outside the Data Center, and may do so using a third party telecommunication provider, a third party wireless network, the Secure Financial Transaction Infrastructure (SFTI) network, or a combination thereof.[134] Furthermore, the Exchange points out that alternatives to the Exchange's access and connectivity services also exist inside the Data Center, as evidenced by the fact that ''there are at least six Users within the co-location hall that offer other Users or hosted customers access to trading or connectivity to market data, including the two other exchanges that are co-located with the Exchange, as well as the fact that Users may contract with any of the 15 telecommunication providers—including five third party wireless networks—available to Users to connect to third party vendors.'' [135] The Exchange notes that these alternatives are possible because the Exchange allows Users to provide services to other Users and third parties out of the Exchange's co-location facility—that is, to compete with the Exchange using the Exchange's own facilities.[136]

The Commission has carefully considered the comments and the Exchange's response concerning the availability of alternatives to the Exchange's proposed access and connectivity services. In addition, the Commission notes that two commenters expressed the view that viable alternative means of accessing Third Party Systems are available.[137] The Commission believes that viable alternatives to the Exchange's proposed co-location services are available which bring competitive forces to bear on the fees set forth in the Current Proposal.[138]

Also, as discussed above, some commenters expressed concern that the proposed fees would impose a barrier to entry on smaller broker-dealers and new entrants, and a burden on competition.[139] The Commission does not believe that the Current Proposal would impose a burden on competition inconsistent with the Act because, as discussed above, viable alternatives to the Exchange's proposed services exist, both inside and outside the Data Center.

Finally, the Commission notes that several commenters believed the originally proposed NYSE Premium Connectivity Fee to be duplicative and an inequitable allocation of fees.[140] Because the Exchange eliminated that fee in Amendment Nos. 2 and 3, the Commission believes that these concerns have been addressed.[141]

Accordingly, the Commission finds that the Current Proposal is consistent with the Act.

V. Solicitation of Comments on Partial Amendment No. 4

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether partial Amendment No. 4 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–89. 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

[129] 15 U.S.C. 78f(b)(5).

[130] 15 U.S.C. 78f(b)(8).

[131] 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).

[132] *See supra* notes 62, 88–94, and accompanying text.

[133] *See supra* notes 59, 96, 114–116, and accompanying text.

[134] *See* Response Letter II at 6.

[135] *See id.* at 9.

[136] *See id.*

[137] *See supra* notes 97–99. One of these commenters also stated its view that Amendment No. 3 addressed the concerns raised in the OIP. *See supra* note 71. Furthermore, the Exchange's proposal with respect to connectivity to Third Party Data Feeds is not novel, given that Nasdaq similarly charges connectivity fees for third party data feeds, as reflected on its co-location fee schedule. *See* Nasdaq Rule 7034.

[138] *See also* Securities Exchange Act Release No. 34–62397 (June 28, 2010); Securities Exchange Act Release No. 34–66013 (December 20, 2011), 76 FR 80992 (December 27, 2011) (noting ''that members may choose not to obtain low latency network connectivity through the Exchange and instead negotiate connectivity options separately through other vendors on site''); Securities Exchange Act Release No. 34–76748 (finding the establishment of an exclusive wireless connection consistent with the Act because, among other reasons, the alternatives suggested provided the same or similar speeds as compared to the NYSE's wireless connectivity); Securities Exchange Act Release No. 34–68735 (finding the establishment of an exclusive wireless connection consistent with the Act because, among other reasons, the alternatives suggested provided the same or similar speeds as compared to Nasdaq's wireless connectivity).

[139] *See supra* notes 74–80 and accompanying text.

[140] *See supra* notes 69–71 and accompanying text.

[141] The Commission believes that comments expressing concerns about proprietary market data fees more generally are outside the scope of the Current Proposal.

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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–89 and should be submitted on or before April 20, 2017.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1–4

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos 1–4, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. The revisions made to the proposal in partial Amendment No. 4 [142] (1) removed reference to the National Stock Exchange (NSX) from its list of Third Party Systems, (2) added three additional Third Party Data Feeds—ICE Data Services Consolidated Feed, ICE Data Services PRD, and ICE Data Services PRD CEP, (3) added connectivity fees for each of the newly added Third Party Data feeds. With respect to NSX, the Exchange represents that NSX was acquired by the NYSE Group on January 31, 2017, making it no longer a Third Party System. The Commission believes this characterization is consistent with the NYSE Group's similarly situated affiliated exchanges, NYSEMKT and NYSE, which, like NSX are solely within the NYSE Group's control. Regarding the ICE Data Services feeds, the Exchange notes that it has an indirect interest in these feeds because ICE Data Services is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc. As represented in partial Amendment No. 4, the Exchange considers the ICE Data Services Consolidated Feed (like the NYSE Global Index feed), a Third Party Data Feed because it includes third party market data rather than exclusively the proprietary market data of the Exchange and its affiliated SROs, NYSE and NYSE MKT.[143] The Commission believes that partial Amendment No. 4 does not raise issues not previously raised in the proposed rule change, as modified Amendment Nos. 1–3, and addressed in Exchange Response Letters I, II, and III. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[144] to approve the proposed rule change, as modified by Amendment Nos. 1–4, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[145] that the proposed rule change (SR–NYSEArca–2016–89) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[146]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06257 Filed 3–29–17; 8:45 am]

BILLING CODE 8011–01–P

[142] *See* partial Amendment No. 4, *supra* note 13.

[143] *See id.*

[144] 15 U.S.C. 78s(b)(2).

[145] *See id.*

[146] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32573; File No. 812–14489]

Transamerica Advisors Life Insurance Company, et al.

March 24, 2017.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or ''Act'').

APPLICANTS: Transamerica Advisors Life Insurance Company (''TALIC'') and Transamerica Financial Life Insurance Company (''TFLIC'') (each a ''Company'' and together, the ''Companies''), Merrill Lynch Life Variable Annuity Separate Account A (''Merrill Lynch A'') and ML of New York Variable Annuity Separate Account A (''ML of New York A'') (each, an ''Account'' and together, the ''Accounts''). The Companies and the Accounts are collectively referred to herein as the ''Applicants.''

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(c) of the 1940 Act, approving the substitution of shares issued by certain series of Transamerica Series Trust (the ''Replacement Funds'') for shares of certain registered investment companies currently held by sub-accounts of the Accounts (the ''Existing Funds''), to support certain variable annuity contracts (collectively, the ''Contracts'') issued by the Companies.

FILING DATE: The application was filed on June 15, 2015, and was amended and restated on December 8, 2015; July 1, 2016; and November 14, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 18, 2017 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Commission: Secretary, SEC, 100 F Street NE., Washington, DC 20549–1090. Applicants: Alison C. Ryan, Associate General Counsel, Transamerica, 1150 South Olive Street, T–27–01, Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: Stephan N. Packs, Senior Counsel, at (202) 551–6853, or David J. Marcinkus, Branch Chief at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. TALIC is the depositor of Merrill Lynch A. TFLIC is the depositor of ML of New York A. Each Company is an indirect, wholly-owned subsidiary of AEGON, N.V.

2. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act and each is

registered under the 1940 Act as a unit investment trust. Each Account is divided into sub-accounts, which reflect the investment performance of certain registered investment companies, including series of Transamerica Series Trust. The Accounts are administered and accounted for as part of the general business of the Companies. The application sets forth the registration statement file numbers for the security interests under the Contracts and the Accounts.

3. The Contracts are individual variable annuity contracts. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of a registered open-end management investment company held by a sub-account of an Account.

4. Transamerica Series Trust is an open-end management investment company of the series type that is registered with the Commission under the 1940 Act (File No. 811–04419).[1] Shares of the series are registered under the Securities Act of 1933 (File No. 033–00507), and are sold to the separate accounts of life insurance companies to fund benefits under variable life policies or variable annuity contracts and to certain affiliated asset allocation funds.

5. Transamerica Asset Management, Inc. (''TAM''), an investment adviser that is registered with the Commission, has overall responsibility for the management of each Replacement Fund. TAM delegates to a sub-adviser the responsibility for day-to-day management of the investments of each Replacement Fund, subject to TAM's oversight. TAM may, in the future, determine to provide the day to day management of any Replacement Fund without the use of a sub-adviser.

6. Applicants propose, as set forth below, to substitute shares of the Replacement Funds for shares of the Existing Funds (''Substitutions'') to fund the Contracts:

Existing fund	Replacement fund
American Century Investments VP International Fund (Class I)	Transamerica MFS International Equity VP (Initial Class).
Dreyfus Variable Investment Fund: Appreciation Portfolio (Service Shares).	Transamerica WMC US Growth VP (Service Class).
Oppenheimer Capital Appreciation Fund/VA (Service Shares)	Transamerica Jennison Growth VP (Initial Class).
Oppenheimer Main Street Small Cap Fund®/VA (Service Shares)	Transamerica T. Rowe Price Small Cap VP (Initial Class).
Wanger USA	Transamerica T. Rowe Price Small Cap VP (Initial Class).
Columbia Variable Portfolio—Select Smaller-Cap Value Fund (Class 1)	Transamerica T. Rowe Price Small Cap VP (Initial Class).
Pioneer Emerging Markets VCT Portfolio (Class II Shares)	Transamerica TS&W International Equity VP (Service Class).
Pioneer Fund VCT Portfolio (Class II Shares)	Transamerica JPMorgan Enhanced Index VP (Initial Class).

7. The Applicants believe that the Replacement Funds have investment objectives, policies and risk profiles, as described in their prospectuses, that are substantially the same as, or sufficiently similar to, the corresponding Existing Funds to make those Replacement Funds appropriate candidates as substitutes. Applicants also state that the investment objectives and investment strategies of each Replacement Fund are similar to the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the Existing Fund, and therefore the fundamental objectives, risk, and performance expectations of those Contract owners with interests in sub-accounts of the Existing Funds will continue to be met after the Substitutions.

8. The investment objectives of each Existing Fund and its corresponding Replacement Fund are set out below. Additional information for each Existing Fund and Replacement Fund, including principal investment strategies, principal risks, and comparative performance history, can be found in the application.

Existing fund	Replacement fund
American Century Investments VP International Fund (Class I) seeks capital growth.	Transamerica MFS International Equity VP (Initial Class) seeks capital growth.
Dreyfus Variable Investment Fund: Appreciation Portfolio (Service Shares) seeks long-term capital growth consistent with the preservation of capital. The fund's secondary goal is current income.	Transamerica WMC US Growth VP (Service Class) seeks to maximize long-term growth.
Oppenheimer Capital Appreciation Fund/VA (Service Shares) seeks capital appreciation.	Transamerica Jennison Growth VP (Initial Class) seeks long-term growth of capital.
Oppenheimer Main Street Small Cap Fund®/VA (Service Shares) seeks capital appreciation.	Transamerica T. Rowe Price Small Cap VP (Initial Class) seeks long-term growth of capital by investing primarily in common stocks of small growth companies.
Wanger USA seeks long-term capital appreciation.	
Columbia Variable Portfolio—Select Smaller-Cap Value Fund (Class 1) seeks to provide shareholders with long-term capital growth.	
Pioneer Emerging Markets VCT Portfolio (Class II Shares) seeks long-term growth of capital.	Transamerica TS&W International Equity VP (Service Class) seeks maximum long-term total return, consistent with reasonable risk to principal, by investing in a diversified portfolio of common stocks of primarily non-U.S. issuers.
Pioneer Fund VCT Portfolio (Class II Shares) seeks reasonable income and capital growth.	Transamerica JPMorgan Enhanced Index VP (Initial Class) seeks to earn a total return modestly in excess of the total return performance of the S&P 500® (including the reinvestment of dividends) while maintaining a volatility of return similar to the S&P 500®.

[1] Effective May 1, 2008, Transamerica Series Trust changed its name from AEGON/Transamerica Series Trust.

9. Applicants state that the Substitutions are designed to allow Contract Owners to continue their investment in similar or better investment options without interruption and at no additional cost to them. Contract owners with sub-account balances invested through the Separate Accounts in shares of the Replacement Funds will have the same or lower total expense ratios taking into account fund expenses (including Rule 12b–1 fees, if any). With respect to all of the proposed Substitutions, the combined management fee and Rule 12b–1 fees paid by the Replacement Fund are the same or lower than those of the corresponding Existing Fund. The application sets forth the fees and expenses of each Existing Fund and its corresponding Replacement Fund in greater detail.

10. Applicants represent that as of the effective date of the Substitutions (''Effective Date'') shares of the Existing Funds will be redeemed for cash. The Companies, on behalf of each Existing Fund sub-account of each relevant Account, will simultaneously place a redemption request with each Existing Fund and a purchase order with the corresponding Replacement Fund so that the purchase of Replacement Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times.

11. The Substitutions will take place at relative net asset value (in accordance with Rule 22c–1 under the 1940 Act) with no change in the amount of any affected Contract owner's contract value, cash value, accumulation value, account value or death benefit or in dollar value of his or her investment in the applicable Accounts.[2] No brokerage commissions or other fees will be paid by either the Existing Funds or the Replacement Funds or by affected Contract owners in connection with the Substitutions.

12. The affected Contract owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including brokerage, legal, accounting, and other fees and expenses. The Substitutions will not cause the Contract fees and charges currently being paid by affected Contract owners to be greater after the Substitutions than before the Substitutions. Moreover, the Substitutions will not impose any tax liability on affected Contract owners.

13. As described in the application, after notification of the Substitution and for 30 days after the Effective Date, affected Contract owners may reallocate the sub-account value of an Existing Fund to any other investment option available under their Contract without incurring any transfer charges.

14. All Contract owners affected by the Substitutions will be notified of this application by means of supplements to the Contract prospectuses at least 30 days prior to the Effective Date. The notice will advise Contract owners that from the date of the notice until the Effective Date, owners are permitted to make one transfer of Contract value out of the Existing Fund sub-account to one or more other sub-accounts without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. Among other information, the notice will inform affected Contract owners that the Companies will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Effective Date.

15. If affected Contract owners reallocate account value during this 60 day period, there will be no charge for the reallocation of accumulated value from the Existing Fund sub-accounts and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. Additionally, all affected Contract owners will be sent prospectuses of the applicable Replacement Funds at least 30 days before the Effective Date.

16. Within five (5) business days after the Effective Date, affected Contract owners will be sent a written confirmation, which will include: (a) A confirmation that the Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the pre-Substitution notice; and (c) values of the Contract owner's position in the (i) Existing Fund before the Substitution, and (ii) Replacement Fund after the Substitution.

[2] Applicants state that, because the Substitutions will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitutions, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. Applicants also state that what effect the Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Funds and Replacement Funds, which Applicants cannot predict. Nevertheless, Applicants note that at the time of the Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the Substitutions. Section 26(c) requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Section 26(c) requires the Commission to issue such an order if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the terms and conditions of the Substitutions meet the standards set forth in Section 26(c) and assert that the replacement of an Existing Fund with the corresponding Replacement Fund is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. As described in the application, for a period of two years following the Effective Date, the Companies or their affiliates will reimburse any Contract owner affected by the proposed Substitutions involving Replacement Funds and whose sub-account invests in the Replacement Fund to the extent a Replacement Fund's net annual operating expenses exceeds the net annual operating expenses of the corresponding Existing Fund. Applicants further assert that each Replacement Fund has similar investment objectives and investment strategies as the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the corresponding Existing Fund. Accordingly, Applicants believe that the fundamental investment objectives, risk, and performance expectations of the affected Contract owners will continue to be met after the Substitutions.

3. Applicants also maintain that it is in the best interests of the Contract owners to substitute the Replacement Fund for its corresponding Existing Fund. Applicants anticipate that the substitution of an Existing Fund with the corresponding Replacement Fund will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products. The rights of affected Contract owners and the obligations of the Companies under the Contracts will not be altered by the Substitutions. Affected Contract owners will not incur any additional tax liability or any additional

fees and expenses as a result of the Substitutions.

4. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of an open-end management investment company held by a sub-account of an Account.

5. Applicants also assert that none of the proposed Substitutions is of the type that Section 26(c) was designed to prevent. Unlike a traditional unit investment trust where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer account values into other sub-accounts. Moreover, the Contracts will offer affected Contract owners the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. The Substitution, therefore, will not result in the type of costly forced redemptions that Section 26(c) was designed to prevent. Applicants also maintain that the Substitutions are unlike the type of substitutions which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular registered management open-end investment company in which to invest their account values. They also select the specific type of insurance coverage offered by the Companies under their Contracts as well as other rights and privileges set forth in the Contract.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The proposed Substitutions will not be effected unless the Companies determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitutions can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses, and other fees and expenses. No fees or charges will be assessed to the Contract owners to effect the Substitutions.

3. The proposed Substitutions will be effected at the relative net asset values of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

4. The proposed Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for affected Contract owners as a result of the Substitutions.

5. The rights or obligations of the Companies under the Contracts of affected Contract owners will not be altered in any way.

6. Affected Contract owners will be permitted to make at least one transfer of Contract value from the sub-account investing in the Existing Fund (before the Effective Date) or the Replacement Fund (after the Effective Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Company will not exercise any right it may have under the Contract to impose restrictions on transfers between the sub-accounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date.

7. All affected Contract owners will be notified, at least 30 days before the Effective Date about: (a) The intended substitution of Existing Funds with the Replacement Funds; (b) the intended Effective Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Companies will deliver to all affected Contract owners, at least 30 days before the Effective Date, a prospectus for each applicable Replacement Fund.

8. The Companies will deliver to each affected Contract owner within five (5) business days of the Effective Date a written confirmation which will include: (a) A confirmation that the Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the pre-Substitution notice; and (c) values of the Contract owner's position in the (i) Existing Fund before the Substitution, and (ii) Replacement Fund after the Substitution.

9. After the Effective Date, the Applicants agree not to change a Replacement Fund's sub-adviser without obtaining shareholder approval of either (a) the sub-adviser change or (b) the parties' continued ability to rely on their manager-of-managers exemptive order.

10. For two years following the Effective Date the net annual expenses of each Replacement Fund that is a Transamerica Series Trust Fund will not exceed the net annual expenses of the corresponding Existing Fund as of the fund's most recent fiscal year. To achieve this limitation, the Replacement Fund's investment adviser will waive fees or reimburse the Replacement Fund in certain amounts to maintain expenses at or below the limit. Any adjustments will be made at least on a quarterly basis. In addition, the Insurance Companies will not increase the Contract fees and charges, including asset based charges such as mortality expense risk charges deducted from the sub-accounts that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Effective Date.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06246 Filed 3–29–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32574; File No. 812–14490]

Transamerica Life Insurance Company, et al.

March 24, 2017.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or ''Act'').

APPLICANTS: Transamerica Life Insurance Company (''TLIC''), Transamerica Financial Life Insurance Company (''TFLIC'') (each a ''Company'' and together, the ''Companies''), Separate Account VA B, and Separate

Account VA BNY (each, an ''Account'' and together, the ''Accounts''). The Companies and the Accounts collectively are referred to herein as the ''Applicants.''

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(c) of the 1940 Act, approving the substitution of shares issued by certain series of Transamerica Series Trust (the ''Replacement Funds'') for shares of certain registered investment companies currently held by sub-accounts of the Accounts (the ''Existing Funds''), to support certain variable annuity contracts (collectively, the ''Contracts'') issued by the Companies.

FILING DATE: The application was filed on June 15, 2015, and was amended on December 8, 2015, July 1, 2016, and November 14, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 18, 2017 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Commission: Secretary, SEC, 100 F Street NE., Washington, DC 20549–1090. Applicants: Alison C. Ryan, Associate General Counsel, Transamerica, 1150 South Olive Street, T–27–01, Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. TLIC is the depositor of Account VA B. TFLIC is the depositor of Account VA BNY. Each Company is an indirect, wholly-owned subsidiary of AEGON, N.V.

2. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act, and each is registered under the 1940 Act as a unit investment trust. Each Account is divided into sub-accounts, which reflect the investment performance of certain registered investment companies, including Transamerica Series Trust. The Accounts are administered and accounted for as part of the general business of the Companies. The application sets forth the registration statement file numbers for the security interests under the Contracts and the Accounts.

3. The Contracts are individual and group variable annuity contracts. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of a registered open-end management investment company held by a sub-account of an Account.

4. Transamerica Series Trust is an open-end management investment company of the series type that is registered with the Commission under the 1940 Act (File No. 811–04419).[1] Shares of the series are registered under the Securities Act of 1933 (File No. 033–00507) and are sold to the separate accounts of life insurance companies to fund benefits under variable life policies or variable annuity contracts and to certain affiliated asset allocation funds.

5. Transamerica Asset Management, Inc. (''TAM''), an investment adviser that is registered with the Commission, has overall responsibility for the management of each Transamerica Series Trust Replacement Fund. TAM delegates to a sub-adviser the responsibility for day-to-day management of the investments of each Transamerica Series Trust Replacement Fund, subject to TAM's oversight. TAM may, in the future, determine to provide the day-to-day management of any Transamerica Series Trust Replacement Fund without the use of a sub-adviser.

6. Applicants propose, as set forth below, to substitute shares of the Replacement Funds for shares of the Existing Funds (''Substitutions'') to fund the Contracts:

Existing fund	Replacement fund
Wanger USA	Transamerica T. Rowe Price Small Cap VP (Initial Class).
Invesco V.I. Value Opportunities Fund (Series II)	Transamerica Barrow Hanley Dividend Focused VP (Initial Class).

7. The Applicants believe that the Replacement Funds have investment objectives, policies and risk profiles, as described in their prospectuses, that are substantially the same as, or sufficiently similar to, the corresponding Existing Funds to make those Replacement Funds appropriate candidates as substitutes. Applicants also state that the investment objectives and investment strategies of each Replacement Fund are similar to the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the Existing Fund, and therefore the fundamental objectives, risk, and performance expectations of those Contract owners with interests in sub-accounts of the Existing Funds will continue to be met after the Substitutions.

8. The investment objectives of each Existing Fund and its corresponding Replacement Fund are set forth below. Additional information for each Existing Fund and Replacement Fund, including principal investment strategies, principal risks, and comparative performance history, can be found in the application.

[1] Effective May 1, 2008, Transamerica Series Trust changed its name from AEGON/Transamerica Series Trust.

Existing fund	Replacement fund
Wanger USA seeks long-term capital appreciation	Transamerica T. Rowe Price Small Cap VP seeks long-term growth of capital by investing primarily in common stocks of small growth companies.
Invesco V.I. Value Opportunities Fund's investment objective is long-term growth of capital.	Transamerica Barrow Hanley Dividend Focused VP seeks total return gained from the combination of dividend yield, growth of dividends and capital appreciation.

9. Applicants state that the Substitutions are designed to allow Contract owners to continue their investment in similar or better investment options without interruption and at no additional cost to them. Contract owners with sub-account balances invested through the Accounts in shares of the Replacement Funds will have the same or lower total expense ratios taking into account fund expenses (including Rule 12b–1 fees, if any). With respect to all of the proposed Substitutions, the combined management fee and Rule 12b–1 fees paid by the Replacement Fund are the same or lower than those of the corresponding Existing Fund. The application sets forth the fees and expenses of each Existing Fund and its corresponding Replacement Fund in greater detail.

10. Applicants represent that as of the effective date of the Substitutions (''Effective Date'') shares of the Existing Funds will be redeemed for cash. The Companies, on behalf of each Existing Fund sub-account of each relevant Account, will simultaneously place a redemption request with each Existing Fund and a purchase order with the corresponding Replacement Fund so that the purchase of Replacement Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times.

11. The Substitutions will take place at relative net asset value (in accordance with Rule 22c–1 under the 1940 Act) with no change in the amount of any affected Contract owner's contract value, cash value, accumulation value, account value or death benefit or in dollar value of his or her investment in the applicable Accounts.[2] No brokerage commissions or other fees will be paid by either the Existing Funds or the Replacement Funds or by the affected Contract owners in connection with the Substitutions.

12. The affected Contract owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including brokerage, legal, accounting, and other fees and expenses. The Substitutions will not cause the Contract fees and charges currently being paid by affected Contract owners to be greater after the Substitutions than before the Substitutions. Moreover, the Substitutions will not impose any tax liability on affected Contract owners.

13. As described in the application, after notification of the Substitution and for 30 days after the Effective Date, affected Contract owners may reallocate the sub-account value of an Existing Fund to any other investment option available under their Contract without incurring any transfer charges.

14. All Contract owners affected by the Substitutions will be notified of this application by means of supplements to the Contract prospectuses at least 30 days prior to the Effective Date. The notice will advise Contract owners that from the date of the notice until the Effective Date, owners are permitted to make one transfer of Contract value out of the Existing Fund sub-account to one or more other sub-accounts without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. Among other information, the notice will inform affected Contract owners that the Companies will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Effective Date.

15. If affected Contract owners reallocate account value during this 60 day period, there will be no charge for the reallocation of accumulated value from the Existing Fund sub-accounts and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. Additionally, all affected Contract owners will be sent prospectuses of the applicable Replacement Funds at least 30 days before the Effective Date.

16. Within five (5) business days after the Effective Date, affected Contract owners will be sent a written confirmation, which will include confirmation that the Substitutions were carried out as previously notified, a restatement of the information set forth in the pre-Substitution notice and values of the Contract owner's position in the Existing Fund before the Substitution and the Replacement Fund after the Substitution.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the Substitutions. Section 26(c) requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Section 26(c) requires the Commission to issue such an order if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the terms and conditions of the Substitutions meet the standards set forth in Section 26(c) and assert that the replacement of an Existing Fund with the corresponding Replacement Fund is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the l940 Act. As described in the application, for a period of two years following the Effective Date, the Companies or their affiliates will reimburse any Contract owner affected by the proposed Substitutions involving Transamerica Series Trust Replacement Funds and whose sub-account invests in the Replacement Fund to the extent a Replacement Fund's net annual operating expenses exceeds the net annual operating expenses of the corresponding Existing Fund.

[2] Applicants state that, because the Substitutions will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitutions, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. Applicants also state that what effect the Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Funds and Replacement Funds, which Applicants cannot predict. Nevertheless, Applicants note that at the time of the Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

Applicants further assert that each Replacement Fund has similar investment objectives and investment strategies as the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the corresponding Existing Fund. Accordingly, Applicants believe that the fundamental investment objectives, risk and performance expectations of the Contract owners will continue to be met after the Substitutions.

3. Applicants also maintain that it is in the best interests of the Contract owners to substitute the Replacement Fund for its corresponding Existing Fund. Applicants anticipate that the substitution of an Existing Fund with the corresponding Replacement Fund will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products. The rights of affected Contract owners and the obligations of the Companies under the Contracts will not be altered by the Substitutions. Affected Contract owners will not incur any additional tax liability or any additional fees and expenses as a result of the Substitutions.

4. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of an open-end management investment company held by a sub-account of an Account.

5. Applicants also assert that none of the proposed Substitutions is of the type that Section 26(c) was designed to prevent. Unlike a traditional unit investment trust where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer account values into other sub-accounts. Moreover, the Contracts will offer affected Contract owners the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. The Substitution, therefore, will not result in the type of costly forced redemptions that Section 26(c) was designed to prevent. Applicants also maintain that the Substitutions are unlike the type of substitutions which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular registered management open-end investment company in which to invest their account values. They also select the specific type of insurance coverage offered by the Companies under their Contracts as well as other rights and privileges set forth in the Contracts.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The proposed Substitutions will not be effected unless the Companies determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitutions can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Contract owners to effect the Substitutions.

3. The proposed Substitutions will be effected at the relative net asset values of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

4. The proposed Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for affected Contract owners as a result of the Substitutions.

5. The rights or obligations of the Companies under the Contracts of affected Contract owners will not be altered in any way.

6. Affected Contract owners will be permitted to make at least one transfer of Contract value from the sub-account investing in the Existing Fund (before the Effective Date) or the Replacement Fund (after the Effective Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Company will not exercise any right it may have under the Contract to impose restrictions on transfers between the sub-accounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date.

7. All affected Contract owners will be notified, at least 30 days before the Effective Date about: (a) The intended substitution of Existing Funds with the Replacement Funds; (b) the intended Effective Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Companies will deliver to all affected Contract owners, at least 30 days before the Effective Date, a prospectus for each applicable Replacement Fund.

8. The Companies will deliver to each affected Contract owner within five (5) business days of the Effective Date a written confirmation which will include: (a) A confirmation that the Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the pre-Substitution notice; and (c) values of the Contract owner's positions in the Existing Fund before the Substitution and the Replacement Fund after the Substitution.

9. After the Effective Date the Applicants agree not to change a Replacement Fund's sub-adviser without first obtaining shareholder approval of either (a) the sub-adviser change or (b) the parties' continued ability to rely on their manager-of-managers exemptive order.

10. For two years following the Effective Date the net annual expenses of each Replacement Fund that is a Transamerica Series Trust Fund will not exceed the net annual expenses of the corresponding Existing Fund as of the fund's most recent fiscal year. To achieve this limitation, the Replacement Fund's investment adviser will waive fees or reimburse the Replacement Fund in certain amounts to maintain expenses at or below the limit. Any adjustments will be made at least on a quarterly basis. In addition, the Companies will not increase the Contract fees and charges, including asset based charges such as mortality expense risk charges deducted from the sub-accounts that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Effective Date.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06247 Filed 3–29–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80305; File No. SR–Phlx–2017–25]

Self-Regulatory Organizations; NASDAQ PHLX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Section VII(A)

March 24, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2017, NASDAQ PHLX, LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section VII(A) of the Exchange's Pricing Schedule, as described in further detail below.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on May 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section VII(A), entitled ''Option Trading Floor Fees,'' to add certain new fees that it will charge to members, member organizations and non-members that install and operate server and telecommunications equipment on the premises of the Exchange, and connect such servers and equipment to off-site locations, such as their remote offices, in connection with conducting a floor trading business.

The Exchange recently moved to a new state-of-the-art operations center.[3] The new operations center will provide significantly upgraded facilities for the Exchange's members and member organizations to conduct their floor trading business. Among these upgraded facilities are a new trading floor, equipped with intercooled Erich Keller workstations specifically designed for trading floors, and a new data center supported by enhanced power supplies.[4] The Exchange anticipates increased utility and operational costs due to the above described enhancements. In the past, members and member organizations installed and operated their own server and telecommunications equipment on the premises of the Exchange in an *ad hoc* manner, supervised by the Exchange. In an effort to establish greater oversight and control over such activities, to standardize the manner in which these activities occur, and to generally provide for a more secure and orderly operating environment for both the Exchange and its members and member organizations, the Exchange will provide dedicated, segregated, and access-limited space (''cabinets'') in its new data center to members, member organizations and non-members for their telecommunications vendors to house servers and telecommunications equipment.[5] Furthermore, the Exchange will provide for the connection of such servers and equipment to the trading floor and to off-site locations, including the remote offices of members and member organizations.

The Exchange proposes to charge its members, member organizations and non-members new fees for providing them with these upgraded facilities and services. In particular, the Exchange proposes to charge monthly fees for providing dedicated half cabinets ($250 per month) or whole cabinets ($800 per month) in its data center to house the servers and telecommunications equipment of its members, member organizations and non-members and their telecommunications vendors.[6] The Exchange also proposes to charge a monthly fee of $50 to connect one cabinet to another cabinet and the same monthly fee to connect a cabinet to off-site locations, including to a member's or member organization's remote office.[7] Lastly, the Exchange proposes a fee of $150 per hour (billable on a quarter hour basis) for ''remote hands,'' meaning technical support that Exchange personnel provides with respect to the installation, configuration, maintenance, and repair of hardware, cables, and circuits.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the provisions of Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposed fees are equitable and non-discriminatory in that they are applicable to all members, member organizations and non-members that choose to house their servers and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange relocated its premises from 1900 Market Street in Philadelphia, Pennsylvania to a new location at FMC Tower, 2929 Walnut Street in Philadelphia, Pennsylvania.

[4] The new trading floor will be driven by brand new 300 kVA UPS units, with an 800 kw back-up generator.

[5] The Exchange will assign each member, member organization and non-member a minimum of one half cabinet in its new data center.

[6] The Exchange proposes to charge substantially less for half cabinets than whole cabinets to incentivize members, member organizations, and non-members to make efficient use of the limited space in the new data center. That is, the Exchange seeks to discourage the purchase of a whole cabinet if the purchase of a half cabinet would suffice.

[7] The proposed Pricing Schedule refers to this as a ''Cabinet to MPOE Connectivity'' fee, where ''MPOE'' refers to the ''Main Point of Entry,'' meaning the place within the Exchange's facilities where members and member organizations can connect to the Exchange using external telecommunications lines.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

telecommunications equipment on the premises of the Exchange and to connect such equipment to their trading desks and remote offices. The proposed fees are also reasonable insofar as they permit the Exchange to recover its expected costs of hosting and providing connectivity to the servers and equipment of members, member organizations and non-members in the new environment. Moreover, as the Exchange explains in footnote 6 herein, the fees for half and whole cabinets, in particular, are reasonable insofar as the Exchange designed them to encourage efficient allocation of limited space in the new data center. Lastly, the proposed fees are similar to, if not often less than, fees that competing exchanges charge their customers for similar services.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee structure is designed to ensure a fair and efficient use of Exchange facilities and services while allowing the Exchange to recoup some of its costs for providing those facilities and services to members, member organizations, and non-members. Moreover, the rates of the proposed fees will be comparable with those charged by other competing exchanges.[11]

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.

[10] *See e.g.,* NYSE Arca Options Fees and Charges, at 13–21 (charging vendor equipment room cabinet fee of $2,150 per cabinet per month and a telecom move/add/change fee of $100 per hour on a pro-rated basis), available at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* New York Stock Exchange Price List 2017, at 17 (charging Internet Equipment Monthly Hosting Fee of $1,000 per rack (equivalent to a cabinet), $600 per half rack, and $400 per quarter rack per month), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* CBOE Fee Schedule, at 10 (charging $100 per month per equipment shelf (with 24 shelves equivalent to a half cabinet); $50 per month for outside connectivity; and $100 per hour for after-hours technical support, but with a four hour minimum).

[11] *See id.*

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.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2017–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2017–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2017–25, and should be submitted on or before April 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–06243 Filed 3–29–17; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2017–0014]

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 one revision of an OMB-approved 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*

(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*

Or you may submit your comments online through *www.regulations.gov,*

referencing Docket ID Number [SSA–2017–0014].

I. The information collection below is pending at SSA. SSA will submit it 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 30, 2017. Individuals can obtain copies of the collection instrument by writing to the above email address.

Objection to Appearing by Video Teleconferencing; Acknowledgement of Receipt (Notice of Hearing); Waiver of Written Notice of Hearing—20 CFR 404.935, 404.936; 404.938, 404.939, 416.1435, 416.1436, 416.1438, & 416.1439—0960–0671. SSA uses the information we obtain on Forms HA–55, HA–504, HA–504–OP1, and HA–510 to manage the means by which we conduct hearings before an administrative law judge (ALJ), and the scheduling of hearings with an ALJ. We use the HA–55, Objection to Appearing by Video Teleconferencing, and its accompanying cover letter, HA–L2, to allow claimants to opt-out of an appearance via video teleconferencing (VTC) for their hearing with an ALJ. The HA–L2 explains the good cause stipulation for opting out of VTC if the claimant misses their window to submit the HA–55, and for verifying a new residence address if the claimant moved since submitting their initial hearing request. SSA uses the HA–504 and HA–504–OP1, Acknowledgement of Receipt (Notice of Hearing), and accompanying cover letter, HA–L83 to: (1) Acknowledge the claimants will appear for their hearing with an ALJ; (2) establish the time and place of the hearing; and (3) remind claimants to gather evidence in support of their claims. The only difference between the two versions of the HA–504 is the language used for the selection checkboxes as determined by the type of appearance for the hearing (in-person, phone teleconference, or VTC). In addition, the cover letter, HA–L83, explains: (1) The claimants' need to notify SSA of their wish to object to the time and place set for the hearing; (2) the good cause stipulation for missing the deadline for objecting to the time and place of the hearing; and (3) how the claimants can submit, in writing, any additional evidence they would like the ALJ to consider, or any objections they have on their claims. The HA–510, Waiver of Written Notice of Hearing, allows the claimants to waive their right to receive the Notice of Hearing as specified in the HA–L83. We typically use this form when there is a last minute available opening on an ALJ's schedule, so the claimants can fill in the available time slot. If the claimants agree to fill the time slot, we ask them to waive their right to receive the Notice of Hearing 75 days prior to the scheduled hearing. The respondents are applicants for Social Security disability payments who request a hearing to appeal an unfavorable entitlement or eligibility determination.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–504 (with teleconferencing)	898,000	1	30	449,000
HA–504–OP1	2,000	1	30	1,000
HA–L83	900,000	1	30	450,000
HA–L83—Good Cause for missing deadline	5,000	1	5	417
HA–L83—Objection Stating Issues in Notice are Incorrect	45,000	1	5	3,750
HA–55	850,000	1	5	70,833
HA–L2—Verification of New Residence	45,000	1	5	3,750
HA–L2—Late Notification of Objection to VTC showing good cause	13,500	1	10	2,250
HA–510	4,000	1	2	133
Totals	2,762,500			981,133

Dated: March 27, 2017.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2017–06303 Filed 3–29–17; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9939]

Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of International Security and Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act.

DATES: Effective March 21, 2017.

FOR FURTHER INFORMATION CONTACT: On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930. For U.S. Government procurement ban issues: Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079.

SUPPLEMENTARY INFORMATION: Section 3 of the of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 109–353) provides for penalties on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists, and (c) other items with the potential of making such a material contribution when added through case-by-case decisions.

On March 21, 2017 the U.S. Government applied the measures authorized in Section 3 against the following foreign persons identified in

the report submitted pursuant to Section 2(a) of the Act:

Ministry of Defense Directorate of Defense Industries (DDI) (Burma) and any successor, sub-unit, or subsidiary thereof;

Beijing Zhong Ke Electric Co., LTD. (ZKEC) (China), and any successor, sub-unit, or subsidiary thereof;

Dalian Zhenghua Maoyi Youxian Gongsi (China) and any successor, sub-unit, or subsidiary thereof;

Jack Qin (Chinese individual);

Jack Wang (Chinese individual);

Ningbo New Company Import and Export Company Limited (China) and any successor, sub-unit, or subsidiary thereof;

Karl Lee [aka Li Fangwei] (Chinese individual);

Shanghai Horse Construction [aka Forrisio International Group] (China) and any successor, sub-unit, or subsidiary thereof;

Shenzhen Yataida High-Tech Company Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Sinotech (Dalian) Carbon and Graphite Corporation (SCGC) (China) and any successor, sub-unit, or subsidiary thereof;

Sky Rise Technology [aka Reekay Technology Limited] (China) and any successor, sub-unit, or subsidiary thereof;

Sun Creative (Zhejiang) Technologies, Inc. (China) and any successor, sub-unit, or subsidiary thereof;

T-Rubber Co. Ltd (China) and any successor, sub-unit, or subsidiary thereof;

Special Defense Research Center (SDRC) (Egypt) and any successor, sub-unit, or subsidiary thereof;

Eritrean Navy (Eritrea) and any successor, sub-unit, or subsidiary thereof;

Aerospace Industries Organization (AIO) (Iran) and any successor, sub-unit, or subsidiary thereof;

Saeng Pil Trading Corporation (SPTC) (North Korea) and any successor, sub-unit, or subsidiary thereof;

150th Aircraft Repair Plant (Russia) and any successor, sub-unit, or subsidiary thereof;

Aviaexport (Russia) and any successor, sub-unit, or subsidiary thereof;

Bazalt (Russia) and any successor, sub-unit, or subsidiary thereof;

Kolomna Design Bureau of Machine-Building (KBM) (Russia) and any successor, sub-unit, or subsidiary thereof;

Ulyanovsk Higher Aviation Academy of Civil Aviation (UVAUGA) (Russia) and any successor, sub-unit, or subsidiary thereof;

Ural Training Center for Civil Aviation (UUTsGA) (Russia) and any successor, sub-unit, or subsidiary thereof;

Zhukovskiy and Gagarin Academy (Z&G Academy) (Russia) and any successor, sub-unit, or subsidiary thereof;

Madar Yara Medical Company (Saudi Arabia) and any successor, sub-unit, or subsidiary thereof;

Giad Heavy Industries (GHI) (Sudan) and any successor, sub-unit, or subsidiary thereof;

Military Industries Corporation (MIC) (Sudan) and any successor, sub-unit, or subsidiary thereof;

Muhammad al-Husayn Yusuf (Sudanese individual); and

Mabrooka Trading (United Arab Emirates) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the United States Government may procure or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the United States Government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government, except to the extent that the Secretary of State otherwise may determine;

3. No United States Government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise.

Ann K. Ganzer,

Acting Assistant Secretary of State for International Security and Nonproliferation.

[FR Doc. 2017–06225 Filed 3–29–17; 8:45 am]

BILLING CODE 4710–27–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Approval of an Existing Collection in Use Without an OMB Control Number: Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act of 2015

AGENCY: Surface Transportation Board.

ACTION: Notice and Request for Comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), the Surface Transportation Board (STB or Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval of a new collection to implement a directive of the Fixing America's Surface Transportation Act of 2015, Public Law 114–94 (signed Dec. 4, 2015) (FAST Act). Title XI of the FAST Act, entitled ''Passenger Rail Reform and Investment Act of 2015,'' gives the Board jurisdiction to resolve cost allocation and access disputes between National Railroad Passenger Corporation (Amtrak), the states, and potential non-Amtrak operations of intercity passenger rail service. The FAST Act directs the Board to establish procedures for the resolution of these disputes, ''which may include the provision of professional mediation services.''

The Board adopted final rules to implement these procedures in *Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act of 2015,* EP 734 (STB served Nov. 29, 2016). Due to a technical omission in the notice of proposed rulemaking in EP 734 under the PRA, the Board is seeking OMB approval for this collection separately in this notice. The Board previously published a notice about this collection in the **Federal Register**. 82 FR 1421 (Jan. 5, 2017). That notice allowed for a 60-day public review and comment period. No comments were received.

DATE: Comments on this information collection should be submitted by May 1, 2017.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board: Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act of 2015.'' These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Chad Lallemand, Surface Transportation Board Desk Officer, by email at *OIRA_SUBMISSION@OMB.EOP.GOV;* by fax at

(202) 395–6974; or by mail to Room 10235, 725 17th Street NW., Washington, DC 20503. Please also direct comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *pra@stb.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0284 or at *Michael.Higgins@stb.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: For each collection, comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

Description of Collection

Title: Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act of 2015.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents: Parties seeking the Board's informal assistance under the FAST Act.

Number of Respondents: Approximately three.

Estimated Time Per Response: One hour.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): Three (estimated hours per response (1) × total number of responses (3)).

Total ''Non-hour Burden'' Cost: None identified. Filings may be submitted electronically to the Board.

Needs and Uses: Under the new 49 CFR 1109.5, parties to a dispute involving the State-Sponsored Route Committee or the Northeast Corridor Committee may, by a letter submitted to the Board's Office of Public Assistance, Governmental Affairs, and Compliance, request the Board's informal assistance in securing outside professional mediation services. The letter shall include a concise description of the issues for which outside professional mediation services are sought. The collection by the Board of these request letters enables the Board to meet its statutory duty under the FAST Act.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information.

Dated: March 27, 2017.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2017–06276 Filed 3–29–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–08]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 19, 2017.

ADDRESSES: You may send comments identified by docket number FAA–2016–9428 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lynette Mitterer, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *lynette.mitterer@faa.gov,* phone (425) 227–1047.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 8, 2017.

Victor Wicklund,

Manager, Transport Standard Staff.

Petition For Exemption

Docket No.: FAA–2016–9428.

Petitioner: ST Aerospace (for Elbe Flugzeugwerke GmbH).

Section of 14 CFR Affected: §§ 25.785(j) at Amendment 25–88, 25.812(e) at Amendment 25–128, 25.812(l) at Amendment 25–128, 25.855(a) at Amendment 25–116, 25.857(e) at Amendment 25–93, 25.1447(c)(1) at Amendment 25–116 and 25.1449.

Section of 14 CFR Related: § 121.583(a).

Description of Relief Sought: Permit the carriage of up to seven non-crewmembers (commonly referred to as supernumeraries) aft of the flight deck

on the Airbus Model A330–200/–300 airplanes which have been converted from a passenger to freighter configuration. The exemption sought would allow up to seven supernumeraries access into the Class E main cargo compartment during flight for the purpose of attending to cargo types requiring care or inspection, or both (*e.g.,* live animals or hazardous materials.)

[FR Doc. 2017–06260 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Lake Superior College and City of Duluth, Duluth, Minnesota.

SUMMARY: The FAA is considering a proposal to change 42.29 acres of airport land from aeronautical use to non-aeronautical use of property located at Lake Superior College—Emergency Response Training Center, 11501 MN Highway 23, Duluth, MN 55808. The aforementioned land is not needed for aeronautical use.

DATES: Comments must be received on or before May 1, 2017.

ADDRESSES: Documents are available for review by appointment at the FAA Dakota-Minnesota Airports District Office, Jake Martin, Program Manager, 6020 South 28th Ave., Suite 102, Minneapolis, MN 55450 Telephone: 612–253–4634/Fax: 612–253–4611.

Written comments on the Sponsor's request must be delivered or mailed to: Jake Martin, Program Manager, Federal Aviation Administration, Dakota-Minnesota Airports District Office, 6020 South 28th Ave., Suite 102, Minneapolis, MN 55450 Telephone: 612–253–4634/Fax: 612–253–4611.

FOR FURTHER INFORMATION CONTACT: Jake Martin, Program Manager, Federal Aviation Administration, Dakota-Minnesota Airports District Office, 6020 South 28th Ave., Suite 102, Minneapolis, MN 55450 Telephone: 612–253–4634/Fax: 612–253–4611.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property is located along Highway 23 on the border of Minnesota and Wisconsin, near the point where the St. Louis River enters Lake Superior. This property is used to provide aircraft rescue and firefighting (ARFF) training to personnel working for fire departments responding to crashes involving aircraft. The proposed non-aeronautical use is to shift focus from ARFF training to industrial firefighting of all types.

The property is presently used for an ARFF training facility for personnel responding to emergencies involving aircraft. The land was purchased using Airport Improvement Program (AIP) funds. Lake Superior College and the City of Duluth, co-sponsors for the grant, propose to continue to use the facility as a firefighting training facility, but one that focuses on emergencies and fires of all types; rather than aircraft specific. This is no longer needed for an aeronautical purpose. The property will remain under the jurisdiction of Lake Superior College and the Minnesota State Colleges and University system. Lake Superior College will repay the current Fair Market Value (FMV) of the property to the City of Duluth where the funds will be used for future airport improvement projects at the Duluth International Airport.

The disposition of proceeds from the property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Lake Superior College—Emergency Response Training Center, 11501 MN Highway 23, Duluth, MN 55808 from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

An irregular shaped parcel consisting of approximately 42.29 acres described as the south 250 feet of the NW ¼ of the NE ¼, part of the south 250 feet of the NE ¼ of the NE ¼, the north 480 feet of the SW ¼ -of the NE ¼ of the former Delzotto property, and part of Government Lot 6 located in the SE ¼ of the NE ¼ all located in Section 9 of T48N–R15W

Issued in Minneapolis, MN, on February 7, 2017.

Andrew Peek,

Manager, Dakota-Minnesota Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2017–06293 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Detroit Metropolitan Wayne County Airport, Detroit, Michigan.

SUMMARY: The FAA is considering a proposal to change 5.593 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Detroit Metropolitan Wayne County Airport, Detroit, Michigan. The aforementioned land is not needed for aeronautical use.

DATES: Comments must be received on or before May 1, 2017.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, Irene R. Porter, Program Manager, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone: (734) 229–2915/Fax: (734) 229–2950 and Wayne County Airport Authority Administrative Offices, 1 LC Smith Building, Detroit, Michigan, Attn. Ms. Wendy Sutton. Telephone: (734) 247–7233.

Written comments on the Sponsor's request must be delivered or mailed to: Irene R. Porter, Program Manager, Federal Aviation Administration, Airports Detroit District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone Number: (734) 229–2915/FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Irene R. Porter, Program Manager, Federal Aviation Administration, Airports Detroit District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone Number: (734) 229–2915/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that

requires the property to be used for an aeronautical purpose.

The property is located across a public road and to the northwest of the Detroit Metropolitan Wayne County Airport. It is currently vacant unimproved land that was acquired to support the Vining road relocation necessary for the construction of Runway 4L/22R at the airport. The property proposed for release was acquired by the Wayne County Airport Authority under FAA Grant Numbers: 3–26–0026–1991, 3–26–0026–2292, 3–26–0026–3695, 3–26–0026–4197, and 3–26–0026–4398. There is now a buyer for the entire 25.511 acre parcel on this site. The FAA processed a release for 19.918 acres of this property on September 29, 2006. The Authority is now requesting a release for the remaining 5.593 acres. The land is no longer needed for aeronautical purposes. The proposed non-aeronautical land use would be for compatible commercial/industrial development. The property has been appraised and the airport will receive Fair Market Value for the land to be sold.

The property is currently vacant, unimproved land maintained for compatible land use surrounding the airfield. The proposed non-aeronautical land use would be for compatible commercial/industrial development, allowing the airport to become more self-sustaining. The property has a proposed developer identified and it has been appraised. The airport will receive Fair Market Value for the land to be sold.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Detroit Metropolitan Wayne County Airport, Detroit, Michigan, from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Property Description

PART OF THE SOUTHEAST ¼ SECTION 16, T.3.S.,R.9.E., CITY OF ROMULUS, WAYNE COUNTY, MICHIGAN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH ¼ CORNER OF SECTION 16, T.3.S., R.9.E., CITY OF ROMULUS, WAYNE COUNTY, MICHIGAN AND RUNNING THENCE NORTH 88 DEGREES 11 MINUTES 10 SECONDS EAST, ALONG THE SOUTH LINE OF SAID SECTION 16, A DISTANCE OF 120.00 FEET TO A POINT; THENCE NORTH 01 DEGREE 50 MINUTES 10 SECONDS WEST A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN BEING DESCRIBED; PROCEEDING THENCE FROM SAID POINT OF BEGINNING NORTH 01 DEGREE 50 MINUTES 10 SECONDS WEST A MEASURED DISTANCE OF 1769.32 FEET (DESCRIBED 1770.05 FEET) TO A POINT ON THE SOUTHERLY LINE OF THE NORFOLK AND SOUTHERN RAILROAD RIGHT-OF-WAY (100 FEET WIDE); THENCE NORTH 71 DEGREES 24 MINUTES 00 SECONDS EAST, ALONG SAID RAILROAD RIGHT-OF-WAY LINE, A DISTANCE OF 146.22 FEET TO A POINT; THENCE SOUTH 01 DEGREE 50 MINUTES 10 SECONDS EAST A MEASURED DISTANCE OF 1655.43 FEET TO A POINT ON THE WESTERLY LINE OF VINING ROAD (120 FEET WIDE); THENCE SOUTH 28 DEGREE 28 MINUTES 47 SECONDS WEST, ALONG SAID WESTERLY LINE OF VINING ROAD, A DISTANCE OF 180.80 FEET TO A POINT; THENCE SOUTH 88 DEGREES 11 MINUTES 10 SECONDS WEST, ALONG A LINE 60.00 FEET NORTH OF, AS MEASURED AT RIGHT ANGLES TO AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 16, A DISTANCE OF 48.74 FEET TO THE POINT OF BEGINNING. CONTAINING 243,644 SQUARE FEET OR 5.593 ACRES, MORE OR LESS, OF LAND IN AREA. THE ABOVE DESCRIBED PARCEL OF LAND IS SUBJECT TO A RIGHT-OF-WAY TO STANDARD OIL COMPANY AS RECORDED IN LIBER 11705 OF DEEDS ON PAGE 359 WAYNE COUNTY RECORDS AND LIBER 14426 OF DEEDS ON PAGE 762 WAYNE COUNTY RECORDS AND IS SUBJECT TO AN EASEMENT TO THE WOLVERINE PIPE LINE COMPANY AS RECORDED IN LIBER 11798 OF DEEDS ON PAGE 112 WAYNE COUNTY RECORDS AND LIBER 11864 OF DEEDS ON PAGE 442 WAYNE COUNTY RECORDS.

Issued in Romulus, Michigan, on February 3, 2017.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2017–06292 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–16]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 19, 2017.

ADDRESSES: You may send comments identified by docket number FAA–2017–0118 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on March 24, 2017.

Victor Wicklund,

Manager, Transport Standards Staff.

Petition for Exemption

Docket No.: FAA–2017–0118.
Petitioner: Gulfstream Aerospace LP.
Section of 14 CFR Affected: § 25.841(a)(2).
Description of Relief Sought: The petitioner seeks an exemption from the requirements of 14 CFR 25.841(a)(2) at Amendment 25–87 for certain types of uncontained engine failures, to allow access to the baggage compartment without any altitude-related limitation up to the maximum operating altitude (45,000 feet) approved for the Model G280 airplane. This petition is made in accordance with FAA Policy PS–ANM–03–112–16 dated March 24, 2006.

[FR Doc. 2017–06268 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of ARAC.

DATES: The meeting will be held on April 20, 2017, starting at 1:00 p.m. Eastern Standard Time. Arrange oral presentations by April 13, 2017.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Conference Room 5 A–B–C. In addition, a phone bridge has been established for those wishing to participate by telephone.

FOR FURTHER INFORMATION CONTACT: Nikeita Johnson, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–4977; fax (202) 267–5075; email *Nikeita.Johnson@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the ARAC taking place on April 20, 2017, at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The purpose of this meeting is to consider one or more new ARAC tasks.

Improvement of regulations is a continuous focus for the Department. Accordingly, the Department regularly makes a conscientious effort to review its rules in accordance with the Department's 1979 Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), Executive Order 12866, Executive Order 13563, and section 610 of the Regulatory Flexibility Act. Through two new Executive Orders, President Trump directed agencies to further scrutinize its regulations. On January 30, 2017, President Trump signed Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs (EO).'' Under Section 2a of that Executive Order, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

In addition, on February 24, 2017, President Trump signed Executive Order 13777 titled ''Enforcing the Regulatory Reform Agenda.'' Under this Executive Order, each agency is required to establish a Regulatory Reform Task Force (RRTF) to evaluate existing regulations, and make recommendations for their repeal, replacement, or modification. As part of this process, the Department is directed to seek input/assistance from entities significantly affected by its regulations. Accordingly, the agenda for this ARAC meeting will be to task ARAC to consider (1) recommendations on existing regulations that are good candidates for repeal, replacement, or modification and (2) recommendations on regulatory action identified in FAA's Regulatory Agenda.

The ARAC will also consider the new task Flight Test Harmonization Working Group- Transport Airplane Performance and Handling Characteristics, Phase 3 that was on the agenda for the March 16, 2017, ARAC meeting. At that meeting, all discussions on new tasks were postponed to later ARAC meetings.

Attendance is open to the interested public but limited to the space available. Please confirm your attendance, either in person or by telephone, with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than April 13, 2017. Please provide the following information: full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers are responsible for paying long-distance charges.

The public must arrange by April 13, 2017, to present oral statements at the meeting. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on March 24, 2017.

Lirio Liu,

Designated Federal Officer, Aviation Rulemaking Advisory Committee.

[FR Doc. 2017–06295 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–17]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of applicable Federal regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 19, 2017.

ADDRESSES: You may send comments identified by docket number FAA–2017–0133 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov*

and follow the instructions for sending your comments digitally.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on March 24, 2017.

Victor Wicklund,

Manager, Transport Standards Staff.

Petition for Exemption

Docket No.: FAA–2017–0133.

Petitioner: Erickson Aero Tanker, LLC.

Section of 14 CFR Affected: § 25.201(b)(1).

Description of Relief Sought: The petitioner seeks an exemption from the requirements of 14 CFR 25.201(b)(1) at Amendment 25–42, with respect to stall characteristics in the flaps 40/landing gear up configuration for its DC–9–87 (MD–87) airplanes. The exemption, if granted, would allow the airplanes to be used in aerial firefighting retardant drops.

[FR Doc. 2017–06269 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0353]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators

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

ACTION: Notice of denials of exemption applications.

SUMMARY: FMCSA announces its decision to deny applications from three individuals seeking exemptions from the Federal cardiovascular standard applicable to interstate truck and bus drivers and discusses the reasons for the denials. The Agency reviewed the medical information of each the individuals who applied for an implantable cardioverter defibrillator (ICD) exemption. Based on a review of the applications and following an opportunity for public comment, FMCSA has concluded that the three individuals in the notice did not demonstrate they could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

DATES: Denial letters were sent to each of the individuals listed in this notice on December 7, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief Medical Programs Division, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for up to five years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions for up to an additional five years at the end of each five-year period.[1]

On October 20, 2016, FMCSA published for public notice and comment FMCSA 2016–0353, listing three individuals seeking exemptions for ICDs. Accordingly, the Agency has evaluated each applicant's request to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Evaluation Criteria—Cardiovascular Medical Standard and Advisory Criteria

The individuals included in this notice have requested an exemption from the provisions of 49 CFR 391.41(b)(4), which applies to drivers who operate commercial motor vehicles (CMV) in interstate commerce, as defined in 49 CFR 390.5. Section 391.41(b)(4) states that:

> A person is physically qualified to drive a commercial motor vehicle if—
>
> * * * * *
>
> that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope [a temporary loss of consciousness due to a sudden decline in blood flow to the brain], dyspnea [shortness of breath], collapse, or congestive cardiac failure.

The FMCSA provides medical advisory criteria as recommendations for use by medical examiners in determining whether drivers with certain medical conditions and drivers who have undergone certain procedures and/or treatments should be certified to operate CMVs in interstate commerce in accordance with the various physical qualification standards in 49 CFR part 391, subpart E. The advisory criteria are currently set out in Appendix A to 49 CFR part 391. The advisory criteria for section 391.41(b)(4) provide, in part, that:

> The term ''has no current clinical diagnosis of'' is specifically designed to encompass: ''a clinical diagnosis of'' (1) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term ''known to be accompanied by'' is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse, or congestive cardiac failure.
>
> It is the intent of the Federal Motor Carrier Safety Regulations to render unqualified, a driver who has a current cardiovascular

[1] 49 U.S.C. 81315(b), as amend by section 5206(a) of the FAST ACT, Public Law 114–94, div. A, title V, 129 Stat.1537 (Dec. 4, 2015).

disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope (a transient loss of consciousness) or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. See the Evidence Report on ''Cardiovascular Disease and Commercial Motor Vehicle Driver Safety,'' April 2007.[2] A focused research report entitled ''Implantable Cardioverter Defibrillators and the Impact of a Shock on a Patient When Deployed,'' completed for the FMCSA in December 2014, indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety and upholds the findings of the April 2007 report. Copies of the April 2007 report and the December 2014 report are included in the docket for this notice.

Discussion of Public Comments

On October 20, 2016, FMCSA published in a **Federal Register** Notice the names of three individuals seeking ICD exemption and requested public comment. The public comment period closed on November 21, 2016. One comment was received that was out of scope for this notice.

Conclusion

FMCSA evaluated the three individual exemption requests on their merits, available data from Evidence Reports and Medical Expert Panel opinions on the impact of ICDs on CMV driving, and the public comments received. The Agency has determined that the available medical literature and data does not support a conclusion that granting these exemptions would achieve a level of safety equivalent to or greater than the level of safety maintained without the exemptions. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

The following three applicants are denied exemptions from the cardiovascular standard:

Gary Francher
Henry McGuire
Matthew Wilson

Issued on: March 23, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–06271 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–EX–P

[2] Now available at *http://ntl.bts.gov/lib/30000/30100/30123/Final_CVD_Evidence_Report_v2.pdf.*

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket Number DOT–OST–2017–0043]

Agency Information Collection Activity; Notice of Request for Approval To Continue To Collect Information: Barrier Failure Reporting in Oil and Gas Operations on the Outer Continental Shelf

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice announces the intention of BTS to request the Office of Management and Budget (OMB) to approve continuation of the following information collection: Barrier Failure Reporting in Oil and Gas Operations on the Outer Continental Shelf (OCS). In August 2013, the Bureau of Safety and Environmental Enforcement (BSEE) and BTS signed an Interagency Agreement (IAA) to develop and implement SafeOCS, a voluntary program for confidential reporting of 'near misses' occurring on the OCS. BTS has entered into a memorandum of understanding (MOU) with BSEE to expand the scope of SafeOCS to include an industry-wide repository of equipment failure data, analyze and aggregate information provided under this program, and publish reports that will provide BSEE, the industry, and all OCS stakeholders with essential information about failure types and modes of critical safety barriers for offshore operations related to well control. The data collection effort that is the subject of this notice addresses the collection of failure data as referenced in recently issued BSEE regulations (81 FR 25887, April 29, 2016) and (81 FR 61834, September 7, 2016). BTS received permission to collect the data under an emergency OMB control number on September 29, 2016. Through this notice, BTS is requesting permission to continue this previously approved data collection. This information collection is necessary to aid BSEE, the oil and gas industry, and other stakeholders in identifying barrier failure trends and causes of critical safety barrier failure events.

DATES: Written comments should be submitted by May 30, 2017.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments by only one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically. Docket Number: DOT–OST–2017–0043.
- *Mail:* Docket Services, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Identify all transmissions with ''Docket Number DOT–OST–2017–0043'' at the beginning of each page of the document.

Instructions: All comments must include the agency name and docket number for this notice. Paper comments should be submitted in duplicate. The Docket Management Facility is open for examination and copying, at the above address from 9 a.m. to 5 p.m. EST, Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket Number DOT–OST–2017–0043.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that all comments received, including any personal information, will be posted and will be publicly viewable, without change, at *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may review the Privacy Act Statement at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Demetra V. Collia, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of

Transportation, Office of Statistical and Economic Analysis, RTS–31, E36–302, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; Phone No. (202) 366–1610; Fax No. (202) 366–3383; email: *demetra.collia@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

Data Confidentiality Provisions: The confidentiality of barrier failure information submitted to BTS is protected under the BTS confidentiality statute (49 U.S.C. 6307) and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002 (Pub. L. 107–347, Title V). In accordance with these confidentiality statutes, only statistical (aggregated) and non-identifying data will be made publicly available by BTS through its reports. BTS will not release to BSEE or any other public or private entity any information that might reveal the identity of individuals or organizations mentioned in failure notices or reports without explicit consent of the respondent and any other affected entities.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain OMB approval to initiate an information collection activity. BTS is seeking OMB approval to continue the following BTS information collection activity:

Title: Barrier Failure Reporting in Oil and Gas Operations on the Outer Continental Shelf.

OMB Control Number: 2139–0046.

Type of Review: Approval of data collection. This information collection is limited to the establishment of BTS as an authorized repository for the previously approved BSEE information collections (OMB Control Number 1014–0028, expiration 04/30/2019, and OMB Control Number 1014–0003, expiration 08/31/2019) in order to ensure the confidentiality of submissions under CIPSEA.

Respondents: BTS has entered into a MOU with BSEE to facilitate the collection of information from respondents identified in the BSEE notices for OMB Control Number 1014–0028 and OMB Control Number 1014–0003. Responsibility for establishing the actual scope and burden for this collection resides with BSEE. This BTS information collection request does not create any additional burden for respondents. For the purposes of this collection BTS has identified BSEE as the sole respondent.

Number of Potential Responses: For the purposes of this collection BTS has identified BSEE as the sole respondent reporting to BTS at the annual frequency of one.

Estimated Time per Response: 60 minutes.

Frequency: Once.

Total Annual Burden: 1 hour.

Abstract: The Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (44 U.S.C. 3501 note), can provide strong confidentiality protection for information acquired for statistical purposes under a pledge of confidentiality. CIPSEA Guidance from the Office of Management and Budget advises that a non-statistical agency or unit (BSEE) that wishes to acquire information with CIPSEA protection may consider entering into an agreement with a Federal statistical agency or unit (BTS). BTS and BSEE have determined that it is in the public interest to collect and process the barrier-related failure reports required by 30 CFR 250.730 and the safety and pollution prevention equipment failure reports required by 30 CFR 250.803, or any other data deemed necessary to administer BSEE's safety program pertaining to barrier failures under a pledge of confidentiality for statistical purposes only. BTS has agreed through an MOU with BSEE to undertake the information collection identified in the BSEE notice for OMB Control Number 1014–0028 and the BSEE notice for OMB Control Number 1014–0003 in order to ensure the confidentiality of submissions under CIPSEA. Since this information collection is limited to the establishment of BTS as an authorized repository for the previously approved information collection (OMB Control Number 1014–0028, expiration 04/30/2019 and OMB Control Number 1014–0003, expiration 08/31/2019), this information collections request does not create any additional burden for respondents.

II. Background

In August 2013, BTS and BSEE signed an IAA to develop and implement SafeOCS, a voluntary program for confidential reporting of 'near misses' occurring on the Outer Continental Shelf (OCS). The goal of the voluntary near miss reporting system is to provide BTS with essential information about accident precursors and other hazards associated with OCS oil and gas operations. Under the program, BTS will develop and publish aggregate reports that BSEE, the industry and all OCS stakeholders can use—in conjunction with incident reports and other sources of information—to reduce safety and environmental risks and continue building a more robust OCS safety culture.

In July 2016, new BSEE regulations became effective which require, in part, the reporting of barrier-related failure event and analysis information (see 81 FR 25887) and reporting of failure event and analysis information of safety and pollution prevention equipment (see 81 FR 61834). BSEE requested and BTS agreed to expand the scope of SafeOCS to include reports of equipment failure mandated by a BSEE regulations (see 81 FR 25887 and 81 FR 61834), as well as near-miss reports voluntarily submitted by either employees or companies. Both BTS and BSEE agree that reports on equipment failures are considered a type of precursor safety information and can be included in SafeOCS to provide a means of identifying industry-wide data trends on barrier failures or potential for barrier failures. This data collection will provide parties in the oil and gas industry a trusted means to report sensitive proprietary and safety information related to equipment failures and to foster trust in the confidential collection, handling, and storage of the raw data. BTS will use the data collected to establish a comprehensive source of barrier-related failure data for statistical purposes. With input from subject matter experts, BTS will process and analyze information on equipment failures, and publish results of such analyses in public reports. Such reports will provide BSEE, the industry, and all OCS stakeholders with essential information about failure types and modes of critical safety barriers for offshore operations related to well control and production safety systems.

BTS will continue to collect failure notices, failure analysis reports, and design change/modified procedures reports as described in 30 CFR 250.730 and 30 CFR 250.803 submitted by industry operators, their contractors, original equipment manufacturers, and others employed in the oil and gas industry; develop an analytical database using the reported data and other pertinent information; conduct statistical analyses and develop public reports; and protect the confidentiality of notices and reports in accordance with BTS' own statute and CIPSEA. Accordingly, only statistical and non-sensitive information will be made available through BTS' publications and reports. Those publications and reports will potentially provide the industry, BSEE, other OCS stakeholders, and the public with valuable information regarding precursors to safety risks and

contribute to research and development of intervention programs aimed at preventing accidents and fatalities in the OCS.

Respondents who report equipment failures will be asked to fill out a form and submit pertinent supplemental information as described in 30 CFR 250.730, 30 CFR 250.803 and cited industry standards. Respondents will have the option to mail or submit the report electronically to BTS. Respondents will be asked to provide information such as: (1) Name and contact information; (2) time and location of the failure event; (3) a short description of the failure event and operating conditions that existed at the time of the event; (4) contributing factors to the event; (5) results of an investigation or safety analysis report; (6) any design or procedural changes as a result of the reported equipment failure; and (7) any other information that might be useful in determining ways to prevents such failures from occurring.

III. Request for Public Comment

BTS requests comments on any aspects of this information collection request, including: (1) Ways to enhance the quality, usefulness, and clarity of the collected information; and (2) ways to minimize the collection burden without reducing the quality of the information collected, including additional use of automated collection techniques or other forms of information technology.

Patricia Hu,

Director, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

[FR Doc. 2017–06272 Filed 3–29–17; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite comment on a proposed renewal, without change, to the generic clearance for the collection of qualitative feedback on agency service delivery. This request for comments is being made pursuant to the Paperwork Reduction Act (''PRA'') of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before May 30, 2017.

ADDRESSES: Written comments should be submitted to: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, ''Attention: Comments on generic clearance for the collection of qualitative feedback on agency service delivery.'' Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''Attention: Comments on generic clearance for the collection of qualitative feedback on agency service delivery.'' Please submit by one method only.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

Abstract: The Director of FinCEN is the delegated administrator of the Bank Secrecy Act (''Act''). The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain certain records or file certain reports that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.[1] FinCEN periodically surveys its stakeholders to collect qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Agency's commitment to improving service delivery.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Office of Management and Budget Control Number: 1506–0062.

Abstract: FinCEN is renewing, without change, the bureau's capability to solicit feedback from the public with respect to timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Current Action: Renewal without change to an existing collection.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

Burden: Estimated Number of Respondents: 162,188.[2]

[1] Public Law 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (''USA PATRIOT'') Act of 2001, Public Law 107–56.

[2] This number includes depository institutions (10,772), broker-dealers in securities (5,100), future commission merchants (101), introducing brokers

Continued

Estimated Number of Responses: 1,000. (Avg. 250 per request).[3]

Estimated Number of Hours: 10,000. (30 minutes per response).[4]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget (''OMB''). Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Jamal El Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2017–06301 Filed 3–29–17; 8:45 am]

BILLING CODE 4810–02–P

in commodities (1,249), and open end mutual funds (1,660), and money services businesses (44,300), Residential Mortgage Lenders and Originators (31,000), Dealers in precious metals, precious stones, or jewels (20,000), insurance companies (1,200), operators of credit card systems (6), and entities required to report cash payments over $10,000 received in a trade or business, form 8300 (46,800), each as defined under the BSA.

[3] FinCEN has submitted, on average, four requests per year each with 250 respondents.

[4] The FinCEN surveys average 30 minutes to complete. OMB has allocated 10,000 hours for the three-year period covered by this notice.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Renewal Without Change; Comment Request; Anti-Money Laundering Programs; Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite comment on a proposed renewal, without change, to an information collection found in existing regulations requiring U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts that U.S. financial institutions establish or maintain for certain foreign financial institutions. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before May 30, 2017.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Comments on Anti-Money Laundering Program and Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, ''Attention: Comments on Anti-Money Laundering Program and Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions.'' Please submit by one method only.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 800–767–2825 or electronically at *frc@fincen.gov*.

SUPPLEMENTARY INFORMATION: *Abstract:* The Director FinCEN is the delegated administrator of the Bank Secrecy Act (''Act''). The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.[1]

Title: Anti-Money Laundering Programs and Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions (31 CFR 1010.610).

Office of Management and Budget Control Number: 1506–0046.

Abstract: FinCEN is renewing, without change, the regulation implementing section 5318(i)(1) and (2) of the Act, found at 31 CFR 1010.610. In general, the regulation requires covered financial institutions, as defined in 31 CFR 1010.605(e)(1), to establish due diligence and, in some circumstances, enhanced due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts that covered U.S. financial institutions establish or maintain for certain foreign financial institutions.

Current Action: Renewal without change to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

Burden: Estimated Number of Respondents: 18,882.[2]

Estimated Number of Responses: 18,882.

Estimated Number of Hours: 37,764. (Two hours per response).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget (''OMB''). Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

[1] Public Law 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (''USA PATRIOT'') Act of 2001, Public Law 107–56.

[2] This number includes depository institutions (10,772), broker-dealers in securities (5,100), future commission merchants (101), introducing brokers in commodities (1,249), and open-end mutual funds (1,660), each as defined under the BSA.

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Jamal El Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2017–06300 Filed 3–29–17; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 13391

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one individual whose property and interests in property have been unblocked pursuant to Executive Order 13391 of November 22, 2005, ''Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe.''

DATES: OFAC's actions described in this notice are effective as of March 27, 2017.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 27, 2017, OFAC, in consultation with the U.S. Department of State, removed from the SDN List the individual listed below, whose property and interests in property were blocked pursuant to Executive Order 13391 (E.O. 13391).

1. GAMBE, Theophilus Pharaoh; DOB 20 Jun 1959; Passport ZA567403 (Zimbabwe); Chairman, Electoral Supervisory Commission (individual) [ZIMBABWE—E.O. 13391].

Dated: March 27, 2017.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–06302 Filed 3–29–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 11, 2017.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Tuesday, April 11, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various special topics with IRS processes.

Dated: March 22, 2017.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–06236 Filed 3–29–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8655 and Revenue Procedure 2012–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8655, Reporting Agent Authorization and Revenue Procedure 2012–32.

DATES: Written comments should be received on or before May 30, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Agent Authorization.

OMB Number: 1545–1058.

Form Number: Form 8655 and Revenue Procedure 2012–32.

Abstract: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns electronically or on magnetic tape, to receive copies of notices and other tax information, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized agents. Revenue Procedure 2012–32 provides the requirements for completing and submitting Form 8655, *Reporting Agent*

Authorization. An Authorization allows a taxpayer to designate a Reporting Agent to perform certain acts on behalf of a taxpayer.

Current Actions: There are no changes being made to this collection at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 114,250.

Estimated Time per Respondent: 7.17 hours.

Estimated Total Annual Burden Hours: 819,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 21, 2017.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–06240 Filed 3–29–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 19, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or 202–317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, April 19, 2017, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or 202–317–3087, or write TAP Office, 1111 Constitution Avenue NW., Room 1509– National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: March 22, 2017.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–06239 Filed 3–29–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8866

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8866, Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

DATES: Written comments should be received on or before May 30, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Ralph M. Terry at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.

OMB Number: 1545–1622.

Form Number: Form 8866.

Abstract: Taxpayers depreciating property under the income forecast method and placed in service after September 13, 1995, must use Form 8866 to compute and report interest due or to be refunded under Internal Revenue Code 167(g)(2). The Internal Revenue Service uses the information on Form 8866 to determine if the interest has been computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 3,300.

Estimated Time per Respondent: 13.86 hours.

Estimated Total Annual Burden Hours: 45,738.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 21, 2017.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–06238 Filed 3–29–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 11, 2017.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, April 11, 2017, at 12 p.m., Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: March 22, 2017.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–06235 Filed 3–29–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 13, 2017.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1–888–912–1227 or 202–317–3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Thursday, April 13, 2017, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues. Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: March 24, 2017.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–06284 Filed 3–29–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Dated: March 16, 2017.

Douglas Poms,

Deputy International Tax Counsel, (Tax Policy).

[FR Doc. 2017–06264 Filed 3–29–17; 8:45 am]

BILLING CODE 4810–35–P

FEDERAL REGISTER

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Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, et al.
Hazardous Materials: Harmonization With International Standards (RRR); Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 175, 176, 178, and 180

[Docket No. PHMSA–2015–0273 (HM–215N)]

RIN 2137–AF18

Hazardous Materials: Harmonization With International Standards (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA is issuing a final rule to amend the Hazardous Materials Regulations (HMR) to maintain consistency with international regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations. Additionally, PHMSA is adopting several amendments to the HMR that result from coordination with Canada under the U.S.-Canada Regulatory Cooperation Council.

DATES: *Effective date:* This rule is effective March 30, 2017, except for instruction 22, which is effective January 2, 2019.

Voluntary compliance date: January 1, 2017.

Delayed compliance date: Unless otherwise specified, compliance with the amendments adopted in this final rule is required beginning January 1, 2018.

Incorporation by reference date: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of March 30, 2017.

FOR FURTHER INFORMATION CONTACT: Steven Webb International Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) to maintain consistency with international regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. This rulemaking project is part of our ongoing biennial process to harmonize the HMR with international regulations and standards.

Federal law and policy strongly favor the harmonization of domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and promotes consistency of the HMR with international transport standards to the extent practicable. Federal hazmat law permits PHMSA to depart from international standards where appropriate, including to promote safety or other overriding public interest. However, Federal hazmat law otherwise encourages domestic and international harmonization (*see* 49 U.S.C. 5120).

Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials. Safety is enhanced by creating a uniform framework for compliance, and as the volume of hazardous materials transported in international commerce continues to grow, harmonization becomes increasingly important.

II. Background

PHMSA published a notice of proposed rulemaking (NPRM) under Docket HM–215N [81 FR 61741 (Sept. 7, 2016)] to incorporate various amendments to harmonize the HMR with recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations). When considering alignment of the HMR with international standards, we review and evaluate each amendment on its own merit, on the basis of its overall impact on transportation safety, and on the basis of the economic implications associated with its adoption into the HMR. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated community. Based on this review and evaluation, in this final rule, PHMSA is amending the HMR to incorporate changes from the 19th Revised Edition of the UN Model Regulations, Amendment 38–16 of the IMDG Code, and the 2017–2018 ICAO Technical Instructions, which become effective January 1, 2017. (Amendment 38–16 to the IMDG Code may be voluntarily applied on January 1, 2017; however, the previous amendment remains effective through December 31, 2017) Notable amendments to the HMR in this final rule include the following:

- *Incorporation by Reference:* PHMSA incorporates by reference the newest versions of various international hazardous materials standards, including the 2017–2018 Edition of the ICAO Technical Instructions; Amendment 38–16 of the IMDG Code; the 19th Revised Edition of the UN Model Regulations; the 6th Revised Edition of the UN Manual of Tests and Criteria; and the 6th Revised Edition of the Globally Harmonized System of Classification and Labelling of Chemicals. Additionally, we are updating our incorporation by reference of the Canadian Transportation of Dangerous Goods (TDG) Regulations to include SOR/2014–152 and SOR/2014–

159 published July 2, 2014; SOR/2014–159 Erratum published July 16, 2014; SOR/2014–152 Erratum published August 27, 2014; SOR/2014–306 published December 31, 2014; SOR/2014–306 Erratum published January 28, 2015; and SOR/2015–100 published May 20, 2015. Finally, in this final rule, PHMSA adopts various updated International Organization for Standardization (ISO) standards.

• *Hazardous Materials Table (HMT):* PHMSA amends the § 172.101 Hazardous Materials Table (HMT) consistent with recent changes in the Dangerous Goods List of the 19th Revised Edition of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions. Specifically, we are making amendments to the HMT to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limits.

• *Provisions for Polymerizing Substances:* PHMSA includes in the HMT four new Division 4.1 entries for polymerizing substances and adds into the HMR defining criteria, authorized packagings, and safety requirements including, but not limited to, stabilization methods and operational controls. These provisions will be in effect until January 2, 2019. During the interim time period, PHMSA intends to review and research the implications of the polymerizing substance amendments during this two-year timeframe, and readdress the issue in the next international harmonization rulemaking.

• *Modification of the Marine Pollutant List:* PHMSA modifies the list of marine pollutants in appendix B to § 172.101. The HMR maintain this list as the basis for regulating substances toxic to the aquatic environment and allow use of the criteria in the IMDG Code if a listed material does not meet the criteria for a marine pollutant. PHMSA periodically updates this list based on changes to the IMDG Code and evaluation of listed materials.

• *Packaging Requirements for Water-Reactive Materials Transported by Vessel:* PHMSA amends packaging requirements for vessel transportation of water-reactive substances consistent with requirements in the IMDG Code. The amendments include changes to the packaging requirements to require certain commodities to have hermetically sealed packaging and to require other commodities—when packed in flexible, fiberboard, or wooden packagings—to have sift-proof and water-resistant packaging or packaging fitted with a sift-proof and water-resistant liner.

• *Hazard Communication Requirements for Lithium Batteries:* PHMSA revises hazard communication requirements for shipments of lithium batteries consistent with changes adopted in the 19th Revised Edition of the UN Model Regulations. Specifically, PHMSA adopts a new lithium battery label in place of the existing Class 9 label; amends the existing marking requirements for small lithium battery shipments in § 173.185(c) to incorporate a new standard lithium battery mark for use across all modes; [1] removes the documentation requirement in § 173.185(c) for shipments of small lithium cells and batteries; and requires the lithium battery mark be applied to each package containing small lithium cells or batteries contained in equipment when there are more than four lithium cells or two lithium batteries installed in the equipment or where there are more than two packages in the consignment.

• *Engine, Internal Combustion/Machinery, Internal Combustion:* PHMSA harmonizes the HMT proper shipping names utilized for the transportation of engines and machinery containing engines with those in the UN Model Regulations. Additionally, PHMSA harmonizes with the IMDG Code for domestic vessel shipments of engines, internal combustion, and machinery containing combustion engines. Existing requirements and exceptions for the transportation of engines and machinery containing engines transported by road, rail, and aircraft remain unchanged. However, PHMSA is harmonizing the transportation requirements for transportation by vessel, which includes varying degrees of hazard communication based on the type of fuel, amount of fuel, and capacity of the fuel tank.

• *U.S.-Canada Regulatory Cooperation Council (RCC) Amendments:* PHMSA makes amendments to the HMR resulting from coordination with Canada under the U.S.-Canada RCC. Specifically, we are adopting provisions for recognition of Transport Canada (TC) cylinders, equivalency certificates (permit for equivalent level of safety), and inspection and repair of cargo tanks. In a parallel effort, Transport Canada is adopting similar regulatory changes that will provide reciprocal recognition of DOT cylinders and DOT special permits.

[1] Small cells and batteries for the purposes of this rulemaking are a lithium metal cell containing not more than 1 gram of lithium metal, a lithium metal battery containing not more than 2 grams of lithium metal, a lithium ion cell not more than 20 Watt-hours (Wh), and a lithium ion battery not more than 100 Wh (49 CFR 173.185(c) and Section II of Packing Instructions 965 and 968 in the ICAO Technical Instructions).

III. Incorporation by Reference Discussion Under 1 CFR Part 51

The UN Recommendations on the Transport of Dangerous Goods—Model Regulations, Manual of Tests and Criteria, and Globally Harmonized System of Classification and Labelling of Chemicals, as well as all of the Transport Canada Clear Language Amendments, are free and easily accessible to the public on the internet, with access provided through the parent organization Web sites. The ICAO Technical Instructions, IMDG Code, and all ISO references are available for interested parties to purchase in either print or electronic versions through the parent organization Web sites. The price charged for those not freely available references helps to cover the cost of developing, maintaining, hosting, and accessing these standards. The specific standards are discussed at length in the ''Section-by-Section Review'' for § 171.7.

PHMSA received a comment from the Commercial Vehicle Safety Alliance (CVSA) recommending that access (including electronic and print media) to materials, such as technical standards developed by non-governmental organizations and incorporated by reference into regulation, be required at no additional charge for enforcement and government purposes. As noted, many of the standards incorporated by reference in this final rule are available for free through their parent organizations. However, some standards that are essential to ensure shippers offer hazardous materials in accordance with international standards are simply not available for free public access, and PHMSA is unable to provide unrestricted access to these materials. Members of the public may access hard copies of standards incorporated by reference at PHMSA's Hazardous Materials Information Center (HMIC) at DOT Headquarters in Washington, DC. Members of the public may make arrangements to visit the HMIC by visiting HMIC's Web site at *http://www.phmsa.dot.gov/hazmat/standardsrulemaking/hmic* or by telephone at (800) 467–4922. PHMSA staff will work directly with any person requesting access to these standards.

IV. Comment Discussion

In response to the September 7, 2016 NPRM [81 FR 61741], PHMSA received comments from the following organizations and individuals:

- Christopher Adams
- Alaska Airlines
- American Coatings Association (ACA)
- Anonymous
- Arkema Inc.
- Basic Acrylic Monomer Manufacturers, Inc. (BAMM) and the Methacrylate Producers Association, Inc. (MPA)
- Sean Bevan
- Commercial Vehicle Safety Alliance (CVSA)
- Council on Safe Transportation of Hazardous Articles (COSTHA)
- CTC Certified Training Co.
- Dangerous Goods Advisory Council (DGAC)
- Deltech Corporation
- Department of Defense (DOD)
- Dow Chemical (Dow)
- FIBA Technologies, Inc.
- Greg Hudspeth
- The Institute of Makers of Explosives (IME)
- International Vessel Operators Dangerous Goods Association (IVODGA)
- Brent Knoblett
- Labelmaster Services
- National Tank Truck Carriers (NTTC)
- The Rechargeable Battery Association (PRBA)
- Wesley Scott
- Specialty Trailer Leasing Inc.
- United Parcel Service (UPS)
- U.S. Amines
- Western International Gas Cylinders
- Worthington Industries

Notably, Dow requested an additional two-year delayed compliance period for any polymerizing substance amendments made in this final rule. Dow contends that appropriate test methods must be determined, materials must be tested, and if the material is determined to be regulated, appropriate packaging must be selected. PHMSA is sympathetic to the concerns raised by Dow, but in order to ensure the safe and efficient transportation of these commodities, PHMSA will maintain the general one-year transition period for these changes. Additional comments specific to the respective HMR sections are addressed in the ''Section-by-Section Review'' of this document.[2]

PHMSA concluded that comments made by Specialty Trailer Leasing, Inc., Mr. Greg Hudspeth, the American Coating Association, and portions of comments made by Worthington Industries are outside the scope of this rulemaking. Therefore, PHMSA did not address these comments in this rulemaking.

[2] Comments which were outside the scope of this rulemaking are not addressed in this final rule.

Polymerizing Substances

In the NPRM, PHMSA proposed incorporating into the HMT four new Division 4.1 entries for polymerizing substances and adding into the HMR defining criteria, authorized packagings, and safety requirements including, but not limited to, stabilization methods and operational controls for these new entries and existing entries requiring stabilization.

PHMSA received comments from Arkema Inc., BAMM & MPA, Deltech Corporation, DGAC, Dow Chemical, and U.S. Amines concerning our proposed amendments. These comments addressed: Materials assigned SP 387 requiring stabilization; testing methods for determining self-accelerating polymerization temperature (SAPT); questions concerning testing requirements for materials already identified in the HMT as materials requiring stabilization; exclusion from classification as polymerizing substances of materials meeting the definition of another hazard class (including combustible liquids); and the SAPT temperature threshold before temperature control is required for portable tanks transporting polymerizing substances.

U.S. Amines requested that PHMSA reconsider assigning special provision 387 to Dipropylamine (UN2383). U.S. Amines asserts this material does not pose a polymerization risk and provides safety data sheets and other associated technical data to substantiate their claim. Based on a review of the material in question, PHMSA agrees and is not assigning either special provision 387 or stowage code 25 to this material.

PHMSA received comments from Arkema Inc., BAMM & MPA, DGAC, and Deltech raising concerns over PHMSA's proposal to require polymerizing substances intended to be transported in portable tanks or IBC's to undergo the Test Series E heating under confinement testing from the UN Manual of Tests and Criteria. The commenters state that when polymerizing substances react in the test apparatus they often clog the test apparatus orifice. They further state this testing leads to unreliable, overly conservative results suggesting the material poses a greater hazard from heating under confinement that it actually does. Additionally, the commenter requested PHMSA align with the international approach for testing these substances, which only requires testing the substances under Test Series H to determine the substances' SAPT. While testing in accordance with UN Series E does present difficulties, this testing has been performed in the past in support of approval applications for various polymerizing substances. Additionally, while a clogged orifice within the Series E tests could be overly conservative, it is important to note that similar situations may occur during transport. For instance, a polymerizing substance which clogs the orifice during testing could potentially clog the pressure relief device on a portable tank. In such an incident, the testing would provide similar results on what could be expected within a transportation situation. Test Series E and H do not measure and/or predict the same phenomena. PHMSA notes Test Series E (or an equivalent performance measure) provides information on how the material behaves when heated under confinement. Test Series H provides information on the SAPT, and thus the potential need for temperature controls. These two tests are synergistic, and not mutually exclusive. For these reasons, PHMSA is maintaining the testing requirements for polymerizing substances as proposed in the NPRM.

PHMSA received questions from Arkema Inc., BAMM & MPA, and Dow about exclusions from classification as polymerizing substances for combustible liquids and Class 9 substances. These same commenters also ask about testing requirements for materials currently identified in the HMT that may also polymerize. Arkema Inc., BAMM & MPA, and DOW request clarification that as proposed in the NPRM materials meeting the definition of a combustible liquid and a polymerizing substance would not need to be offered as a polymerizing substance. Arkema Inc. and BAMM & MPA similarly ask if substances meeting the definitions of Class 9 and polymerizing substances need to be offered as a polymerizing substance. The definition of polymerizing substance adopted by the UN Model Regulations excludes substances that meet the criteria for inclusion in Classes 1–8. In the NPRM we proposed to exclude all materials that meet the definition of any other hazard class. To further harmonize the HMR definition of polymerizing substances with that found in the Model Regulations, PHMSA is amending § 173.124(a)(4)(iii) to exclude substances that meet the criteria for inclusion in Classes 1–8, including combustible liquids. It is our belief that polymerizing substances that also meet the definition of Class 9 would be limited to environmentally hazardous substances. Much like the UN we believe that the polymerizing

properties of these materials should take precedence in the identification of these materials, and that the applicable additional description elements (*i.e.* marine pollutant or ''RQ'' for hazardous substance) should be appropriately identified by shippers. Substances that meet the defining criteria for combustible liquids and polymerizing substances are only required to be offered for transportation as a combustible liquid.

PHMSA received comments from BAMM & MPA, Deltech Corporation, and DGAC concerning our proposal to maintain a minimum SAPT temperature of 50 °C for portable tanks versus the internationally adopted 45 °C. The commenters cite PHMSA's decision not to harmonize the transport provisions applicable to self-reactive materials and organic peroxides and potential non-compliance concerns for imported materials that were evaluated and offered for transport at different temperatures than the proposal would require in the HMR. PHMSA has, and does still maintain that 50 °C is the maximum temperature reasonable expected to be experienced by any self-reactive, organic peroxide, and/or polymerizing substance. Additionally, we note that this 50 °C (122 °F) temperature is consistent with existing requirements for Division 4.1 (Self-reactive) and Division 5.2 (Organic peroxide) hazardous materials.

PHMSA received comments the proposed inclusion of HMT entries, classification criteria, and transport provisions for polymerizing substances. In light of the commenter's concerns, PHMSA is including ''sunset'' provisions for all amendments concerning polymerizing substances. In each regulatory citation adding or amending requirements for polymerizing substances we are including regulatory text that will sunset the provision after a two-year period from the effective date of this rule. PHMSA intends to review and research the implications of the polymerizing substance amendments during this two-year timeframe, and readdress the issue in the next international harmonization rulemaking. During the next international harmonization rulemaking, we will specifically solicit comments from the public on their experiences utilizing these provisions. If PHMSA does not take subsequent action to amend these provisions, the HMR would revert to the requirements in effect before the issuance of this final rule.

V. Section-by-Section Review

The following is a section-by-section review of the amendments adopted in this final rule:

Part 107

Section 107.502

Section 107.502 provides general requirements for the registration of cargo tanks and cargo tank motor vehicle manufacturers, assemblers, repairers, inspectors, testers, and design certifying engineers. PHMSA is revising paragraph (b) to provide an exception from the registration requirements for certain persons engaged in the repair, as defined in § 180.403, of DOT specification cargo tanks by facilities in Canada in accordance with the requirements of § 180.413(a)(1)(iii) in this final rule. Persons engaged in the repair of cargo tanks in Canada are required to register in accordance with the Transport Canada TDG Regulations, as the Canadian registration requirements are substantially equivalent to those in part 107, subpart F of the HMR. The registration information is available on Transport Canada's Web site at *http://wwwapps.tc.gc.ca/saf-sec-sur/3/fdr-rici/highway/tanks.aspx*. The Transport Canada TDG Regulations except persons repairing TC specification cargo tanks at facilities in the United States from registering in Canada if they are registered in accordance with part 107, subpart F.

Therefore, PHMSA believes that requiring the registration of Canadian cargo tank repair facilities authorized by § 180.413(a)(1)(iii) is unnecessarily duplicative and that excepting them from registering in accordance with part 107 subpart F augments reciprocity without negatively impacting safety. See the § 180.413 entry in the ''Section-by-Section Review'' of this document for additional background and discussion of this change.

Section 107.801

Section 107.801 prescribes approval procedures for persons seeking to engage in a variety of activities regulated by PHMSA (*i.e.,* independent inspection agencies, cylinder requalification). PHMSA is amending paragraph (a)(2) to include provisions for persons seeking approval to engage in the requalification, rebuilding, or repair of a cylinder manufactured in accordance with a Transport Canada (TC), Canadian Transportation Commission (CTC), Board of Transport Commissioners for Canada (BTC), or Canadian Railway Commission (CRC) specification under the Transport Canada TDG Regulations. Persons engaged in the requalification, rebuilding, or repair of TC, CTC, BTC, or CRC specification cylinders in the U.S. are required to register with DOT in accordance with this subpart. PHMSA will issue a new approval or revise an existing one to reflect the applicant's intent to requalify TC cylinders. See the § 107.805 entry in the ''Section-by-Section Review'' of this document for discussion of this change, as well as for additional requirements and exceptions.

Section 107.805

Section 107.805 prescribes the requirements cylinder and pressure receptacle requalifiers must meet in order to be approved by PHMSA. PHMSA is amending paragraph (a) to authorize prospective requalifiers to obtain approval by PHMSA to inspect, test, certify, repair, or rebuild TC specification cylinders; amending paragraph (c)(2) to ensure the types of TC cylinders intended to be inspected, tested, repaired, or rebuilt at the facility are included in the application for approval to PHMSA; and amending paragraph (d) to include various TC cylinders to the list of cylinders requiring issuance of a RIN to requalifiers.

PHMSA is also amending paragraph (f) to recognize facilities authorized by Transport Canada to requalify comparable DOT specification cylinders, as well as DOT RIN holders to requalify comparable Transport Canada cylinders subject to modification of their existing approval. PHMSA recognizes that Transport Canada's approval and registration requirements are substantially equivalent to the requirements in 49 CFR part 107, subpart I, and provide an equivalent level of safety. In addition, traceability is maintained based on Transport Canada's publicly available Web site at *http://wwwapps.tc.gc.ca/saf-sec-sur/3/fdr-rici/cylinder/requalifier.aspx*, which allows tracing of a DOT specification cylinder marked with the registered mark of a Transport Canada assigned requalifier back to the appropriate requalification facility.[3]

The addition of paragraph (f)(2) allows persons who are already registered with PHMSA to perform requalification functions on DOT specification cylinders to register to requalify corresponding TC cylinder

[3] The search function on Transport Canada's Web site allows users to search for the registered mark of requalifiers. Searching by the registered mark found on a cylinder will allow interested parties to verify that the cylinder was requalified by a facility certified by Transport Canada.

specifications without additional review by an independent inspection agency. Table 1 of the § 171.12 entry in the ''Section-by-Section Review'' identifies specifications considered to be equivalent. Applicants will be required to submit all of the information prescribed in § 107.705(a) that identifies the TC, CTC, CRC, or BTC specification cylinder(s) or tube(s) to be inspected; certifies the requalifier will operate in compliance with the applicable TDG Regulations; and certifies the persons performing requalification have been trained in the functions applicable to the requalifier activities.

The addition of paragraph (f)(3) allows persons who are already registered with Transport Canada to requalify corresponding DOT specification cylinders without additional application to PHMSA for approval. This exception will provide cylinder owners with additional access to repair and requalification facilities in Canada, while also broadening reciprocity with Canada.

Part 171

Section 171.2

Section 171.2 prescribes general requirements for each person performing functions covered by this subchapter. PHMSA is amending paragraph (h)(1) by adding the letters ''TC,'' ''CRC,'' and ''BTC'' to the list of specification indications that may not be misrepresented according to § 171.2(g). This is necessary as a result of amendments in § 171.12 authorizing the use of various Transport Canada approved specification cylinders under certain conditions.

Section 171.7

Section 171.7 provides a listing of all voluntary consensus standards incorporated by reference into the HMR, as directed by the National Technology Transfer and Advancement Act of 1996. According to the Office of Management and Budget (OMB), Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' government agencies must use voluntary consensus standards wherever practical in the development of regulations. Agency adoption of industry standards promotes productivity and efficiency in government and industry, expands opportunities for international trade, conserves resources, improves health and safety, and protects the environment.

PHMSA actively participates in the development and updating of consensus standards through representation on more than 20 consensus standard bodies and regularly reviews updated consensus standards and considers their merit for inclusion in the HMR.

For this rulemaking, we evaluated updated international consensus standards pertaining to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements and determined that the revised standards provide an enhanced level of safety without imposing significant compliance burdens. These standards have well-established and documented safety histories, and their adoption will maintain the high safety standard currently achieved under the HMR. Therefore, in this final rule, PHMSA is adding and revising the following incorporation by reference materials:

- Paragraph (t)(1), which incorporates the *International Civil Aviation Organization* Technical Instructions for the Safe Transport of Dangerous Goods by Air, 2015–2016 Edition, is revised to incorporate the 2017–2018 Edition. The International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air contain detailed instructions necessary for the safe international transport of dangerous goods by air. The ICAO Technical Instructions support the broad principles by establishing requirements necessary to ensure hazardous materials are safely transported in aircraft while providing a level of safety that protects the aircraft and its occupants from undue risk.
- Paragraph (v)(2), which incorporates the *International Maritime Organization* International Maritime Dangerous Goods Code, 2014 Edition, Incorporating Amendment 37–14, English Edition, Volumes 1 and 2, is revised to incorporate the 2016 Edition, Amendment 38–16. The IMDG Code is intended to provide for the safe transportation of hazardous materials by vessel, protect crew members, and prevent marine pollution. The IMDG Code is based on the UN Model Regulations, but also includes additional requirements applicable to the transport of hazardous materials by sea (*e.g.,* requirements for marine pollutants; freight container loading procedures; stowage and segregation; and other requirements applicable to shipboard safety and preservation of the marine environment) that are not covered by the UN Model Regulations.
- Paragraph (w), which incorporates various *International Organization for Standardization* entries, is revised to incorporate by reference standards for the specification, design, construction, testing, and use of gas cylinders:

—ISO 3807:2013 Gas cylinders—Acetylene cylinders—Basic requirements and type testing is incorporated in paragraph (w)(16). ISO 3807:2013 specifies the basic and type testing requirements for acetylene cylinders with and without fusible plugs with a maximum nominal water capacity of 150 L (39.62 gallons) and requirements regarding production/batch test procedures for manufacturing of acetylene cylinders with porous material.

—ISO 7866:2012 Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing; and ISO 7866:2012/Cor 1:2014 Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing, Technical Corrigendum 1 is incorporated in paragraphs (w)(27) and (28). ISO 7866:2012 specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes and tests at time of manufacture of refillable seamless aluminium alloy gas cylinders of water capacities up to and including 150 L (39.62 gallons) for compressed, liquefied, and dissolved gases for worldwide use. PHMSA received a comment from Western International Gas Cylinders requesting that the previous edition of this standard be referenced with an applicability date. PHMSA notes that the previous edition of this standard was included in the NPRM, but we have amended the language to more clearly indicate that construction to the old standard is authorized until December 31, 2020.

—ISO 9809–4:2014 Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa is incorporated in paragraph (w)(36). ISO 9809–4:2014 specifies the minimum requirements for the material, design, construction and workmanship, manufacturing processes, examinations, and tests at manufacture of refillable seamless stainless steel gas cylinders of water capacities from 0.5 L (.13 gallons) up to and including 150 L (39.62 gallons) for compressed, liquefied, and dissolved gases.

—ISO 10297:2014 Gas cylinders—Cylinder valves—Specification and type testing is incorporated in

paragraph (w)(42). ISO 10297:2014 specifies design, type testing, and marking requirements for: (a) Cylinder valves intended to be fitted to refillable transportable gas cylinders; (b) main valves (excluding ball valves) for cylinder bundles; and (c) cylinder valves or main valves with integrated pressure regulator (VIPR); which convey compressed, liquefied, or dissolved gases.

—ISO 10462:2013 Gas cylinders—Transportable cylinders for dissolved acetylene—Periodic inspection and maintenance is incorporated in paragraph (w)(44). ISO 10462:2013 specifies requirements for the periodic inspection of acetylene cylinders as required for the transport of dangerous goods and for maintenance in connection with periodic inspection. It applies to acetylene cylinders with and without solvent and with a maximum nominal water capacity of 150 L (39.62 gallons).

—ISO 11114–2:2013 Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials is incorporated in paragraph (w)(48). ISO 11114–2:2013 gives guidance in the selection and evaluation of compatibility between non-metallic materials for gas cylinders and valves and the gas contents. It also covers bundles, tubes, and pressure drums.

—ISO 11119–1:2012 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l; ISO 11119–2:2012 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners; ISO 11119–2:2012/Amd 1:2014 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners; and ISO 11119–3:2013 Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners are incorporated in paragraphs (w)(54), (56), (57), and (59), respectively. ISO 11119–1:2012, ISO 11119–2:2012, and ISO 11119–3:2013 specify requirements for composite gas cylinders and tubes between 0.5 L (39.62 gallons) and 450 L (119 gallons) water capacity, for the storage and conveyance of compressed or liquefied gases.

• Paragraph (bb)(1), which incorporates the *Transport Canada* Transportation of Dangerous Goods Regulations, adds paragraphs (bb)(1)(xiii), (xiv), (xv), (xvi), (xvii), (xviii), and (xix) to include SOR/2014–152 and SOR/2014–159 published July 2, 2014; SOR/2014–159 Erratum published July 16, 2014; SOR/2014–152 Erratum published August 27, 2014; SOR/2014–306 published December 31, 2014; SOR/2014–306 Erratum published January 28, 2015; and SOR/2015–100 published May 20, 2015, respectively. The Transport Canada Transportation of Dangerous Goods Regulations incorporated in this final rule are updates to the existing Transportation of Dangerous Goods Regulations and cover all updates made by Transport Canada between January 2014 and May 2015. PHMSA received a comment from COSTHA requesting we also incorporate by reference TDG Regulations, SOR/2016–95 published on June 1, 2016. However, as this standard was not proposed for incorporation in the NPRM, we are unable to adopt it in this final rule.

• Paragraph (dd)(1), which incorporates the *United Nations* Recommendations on the Transport of Dangerous Goods—Model Regulations, 18th Revised Edition (2013), Volumes I and II, is revised to incorporate the 19th Revised Edition (2015), Volumes I and II. The United Nations Model Regulations on the Transport of Dangerous Goods provide a basis for development of harmonized regulations for all modes of transport, in order to facilitate trade and the safe, efficient transport of hazardous materials.

• Paragraph (dd)(2), which incorporates the *United Nations* Recommendations on the Transport of Dangerous Goods—Manual of Tests and Criteria, 5th Revised Edition (2009), is revised to incorporate the 6th Revised Edition (2015). The Manual of Tests and Criteria contains criteria, test methods, and procedures to be used for classification of dangerous goods according to the provisions of Parts 2 and 3 of the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations, as well as of chemicals presenting physical hazards according to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

• Paragraph (dd)(3) is added to incorporate the *United Nations* Recommendations on the Transport of Dangerous Goods—Globally Harmonized System of Classification and Labelling of Chemicals (GHS), 6th Revised Edition (2015). Section 172.401 references the incorporation by reference of the GHS in § 171.7; however, this entry does not currently appear in § 171.7. The addition of this paragraph corrects this oversight. The GHS addresses classification of chemicals by types of hazard and proposes harmonized hazard communication elements, including labels and safety data sheets. It aims at ensuring that information on physical hazards and toxicity from chemicals is available in order to enhance the protection of human health and the environment during the handling, transport, and use of these chemicals. GHS also provides a basis for harmonization of rules and regulations on chemicals at national, regional, and worldwide levels, which is an important factor for trade facilitation.

• In the NPRM, PHMSA proposed incorporating ISO 11515:2013 Gas cylinders—Refillable composite reinforced tubes of water capacity between 450 L and 3000 L—Design, construction and testing into the HMR. After further review, and in order to appropriately address comments received, the incorporation by reference of ISO 11515:2013 will be considered under a future rulemaking rather than adopted at this time. We note that ISO 11515:2013 is currently under review by the relevant ISO Technical Committee (*e.g.,* ISO/TC58/SC3). Substantive revisions under consideration include reintroduction of the high velocity impact (gunfire) test and revisions to the blunt impact test. Consideration of this item under a future rulemaking will allow for these safety enhancements to be appropriately considered by ISO. It also provides opportunity to consider comments received such as those requesting consideration of relevant special permits. PHMSA received a comment from FIBA Technologies, Inc. requesting that we expand the volume maximum allowed from 3000 L to 8500 L; reduce the minimum design burst pressure for Type 3 and Type 4 cylinders from 2.0 to 1.6; waive the blunt impact test if the tubes will be mounted inside a structural framework that finite analysis has demonstrated will protect the tubes from damage; and introduce a high velocity impact test. FIBA Technologies, Inc. correctly noted that these requirements, allowances, and tests are currently authorized under

existing special permits for composite tubes. These requests were outside the scope of this rulemaking, but we do note ongoing work at ISO to generate a standard for larger composite tubes.

In the NPRM, PHMSA proposed to incorporate by reference the Transport Canada standards into §§ 107.801 and 805 with the text ''IBR, See 171.7.'' Part 107 is in subchapter A. Section 171.7 is only applicable to subchapter C, therefore the IBR references proposed have in 107.801 and 805 would not have been valid. As a result PHMSA is amending § 171.7(a)(1) as central section for material that is incorporated by reference into subchapters A, B, and C.

Section 171.8

Section 171.8 defines terms generally used throughout the HMR that have broad or multi-modal applicability. PHMSA is adding the following terms and definitions:

- *Design life:* PHMSA adds the term ''design life'' to define the maximum life of composite cylinders and tubes. This term is specifically limited to references in the HMR related to composite cylinders and tubes.
- *SAPT:* PHMSA adds the term ''SAPT,'' which means self-accelerated polymerization temperature, and a reference to § 173.21(f). This is consistent with the similar term ''SADT'' (self-accelerated decomposition temperature). In the absence of further rulemaking actions, this definition will sunset two years from the effective date of this rulemaking. See the ''Comment Discussion'' section of this document for further discussion.
- *Service life:* PHMSA adds the term ''service life'' to define the number of years a composite cylinder or tube is permitted to be in service. This term is specifically limited to references in the HMR related to composite cylinders and tubes.

Additionally, PHMSA amends the definitions for the following terms:

- *Aerosol:* PHMSA revises the definition of ''aerosol'' to clarify that it is an article. Currently under the HMR, an aerosol is considered to be an article, and therefore, the use of inner packagings in a combination package is not necessary; however, practice has shown that an aerosol is often mistaken for the inner packaging of a combination packaging, including both the substance dispensed (liquid, paste, or powder) and the propellant gas itself.
- *Large salvage packaging:* PHMSA revises the definition of ''large salvage packaging'' to add a reference to non-conforming hazardous materials packages to be consistent with the wording in the definition of ''salvage packaging.''
- *UN tube:* PHMSA revises the definition of ''UN tube,'' which describes it as a seamless pressure receptacle, to specify that the term includes composite cylinders.

Section 171.12

Section 171.12 prescribes requirements for the use of the Transport Canada TDG Regulations. Under the U.S.-Canada RCC—which was established in 2011 by the President of the United States and the Canadian Prime Minister—PHMSA and Transport Canada, with input from stakeholders, identified impediments to cross-border transportation of hazardous materials. In this final rule, PHMSA is addressing these barriers by amending the HMR to expand recognition of cylinders, cargo tank repair facilities, and equivalency certificates in accordance with the TDG Regulations.

The HMR in § 171.12(a)(1) provide general authorizations to use the TDG Regulations for hazardous materials transported from Canada to the United States, from the United States to Canada, or through the United States to Canada or a foreign destination. PHMSA is amending § 171.12(a)(1) to authorize the use of a Transport Canada equivalency certificate for such road or rail transportation of a hazardous material shipment. Consistent with existing authorizations to utilize the TDG Regulations for transportation from Canada to the United States, the authorization to use a Transport Canada equivalency certificate only applies until the shipment's initial transportation ends. In other words, once a shipment offered in accordance with a Transport Canada equivalency certificate reaches the destination shown on either a transport document or package markings, transportation under the authorization in § 171.12 has ended. Any subsequent offering of packages imported under a Transport Canada equivalency certificate would have to be done in full compliance with the HMR.

Transport Canada is proposing amendments to the TDG Regulations to authorize similar reciprocal treatment of PHMSA special permits. PHMSA received comments from Dow and DGAC supporting the proposed acceptance of Transport Canada equivalency certificates. These same commenters requested that PHMSA extend the authorization to offer in accordance with an equivalency certificate further than a shipment's initial transportation into or out of the country. The commenters requested PHMSA allow a shipment offered in accordance with a Canadian certificate of equivalency to be reshipped under the provisions of the permit (*e.g.,* original shipment from Canada to a distribution center in the U.S. and then reoffered to other U.S. locations). As previously noted, the intent of this regulatory change is to authorize the use of Canadian certificates of equivalency consistent with the recognition given to shipments made in accordance with the TDG Regulations. PHMSA may continue the expansion of this allowance in future RCC rulemaking activities.

PHMSA received questions from Western International Gas Cylinders concerning ultrasonic requalification of cylinders in accordance with a special permit or certificate of equivalency. Western International Gas Cylinders asked if cylinders that are requalified in accordance with a special permit ultrasonically and then offered for transport to Canada can be refilled and reoffered to the United States. It is our understanding that Transport Canada intends to provide the same reciprocity to PHMSA special permits that we are extending to their certificates of equivalency. Please review the Transport Canada harmonization rulemaking [4] for a better understanding of the Canadian proposals in this area. Changes to § 171.12 would authorize the shipment of a Canadian cylinder in accordance with the provisions in a certificate of equivalency, including the use of ultrasonic examination techniques if so indicated in the certificate. Western International Gas Cylinders further asked if ultrasonic cylinder requalifiers in the U.S. would be allowed to add TC, CTC, BTC, and CRC marked cylinders to their special permits and conduct ultrasonic examinations of these cylinders. Cylinder requalifiers may submit a modification request for their special permit to authorize ultrasonic examination of these Canadian cylinders. Each request will be evaluated on its own merits.

PHMSA is additionally amending § 171.12(a)(1) to authorize the transportation of cylinders and multiple-element gas containers (MEGCs) authorized by the Transport Canada TDG Regulations to be transported from Canada to the United States, from the United States to Canada, or through the United States to Canada or a foreign destination.

The HMR in § 171.12(a)(4) permit the transportation of a cylinder authorized by the Transport Canada TDG

[4] *http://www.gazette.gc.ca/rp-pr/p1/2016/2016-11-26/pdf/g1-15048.pdf.*

Regulations to, from, or within the United States. Currently this authorization is limited to CTC cylinders corresponding to a DOT specification cylinder and UN pressure receptacles marked with ''CAN.'' In this final rule, PHMSA is amending paragraph (a)(4)(ii) to authorize the use of Canadian manufactured cylinders. Specifically, PHMSA is authorizing the transportation of CTC, CRC, BTC, and TC cylinders that have a corresponding DOT specification cylinder prescribed in the HMR.

This final rule does not remove or amend existing requirements for DOT specification cylinders; rather, PHMSA is providing that a shipper may use either a DOT specification cylinder or a TC cylinder as appropriate. The goal of these amendments is to promote flexibility; to permit the use of advanced technology for the requalification and use of pressure receptacles; to provide for a broader selection of authorized pressure receptacles; to reduce the need for special permits; and to facilitate cross-border transportation of these cylinders.

Additionally, PHMSA is amending paragraph (a)(4) to authorize the filling, maintenance, testing, and use of CTC, CRC, BTC, and TC cylinders that have a corresponding DOT specification cylinder as prescribed in HMR. This authorization extends the recognition of cylinders manufactured in Canada to be filled, used, and requalified (including rebuild, repair, reheat-treatment) in the United States in accordance with the TDG Regulations. PHMSA received a comment from CTC Certified Training Co. requesting that we reconsider requiring requalification of all CTC, CRC, BTC, and TC cylinders be done in accordance with the Transport Canada TDG Regulations. CTC Certified Training Co. stated that the current authorization for CTC specification cylinders allows requalification to be done under either a program authorized by the Transport Canada TDG Regulations or requalified in accordance with the requirements in § 180.205. The commenter further noted that CTC, CRC, and BTC all correspond to DOT specification cylinders and that requiring these cylinders to be requalified in accordance with the TDG Regulations is unnecessary. PHMSA agrees and is amending paragraph (a)(4)(ii)(B) to note that Canadian cylinders that have been requalified in accordance with either a program authorized by the TDG Regulations or part 107, subpart I, of the HMR are acceptable. See the § 180.205 entry in the ''Section-by-Section Review'' of this document for specific requalification requirements for Canadian cylinders.

Table 1 lists the Canadian cylinders with the corresponding DOT specification cylinders:

TABLE 1

TC	DOT (some or all of these may also be marked with an ICC prefix)	CTC (some or all of these may also be marked with a BTC and a CRC prefix)
TC–3AM	DOT–3A [ICC–3]	CTC–3A
TC–3AAM	DOT–3AA	CTC–3AA
TC–3ANM	DOT–3BN	CTC–3BN
TC–3EM	DOT–3E	CTC–3E
TC–3HTM	DOT–3HT	CTC–3HT
TC–3ALM	DOT–3AL	CTC–3AL
	DOT–3B	CTC–3B
TC–3AXM	DOT–3AX	CTC–3AX
TC–3AAXM	DOT–3AAX	CTC–3AAX
TC–3TM	DOT–3T	
TC–4AAM33	DOT–4AA480	CTC–4AA480
TC–4BM	DOT–4B	CTC–4B
TC–4BM17ET	DOT–4B240ET	CTC–4B240ET
TC–4BAM	DOT–4BA	CTC–4BA
TC–4BWM	DOT–4BW	CTC–4BW
TC–4DM	DOT–4D	CTC–4D
TC–4DAM	DOT–4DA	CTC–4DA
TC–4DSM	DOT–4DS	CTC–4DS
TC–4EM	DOT–4E	CTC–4E
TC–39M	DOT–39	CTC–39
TC–4LM	DOT–4L	CTC–4L
	DOT–8	CTC–8
	DOT–8AL	CTC–8AL

In accordance with § 171.12(a)(4), when the provisions of subchapter C of the HMR require that either a DOT specification or a UN pressure receptacle must be used for a hazardous material, a packaging authorized by Transport Canada's TDG Regulations may be used only if it corresponds to the DOT specification or UN standard authorized by this subchapter. PHMSA received a comment from COSTHA requesting that the table of Canadian cylinders and the corresponding DOT specification cylinders be included in the HMR. PHMSA agrees that this is useful information and is including the table of corresponding cylinders in new paragraph (a)(4)(iii).

Section 171.23

Section 171.23 prescribes requirements for specific materials and packagings transported under the various international standards authorized by the HMR. PHMSA is amending paragraph (a) to add TC, CTC, BTC, or CRC specification cylinders to the list of cylinders which may be transported to, from, or within the United States.

Part 172

Section 172.101

Section 172.101 provides the Hazardous Materials Table (HMT), as well as instructions for its use. Readers should review all changes for a complete understanding of the amendments. For purposes of the

Government Publishing Office's typesetting procedures, changes to the HMT appear under three sections of the Table: ''remove,'' ''add,'' and ''revise.'' Certain entries in the HMT, such as those with revisions to the proper shipping names, appear as a ''remove'' and ''add.'' In this final rule, PHMSA is amending the HMT for the following:

New HMT Entries

- UN 0510 Rocket Motors, Division 1.4C

This new HMT entry is the result of packaged products of low power ''Rocket motors'' that typically meet test criteria for assignment to Division 1.4, Compatibility Group C, but are assigned to 1.3C (*i.e.,* UN 0186) or the 1.4C n.o.s. classification (*i.e.,* UN 0351). This 1.4 rocket motor entry accurately reflects the product type and hazard of these articles and allows for the assignment of specific packaging instructions.

- UN 3527 Polyester resin kit, *solid base material*

This new HMT entry addresses polyester resin kits with a base material that does not meet the definition of Class 3 (Flammable liquid) and is more appropriately classed as a Division 4.1 (Flammable solid). Presently, polyester resin kits are limited to those with a Class 3 liquid base material component and are assigned under the entry UN 3269. This new entry permits products with a viscous base component containing a flammable solvent that does not meet the definition of a flammable liquid but does meet the definition of a flammable solid.

- UN 3528 Engine, internal combustion, flammable liquid powered *or* Engine, fuel cell, flammable liquid powered *or* Machinery, internal combustion, flammable liquid powered *or* Machinery, fuel cell, flammable liquid powered
- UN 3529 Engine, internal combustion, flammable gas powered *or* Engine, fuel cell, flammable gas powered *or* Machinery, internal combustion, flammable gas powered *or* Machinery, fuel cell, flammable gas powered
- UN 3530 Engine, internal combustion *or* Machinery, internal combustion

These new HMT entries apply to the fuel contained in engines and machinery powered by Class 3 flammable liquids, Division 2.1 gases, and Class 9 environmentally hazardous substances. The previous entry applicable to these articles, UN 3166, is now applicable to vehicles only. As a result of the new ''Engine'' and ''Machinery'' entries, the entries ''UN 3166, Engines, internal combustion, *or* Engines, fuel cell, *flammable gas powered*'' and ''UN 3166, Engines internal combustion, *or* Engines, fuel cell, *flammable liquid powered*'' are removed.

PHMSA received comments from COSTHA and UPS noting that new entries UN 3528, UN 3529, and UN 3530 include reference to special provision 363 in column (7) of the HMT. Both commenters noted that while special provision 363—which is assigned to these entries in the UN Model Regulations—does not exist in the current or proposed § 172.102, its conditions are proposed in § 176.906. PHMSA agrees with the commenters. The assignment of special provision 363 in column (7) of the HMT was inadvertent and as a result, the references to special provision 363 are removed in this final rule.

Additionally, during our review of the proposed changes to the engine HMT entries, we noticed that special provisions 135 and A200 were inadvertently left out of column (7) for these three new engine entries. This omission was not intended, and these provisions are placed back in column (7) in this final rule.

- UN 3531 Polymerizing substance, solid, stabilized, n.o.s.
- UN 3532 Polymerizing substance, liquid, stabilized, n.o.s.
- UN 3533 Polymerizing substance, solid, temperature controlled, n.o.s.
- UN 3534 Polymerizing substance, liquid, temperature controlled, n.o.s.

These new Division 4.1 HMT entries are added for polymerizing substances that do not meet the criteria for inclusion in any other hazard class. In the absence of further rulemaking actions, these entries will cease to have effect two years from the effective date of this rulemaking. See the ''Comment Discussion'' section of this document for further discussion.

- Catecholborane (also known as 1, 3, 2-Benzodioxaborole)

At the October 2015 meeting of the ICAO Dangerous Goods Panel (DGP/25), the Panel was informed of an incident involving Catecholborane (also known as 1, 3, 2-Benzodioxaborole) that resulted in a recommendation to forbid transport of the substance by air unless transported in pressure receptacles and under cooled conditions. The material was classified as ''UN 2924, Flammable liquid, corrosive, n.o.s.'' The product properties indicate (1) that the substance decomposes to borane gas at a rate of 2 percent per week at room temperature, (2) that borane gas could ignite when in contact with moist air, and (3) that catecholborane could react violently with water. The incident occurred after transport of the substance was delayed for nine days as the result of extreme weather conditions with temperatures consistently above 33 °C (91 °F). After being stored for approximately two weeks at a low temperature at the destination, several bottles containing the substance exploded and caught fire. It was concluded that moist air entered the bottles during the long transit time under high temperatures causing a chemical reaction and pressure build up. Panel members suspected a classification problem, but they could not determine whether this was due to shipper error or a limitation in the classification criteria in the regulations. The issue was submitted to the attention of the UN Sub-Committee at the December 2016 meeting for further review and determination if a new classification was required. In the interim, a new light type entry was added to the ICAO Technical Instructions Dangerous Goods List with a new special provision A210 assigned to ''Catecholborane'' and ''1, 3, 2-Benzodioxaborole'' forbidding the substance for transport by air on both passenger-carrying and cargo-only aircraft. Transport on cargo-only aircraft would be possible with the approval of the State of Origin and State of the Operator.

Consistent with the ICAO Technical Instructions, PHMSA is adding new HMT entries in italics for ''Catecholborane'' and ''1, 3, 2-Benzodioxaborole'' and assigning a new special provision A210 clarifying that this material is forbidden for air transport unless approved by the Associate Administrator for the Office of Hazardous Materials Safety. PHMSA received a comment from DGAC supporting the addition of these new entries in the HMT. Additionally, DGAC noted that it is unclear as to how this material is described, classed, packaged, etc. and requests guidance relative to the proper shipping description, class, label, etc. for this material. PHMSA acknowledges that for these two commodities the appropriate proper shipping description to be utilized based on the hazards presented is unclear. Therefore, these two specific technical names are added in italics in the table and not assigned to specific HMT entries.

Amendments to Column (2) Hazardous Materials Descriptions and Proper Shipping Names

Section 172.101(c) describes column (2) of the HMT and the requirements for

hazardous materials descriptions and proper shipping names.

• PHMSA is amending the proper shipping name for ''UN 3269, Polyester resin kit'' by adding the italicized text ''liquid base material.'' This is consistent with the format of the new HMT entry for polyester resin kits with a solid base material.

• PHMSA is amending the proper shipping names for ''UN 3151, Polyhalogenated biphenyls, liquid *or* Polyhalogenated terphenyls, liquid'' and ''UN 3152, Polyhalogenated biphenyls, solid or Polyhalogenated terphenyls, solid'' by adding ''Halogenated monomethyldiphenylmethanes, liquid'' and ''Halogenated monomethyldiphenylmethanes, solid,'' respectively. Noting that halogenated monomethyldiphenylmethanes have similar chemical and ecotoxicological properties as polychlorinated biphenyls (PCBs) and polychlorinated terphenyls (PCTs), this revision ensures that they are considered as PCBs or PCTs for the purposes of transport.

Amendments to Column (3) Hazard Class or Division

Section 172.101(d) describes column (3) of the HMT and the designation of the hazard class or division corresponding to each proper shipping name. PHMSA is revising the hazard class of ''UN 3507, Uranium hexafluoride, radioactive material, excepted package, *less than 0.1 kg per package, non-fissile or fissile-excepted,*'' from Class 8 to Division 6.1 and subsequently adding the Class 8 hazard as a subsidiary hazard label code in column (6). This revision is based on the precedence provisions for classification of materials possessing more than one hazard and is consistent with the 19th Revised Edition of the UN Model Regulations. The presence of a Division 6.1 hazard was determined following a thorough review of literature and test data on uranium hexafluoride. A summary of the data and a proposal to revise the primary hazard class from Class 8 to Division 6.1 was provided in Working Paper ST/SG/AC.10/C.3/2014/60, which was submitted to the 45th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) and is available at *http://www.unece.org/fileadmin/DAM/trans/doc/2013/dgac10c3/ST-SG-AC.10-C.3-2014-60e.pdf*.

Amendments to Column (6) Label(s)

Section 172.101(g) describes column (6) of the HMT and the labels required (primary and subsidiary) for specific entries in the HMT.

Data presented to UNSCOE TDG in this last biennium indicated a need for the addition of a subsidiary hazard of Division 6.1 to be assigned to ''UN 2815, N-Aminoethylpiperazine,'' ''UN 2977, Radioactive material, uranium hexafluoride, fissile,'' and ''UN 2978, Radioactive material, uranium hexafluoride *non fissile or fissile-excepted*.'' PHMSA is making appropriate amendments to the HMT to account for these revisions to the UN Model Regulations.

For the HMT entry, ''UN 3507, Uranium hexafluoride, radioactive material, excepted package, *less than 0.1 kg per package, non-fissile or fissile-excepted,*'' PHMSA is revising the labels for consistency with the change made to the classification of this material under amendments to column (3). See discussion in the ''Amendments to column (3) hazard class or division'' section above. The Class 8 (Corrosive) primary hazard label is revised to a Division 6.1 primary hazard label and a Class 8 subsidiary hazard label in addition to the existing Class 7 (Radioactive) subsidiary hazard label to read ''6.1, 7, 8.''

Amendments to Column (7) Special Provisions

Section 172.101(h) describes column (7) of the HMT whereas § 172.102(c) prescribes the special provisions assigned to specific entries in the HMT. The particular modifications to the entries in the HMT are discussed below. See ''Section 172.102 special provisions'' below for a detailed discussion of the additions, revisions, and deletions to the special provisions addressed in this final rule.

• New special provision 157 is assigned to the HMT entry ''UN 3527, Polyester resin kit, *solid base material*.''

• New special provision 379 is assigned to the HMT entries ''UN 1005, Ammonia, anhydrous'' and ''UN 3516, Adsorbed gas, toxic, corrosive, n.o.s.''

• In the 19th Revised Edition of the UN Model Regulations, new special provision 386 was assigned to the four new ''n.o.s.'' HMT entries for polymerizing substances and to the 52 named substances in the HMT that polymerize, all of which contain the text ''stabilized'' as part of the proper shipping name, except for ''UN 2383, Dipropylamine'' (see Table 2 below). This new special provision includes transport controls to avoid dangerous polymerization reactions including the use of chemical stabilization or temperature control. U.S. Amines requested that PHMSA reconsider assigning special provision 387 to Dipropylamine (UN 2383). They further asserted this material does not pose a polymerization risk and provided safety data sheets and other associated technical data to substantiate their claim. Based on a review of the material in question, PHMSA agrees and is not assigning either special provision 387 or stowage code 25 to this material.

Special provision 387 states that if chemical stabilization becomes ineffective at lower temperatures within the anticipated duration of transport, temperature control is required. Special provision 387 goes on to provide a non-inclusive list of factors to be considered in determining whether temperature control is necessary, to include an evaluation of any other relevant factors that may impact the ability of the chemical stabilizer to perform its function. BAMM & MPA and Dow stated that they routinely transport stabilized materials in rail cars where no effective means of temperature control exist. Rail car shipments of these stabilized materials are made year round and, during the winter months, are provided to customers and contracted terminals who have demonstrated they have in place the equipment (*i.e.,* typically tempered water/glycol systems) and procedures to safely thaw these monomers before use. BAMM & MPA and Dow requested in their comments that PHMSA clarify that ''any other relevant factors'' at the close of special provision 387 can include use of appropriate methods to safely thaw any shipment that does contain frozen product. The intent of the proposed requirement for temperature control if chemical stabilization becomes ineffective at lower temperatures is that it would only apply if at any point during transportation (including unloading incidental to movement) the chemical stabilizer would be incapable of performing its function. Operational controls to ensure a frozen material is thawed to ensure no polymerizing effect occurs are considered appropriate other relevant factors for the purposes of determining when temperature control is required.

BAMM & MPA further requested that PHMSA amend special provision 387 to more clearly indicate that chemical stabilization must be sufficient to prevent the bulk mean temperature of the package from reaching 50 °C. PHMSA agrees and is making the recommended change.

In this final rule, new special provision 387 (special provision 386 already exists) is assigned to the 51 HMT entries shown in Table 2. In the absence of further rulemaking actions, this special provision will sunset two years from the effective date of this

rulemaking. See the ''Comment Discussion'' section of this document for further discussion.

TABLE 2

Proper shipping name	UN No.
Acrolein dimer, stabilized	UN 2607
Acrolein, stabilized	UN 1092
Acrylic acid, stabilized	UN 2218
Acrylonitrile, stabilized	UN 1093
Allyl isothiocyanate, stabilized	UN 1545
Allyltrichlorosilane, stabilized	UN 1724
Bicyclo [2,2,1] hepta-2,5-diene, stabilized *or* 2,5-Norbornadiene, stabilized	UN 2251
Butadienes, stabilized *or* Butadienes and Hydrocarbon mixture, stabilized *containing more than 40% butadienes*	UN 1010
Butyl acrylates, stabilized	UN 2348
n-Butyl methacrylate, stabilized	UN 2227
Butyl vinyl ether, stabilized	UN 2352
1,2-Butylene oxide, stabilized	UN 3022
Chloroprene, stabilized	UN 1991
Crotonaldehyde *or* Crotonaldehyde, stabilized	UN 1143
Cyanogen chloride, stabilized	UN 1589
Diketene, stabilized	UN 2521
Divinyl ether, stabilized	UN 1167
Ethyl acrylate, stabilized	UN 1917
Ethyl methacrylate, stabilized	UN 2277
Ethylacetylene, stabilized	UN 2452
Ethyleneimine, stabilized	UN 1185
Hydrogen cyanide, stabilized *with less than 3 percent water*	UN 1051
Hydrogen cyanide, stabilized, *with less than 3 percent water and absorbed in a porous inert material*	UN 1614
Isobutyl acrylate, stabilized	UN 2527
Isobutyl methacrylate, stabilized	UN 2283
Isoprene, stabilized	UN 1218
Methacrylaldehyde, stabilized	UN 2396
Methacrylic acid, stabilized	UN 2531
Methacrylonitrile, stabilized	UN 3079
Methyl acetylene and propadiene mixtures, stabilized	UN 1060
Methyl acrylate, stabilized	UN 1919
Methyl isopropenyl ketone, stabilized	UN 1246
Methyl methacrylate monomer, stabilized	UN 1247
Methyl vinyl ketone, stabilized	UN 1251
Propadiene, stabilized	UN 2200
Propyleneimine, stabilized	UN 1921
Styrene monomer, stabilized	UN 2055
Sulfur trioxide, stabilized	UN 1829
Tetrafluoroethylene, stabilized	UN 1081
Trifluorochloroethylene, stabilized *or* Refrigerant gas R 1113	UN 1082
Vinyl acetate, stabilized	UN 1301
Vinyl bromide, stabilized	UN 1085
Vinyl butyrate, stabilized	UN 2838
Vinyl chloride, stabilized	UN 1086
Vinyl ethyl ether, stabilized	UN 1302
Vinyl fluoride, stabilized	UN 1860
Vinyl isobutyl ether, stabilized	UN 1304
Vinyl methyl ether, stabilized	UN 1087
Vinylidene chloride, stabilized	UN 1303
Vinylpyridines, stabilized	UN 3073
Vinyltoluenes, stabilized	UN 2618

• New special provision 422 is assigned to the HMT entries ''UN 3480, Lithium ion batteries *including lithium ion polymer batteries*''; ''UN 3481, Lithium ion batteries contained in equipment *including lithium ion polymer batteries*''*;* ''UN 3481 Lithium ion batteries packed with equipment *including lithium ion polymer batteries*''; ''UN 3090, Lithium metal batteries *including lithium alloy batteries*''; ''UN 3091, Lithium metal batteries contained in equipment *including lithium alloy batteries*''; and ''UN3091, Lithium metal batteries packed with equipment *including lithium alloy batteries*.''

• Special provision 134 is removed from the HMT entry ''UN 3072, Life-saving appliances, not self-inflating *containing dangerous goods as equipment*'' and replaced with new special provision 182 as proposed in the NPRM. In reviewing the assignment of special provision 134 to ''UN 3072'' to make this clarification, PHMSA found that the provisions of special provision 134 are not assigned to ''UN 3072'' in any international standard, but rather to the entry for ''UN 3171, Battery-powered vehicle *or* Battery-powered equipment.'' Although special provision 134 does require that equipment powered only by lithium metal batteries or lithium ion batteries must be consigned under the entries associated with lithium batteries contained in or packed with equipment, the rest of special provision 134 is not applicable

to ''Life-saving appliances, not self-inflating *containing dangerous goods as equipment*.'' As a result, PHMSA is adding a new special provision 182 applicable only to the HMT entry for ''UN 3072, Life-saving appliances, not self-inflating *containing dangerous goods as equipment*'' to clarify that equipment containing only lithium batteries must be classified as either lithium batteries contained in or packed with equipment ''UN 3091'' or ''UN 3481,'' as appropriate.

• New special provision A210 is assigned to the new HMT italicized entries for ''Catecholborane'' and ''1, 3, 2-Benzodioxaborole.''

• New special provision A212 is assigned to the HMT entry for ''UN 2031, Nitric acid *other than red fuming, with more than 20 percent and less than 65 percent nitric acid*.''

• New special provision B134 is assigned to the Packing Group (PG) III entries in Table 3 consistent with revisions to the IMDG Code.

TABLE 3

Proper shipping name	UN No.
Aluminum powder, coated	UN 1309
Ferrous metal borings *or* Ferrous metal shavings *or* Ferrous metal turnings *or* Ferrous metal cuttings *in a form liable to self-heating*	UN 2793
Iron oxide, spent, *or* Iron sponge, spent *obtained from coal gas purification*	UN 1376
Magnesium *or* Magnesium alloys *with more than 50 percent magnesium in pellets, turnings or ribbons*	UN 1869
Peroxides, inorganic, n.o.s	UN 1483
Titanium sponge granules *or* Titanium sponge powders	UN 2878

• New special provision B135 is assigned to the PG III entries in Table 4 consistent with revisions to the IMDG Code.

TABLE 4

Proper shipping name	UN No.
Hafnium powder, dry	UN 2545
Metal catalyst, dry	UN 2881
Metal powder, self-heating, n.o.s	UN 3189
Titanium powder, dry	UN 2546
Zirconium powder, dry	UN 2008
Zirconium scrap	UN 1932

• Special provision TP1 is changed to TP2 for the following entries: ''UN 2672, Ammonia solution, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*''; ''UN 2709, Butyl benzenes''; ''UN 2241, Cycloheptane''; ''UN 1206, Heptanes''; ''UN 1208, Hexanes''; ''UN 2294, N-Methylaniline''; ''UN 2296, Methylcyclohexane''; ''UN 1920, Nonanes''; ''UN 1262, Octanes''; ''UN 2368, alpha-Pinene''; ''UN 1272, Pine oil''; ''UN 2850, Propylene tetramer''; ''UN 2325, 1,3,5-Trimethylbenzene''; ''UN 2057, Tripropylene''; ''UN 1299, Turpentine''; and ''UN 1840, Zinc chloride, solution.'' Tank provision TP2 authorizes a slightly lower degree of filling than TP1. The IMDG Code follows a guiding principle that assigns TP2 to materials that are marine pollutants. In a previous harmonization rulemaking [HM–215M; 80 FR 1075 (Jan. 8, 2015)], PHMSA added various hazardous materials to the list of marine pollutants in appendix B to § 172.101, but both the HMT and IMDG Code failed to change the TP code from TP1 to TP2 to authorize a lower degree of filling.

• Special provisions T9, TP7, and TP33 are assigned to the HMT entry ''UN 1415, Lithium.'' This permits UN 1415 for transportation in UN portable tanks consistent with similar Division 4.3, PG I materials.

• New special provisions W31, W32, W40, and W100 are assigned to certain water-reactive substances. The special provisions correspond with special packaging provisions PP31, PP31 ''modified'' (Packing Instruction P403), PP40, and PP100 of the IMDG Code, respectively. Table 5 contains the changes listed in alphabetical order and showing the proper shipping name, UN identification number, and the special provision(s).

TABLE 5

Proper shipping name	UN No.	Addition(s)
Alkali metal alcoholates, self-heating, corrosive, n.o.s	UN 3206	W31
Alkali metal alloys, liquid, n.o.s	UN 1421	W31
Alkali metal amalgam, liquid	UN 1389	W31
Alkali metal amalgam, solid	UN 3401	W32
Alkali metal amides	UN 1390	W31, W40
Alkali metal dispersions, flammable *or* Alkaline earth metal dispersions, flammable	UN 3482	W31
Alkali metal dispersions, *or* Alkaline earth metal dispersions	UN 1391	W31
Alkaline earth metal alcoholates, n.o.s	UN 3205	W31
Alkaline earth metal alloys, n.o.s	UN 1393	W31, W40
Alkaline earth metal amalgams, liquid	UN 1392	W31
Alkaline earth metal amalgams, solid	UN 3402	W32

TABLE 5—Continued

Proper shipping name	UN No.	Addition(s)
Aluminum carbide	UN 1394	W31, W40
Aluminum ferrosilicon powder (PG II)	UN 1395	W31, W40
Aluminum hydride	UN 2463	W32
Aluminum phosphide	UN 1397	W32
Aluminum phosphide pesticides	UN 3048	W31
Aluminum powder, coated	UN 1309	W100
Aluminum powder, uncoated	UN 1396	W31, W40
Aluminum silicon powder, uncoated	UN 1398	W31, W40
Aluminum smelting by-products *or* Aluminum remelting by-products (PG II)	UN 3170	W31, W40
Aluminum smelting by-products *or* Aluminum remelting by-products (PG III)	UN 3170	W31
2-Amino-4,6-Dinitrophenol, wetted *with not less than 20 percent water by mass*	UN 3317	W31
Ammonium picrate, wetted *with not less than 10 percent water, by mass*	UN 1310	W31
Arsenic acid, liquid	UN 1533	W31
Barium	UN 1400	W31, W40
Barium alloys, pyrophoric	UN 1854	W31
Barium azide, wetted *with not less than 50 percent water, by mass*	UN 1571	W31
Barium cyanide	UN 1565	W31
Barium peroxide	UN 1449	W100
Beryllium, powder	UN 1567	W100
Boron trifluoride diethyl etherate	UN 2604	W31
Boron trifluoride dimethyl etherate	UN 2965	W31
Bromobenzyl cyanides, liquid	UN 1694	W31
Bromobenzyl cyanides, solid	UN 3449	W31
Calcium	UN 1401	W31, W40
Calcium carbide (PG I)	UN 1402	W32
Calcium carbide (PG II)	UN 1402	W31, W40
Calcium cyanamide *with more than 0.1 percent of calcium carbide*	UN 1403	W31, W40
Calcium cyanide	UN 1575	W31
Calcium dithionite *or* Calcium hydrosulfite	UN 1923	W31
Calcium hydride	UN 1404	W32
Calcium manganese silicon	UN 2844	W31
Calcium peroxide	UN 1457	W100
Calcium phosphide	UN 1360	W32
Calcium, pyrophoric *or* Calcium alloys, pyrophoric	UN 1855	W31
Calcium silicide (PG II)	UN 1405	W31
Calcium silicide (PG III)	UN 1405	W31, W40
Carbon, activated	UN 1362	W31
Carbon disulfide	UN 1131	W31
Cerium, *slabs, ingots, or rods*	UN 1333	W100
Cerium, *turnings or gritty powder*	UN 3078	W31, W40
Cesium *or* Caesium	UN 1407	W32
Chloric acid aqueous solution, *with not more than 10 percent chloric acid*	UN 2626	W31
Chlorosilanes, water-reactive, flammable, corrosive, n.o.s	UN 2988	W31
Chromium trioxide, anhydrous	UN 1463	W31
Corrosive solids, water-reactive, n.o.s. (PG II)	UN 3096	W100
Cyanogen bromide	UN 1889	W31
Decaborane	UN 1868	W31
Dinitrophenol, wetted *with not less than 15 percent water, by mass*	UN 1320	W31
Dinitrophenolates, wetted *with not less than 15 percent water, by mass*	UN 1321	W31
Dinitroresorcinol, wetted *with not less than 15 percent water, by mass*	UN 1322	W31
Diphenylamine chloroarsine	UN 1698	W31
Diphenylchloroarsine, liquid	UN 1699	W31
Diphenylchloroarsine, solid	UN 3450	W31
Dipicryl sulfide, wetted *with not less than 10 percent water, by mass*	UN 2852	W31
Ethyldichlorosilane	UN 1183	W31
Ferrocerium	UN 1323	W100
Ferrosilicon *with 30 percent or more but less than 90 percent silicon*	UN 1408	W100
Ferrous metal borings *or* Ferrous metal shavings *or* Ferrous metal turnings *or* Ferrous metal cuttings *in a form liable to self-heating*	UN 2793	W100
Fibers *or* Fabrics, animal *or* vegetable *or* Synthetic, n.o.s. *with animal or vegetable oil*	UN 1373	W31
Fish meal, unstabilized *or* Fish scrap, unstabilized	UN 1374	W31, W40
Hafnium powder, dry	UN 2545	W31
Hafnium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns*	UN 1326	W31, W40
Iron oxide, spent, *or* Iron sponge, spent *obtained from coal gas purification*	UN 1376	W100
Isocyanates, flammable, toxic, n.o.s. *or* Isocyanate solutions, flammable, toxic, n.o.s. *flash point less than 23 degrees C*	UN 2478	W31
Lithium	UN 1415	W32
Lithium aluminum hydride	UN 1410	W32
Lithium borohydride	UN 1413	W32
Lithium ferrosilicon	UN 2830	W31, W40

TABLE 5—Continued

Proper shipping name	UN No.	Addition(s)
Lithium hydride	UN 1414	W32
Lithium hydride, fused solid	UN 2805	W31, W40
Lithium nitride	UN 2806	W32
Lithium peroxide	UN 1472	W100
Lithium silicon	UN 1417	W31, W40
Magnesium aluminum phosphide	UN 1419	W32
Magnesium diamide	UN 2004	W31
Magnesium granules, coated, *particle size not less than 149 microns*	UN 2950	W100
Magnesium hydride	UN 2010	W32
Magnesium *or* Magnesium alloys *with more than 50 percent magnesium in pellets, turnings or ribbons*	UN 1869	W100
Magnesium peroxide	UN 1476	W100
Magnesium phosphide	UN 2011	W32
Magnesium, powder *or* Magnesium alloys, powder (PG I)	UN 1418	W32
Magnesium, powder *or* Magnesium alloys, powder (PG II)	UN 1418	W31, W40
Magnesium, powder *or* Magnesium alloys, powder (PG III)	UN 1418	W31
Magnesium silicide	UN 2624	W31, W40
Maneb *or* Maneb preparations *with not less than 60 percent maneb*	UN 2210	W100
Maneb stabilized *or* Maneb preparations, stabilized *against self-heating*	UN 2968	W100
Mercuric potassium cyanide	UN 1626	W31
Metal catalyst, dry	UN 2881	W31
Metal catalyst, wetted *with a visible excess of liquid*	UN 1378	W31, W40
Metal hydrides, flammable, n.o.s. (PG II)	UN 3182	W31, W40
Metal hydrides, flammable, n.o.s. (PG III)	UN 3182	W31
Metal hydrides, water reactive, n.o.s. (PG I)	UN 1409	W32
Metal hydrides, water reactive, n.o.s. (PG II)	UN 1409	W31, W40
Metal powder, self-heating, n.o.s	UN 3189	W31
Metal powders, flammable, n.o.s	UN 3089	W100
Metal salts of organic compounds, flammable, n.o.s	UN 3181	W31
Metallic substance, water-reactive, n.o.s. (PG I)	UN 3208	W32
Metallic substance, water-reactive, n.o.s. (PG II)	UN 3207	W31
Metallic substance, water-reactive, n.o.s. (PG III)	UN 3208	W31, W40
Metallic substance, water-reactive, self-heating, n.o.s. (PG I and III)	UN 3209	W32
Metallic substance, water-reactive, self-heating, n.o.s. (PG II)	UN 3209	W32, W40
Methyldichlorosilane	UN 1242	W31
Nitrocellulose, *with not more than 12.6 percent nitrogen, by dry mass* mixture with *or* without plasticizer, with *or* without pigment	UN 2557	W31
Nitrocellulose with alcohol *with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass*	UN 2556	W31
Nitrocellulose with water *with not less than 25 percent water by mass*	UN 2555	W31
Nitroguanidine, wetted *or* Picrite, wetted *with not less than 20 percent water, by mass*	UN 1336	W31
4-Nitrophenylhydrazine, *with not less than 30 percent water, by mass*	UN 3376	W31
Nitrostarch, wetted *with not less than 20 percent water, by mass*	UN 1337	W31
Organometallic substance, liquid, water-reactive	UN 3398	W31
Organometallic substance, liquid, water-reactive, flammable	UN 3399	W31
Organometallic substance, solid, water-reactive	UN 3395	W31
Organometallic substance, solid, water-reactive, flammable	UN 3396	W31
Organometallic substance, solid, water-reactive, self-heating	UN 3397	W31
Osmium tetroxide	UN 2471	W31
Paper, unsaturated oil treated *incompletely dried (including carbon paper)*	UN 1379	W31
Peroxides, inorganic, n.o.s	UN 1483	W100
9-Phosphabicyclononanes *or* Cyclooctadiene phosphines	UN 2940	W31
Phosphorus heptasulfide, *free from yellow or white phosphorus*	UN 1339	W31
Phosphorus pentasulfide, *free from yellow or white phosphorus*	UN 1340	W31, W40
Phosphorus sesquisulfide, *free from yellow or white phosphorus*	UN 1341	W31
Phosphorus trisulfide, *free from yellow or white phosphorus*	UN 1343	W31
Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution	UN 1381	W31
Potassium	UN 2257	W32
Potassium borohydride	UN 1870	W32
Potassium cyanide, solid	UN 1680	W31
Potassium cyanide solution	UN 3413	W31
Potassium dithionite *or* Potassium hydrosulfite	UN 1929	W31
Potassium, metal alloys, liquid	UN 1420	W31
Potassium, metal alloys, solid	UN 3403	W32
Potassium phosphide	UN 2012	W32
Potassium sodium alloys, liquid	UN 1422	W31
Potassium sodium alloys, solid	UN 3404	W32
Potassium sulfide, anhydrous *or* Potassium sulfide *with less than 30 percent water of crystallization*	UN 1382	W31, W40
Pyrophoric liquids, organic, n.o.s	UN 2845	W31
Pyrophoric metals, n.o.s., *or* Pyrophoric alloys, n.o.s	UN 1383	W31
Pyrophoric solid, inorganic, n.o.s	UN 3200	W31
Pyrophoric solids, organic, n.o.s	UN 2846	W31

TABLE 5—Continued

Proper shipping name	UN No.	Addition(s)
Rubidium	UN 1423	W32
Self-heating liquid, corrosive, inorganic, n.o.s	UN 3188	W31
Self-heating liquid, corrosive, organic, n.o.s	UN 3185	W31
Self-heating liquid, inorganic, n.o.s	UN 3186	W31
Self-heating liquid, organic, n.o.s	UN 3183	W31
Self-heating liquid, toxic, inorganic, n.o.s	UN 3187	W31
Self-heating liquid, toxic, organic, n.o.s	UN 3184	W31
Self-heating solid, inorganic, n.o.s	UN 3190	W31
Self-heating solid, organic, n.o.s	UN 3088	W31
Silver picrate, wetted *with not less than 30 percent water, by mass*	UN 1347	W31
Sodium	UN 1428	W32
Sodium aluminum hydride	UN 2835	W31, W40
Sodium borohydride	UN 1426	W32
Sodium cyanide, solid	UN 1689	W31
Sodium cyanide solution	UN 3414	W31
Sodium dinitro-o-cresolate, wetted *with not less than 10% water, by mass*	UN 3369	W31
Sodium dinitro-o-cresolate, wetted *with not less than 15 percent water, by mass*	UN 1348	W31
Sodium dithionite *or* Sodium hydrosulfite	UN 1384	W31
Sodium hydride	UN 1427	W32
Sodium hydrosulfide, *with less than 25 percent water of crystallization*	UN 2318	W31
Sodium methylate	UN 1431	W31
Sodium phosphide	UN 1432	W32
Sodium picramate, *wetted with not less than 20 percent water, by mass*	UN 1349	W31
Sodium sulfide, anhydrous *or* Sodium sulfide *with less than 30 percent water of crystallization*	UN 1385	W31, W40
Stannic phosphide	UN 1433	W32
Strontium peroxide	UN 1509	W100
Strontium phosphide	UN 2013	W32
Tear gas substances, liquid, n.o.s	UN 1693	W31
Tear gas substance, solid, n.o.s	UN 3448	W31
4-Thiapentanal	UN 2785	W31
Thiourea dioxide	UN 3341	W31
Titanium disulphide	UN 3174	W31
Titanium hydride	UN 1871	W31, W40
Titanium powder, dry	UN 2546	W31
Titanium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns*	UN 1352	W31, W40
Titanium sponge granules *or* Titanium sponge powders	UN 2878	W100
Titanium trichloride, pyrophoric *or* Titanium trichloride mixtures, pyrophoric	UN 2441	W31
Toxic solids, water-reactive, n.o.s	UN 3125	W100
Trichlorosilane	UN 1295	W31
Trinitrobenzene, wetted, *with not less than 10% water, by mass*	UN 3367	W31
Trinitrobenzene, wetted *with not less than 30 percent water, by mass*	UN 1354	W31
Trinitrobenzoic acid, wetted *with not less than 10% water by mass*	UN 3368	W31
Trinitrobenzoic acid, wetted *with not less than 30 percent water, by mass*	UN 1355	W31
Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass*	UN 3365	W31
Trinitrophenol (picric acid), wetted, *with not less than 10 percent water by mass*	UN 3364	W31
Trinitrophenol, wetted *with not less than 30 percent water, by mass*	UN 1344	W31
Trinitrotoluene (TNT), wetted, *with not less than 10 percent water by mass*	UN 3366	W31
Trinitrotoluene, wetted *or* TNT, wetted, *with not less than 30 percent water by mass*	UN 1356	W31
Urea nitrate, wetted, *with not less than 10 percent water by mass*	UN 3370	W31
Urea nitrate, wetted *with not less than 20 percent water, by mass*	UN 1357	W31
Water-reactive liquid, n.o.s	UN 3148	W31
Water-reactive solid, corrosive, n.o.s. (PG I and III)	UN 3131	W31
Water-reactive solid, corrosive, n.o.s. (PG II)	UN 3131	W31, W40
Water-reactive solid, flammable, n.o.s. (PG I and III)	UN 3132	W31
Water-reactive solid, flammable, n.o.s. (PG II)	UN 3132	W31, W40
Water-reactive solid, n.o.s. (PG I)	UN 2813	W32
Water-reactive solid, n.o.s. (PG II)	UN 2813	W31, W40
Water-reactive solid, n.o.s. (PG III)	UN 2813	W31
Water-reactive solid, self-heating, n.o.s. (PG I and III)	UN 3135	W31
Water-reactive solid, self-heating, n.o.s. (PG II)	UN 3135	W31, W40
Water-reactive solid, toxic, n.o.s. (PG I and III)	UN 3134	W31
Water-reactive solid, toxic, n.o.s. (PG II)	UN 3134	W31, W40
Xanthates	UN 3342	W31
Xylyl bromide, liquid	UN 1701	W31
Zinc ashes	UN 1435	W100
Zinc peroxide	UN 1516	W100
Zinc phosphide	UN 1714	W32
Zinc powder *or* Zinc dust (PG I and III)	UN 1436	W31
Zinc powder *or* Zinc dust (PG II)	UN 1436	W31, W40
Zirconium hydride	UN 1437	W31, W40

TABLE 5—Continued

Proper shipping name	UN No.	Addition(s)
Zirconium, dry, *coiled wire, finished metal sheets, strip (thinner than 254 microns but not thinner than 18 microns)*	UN 2858	W100
Zirconium, dry, *finished sheets, strip or coiled wire*	UN 2009	W31
Zirconium picramate, wetted *with not less than 20 percent water, by mass*	UN 1517	W31
Zirconium powder, dry	UN 2008	W31
Zirconium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns*	UN 1358	W31, W40
Zirconium scrap	UN 1932	W31

PHMSA received comment from DGAC noting for UN Numbers 1309, 1376, 1390, 1394, 1396, 1400, 1401, 1402 (PG II), 1405, 1417, 1483 (PG III), 1869, 1932, 2545 (PG III), 2546 (PG III), 2624, 2793, 2813 (PG II and III), 2830, 2878, 2881 (PG III), 3078, 3170, and 3208 (PG II and III), special provision IP4 was assigned in the regulatory text without corresponding discussion in the preamble. DGAC is correct that the assignment of these IP Codes was not discussed in the preamble; however, this omission was unintentional. The assignment of IP4 to these HMT entries was a result of aligning the HMR with the water-reactive packaging provisions for IBCs prescribed in the IMDG Code. Specifically, the provisions of IP4 are consistent with Special packing provision B4 of the IMDG Code. Special provision IP4 states, ''Flexible, fiberboard or wooden IBCs must be sift-proof and water-resistant or be fitted with a sift-proof and water-resistant liner.'' Based on further review of the implementation effects of this issue, a new special provision IP21, applicable only to vessel transport but with the same provisions as IP4, is assigned.

PHMSA received one comment from DGAC noting for the entry ''UN 2793'' that special provision IP3 is missing from column (7) in the proposed HMT. This was an inadvertent omission. Special provision IP3 has been reestablished.

Amendments to Column (9) Quantity Limitations

Section 172.101(j) describes column (9) of the HMT and the quantity limitations for specific entries. Furthermore, columns (9A) and (9B) specify the maximum quantities that may be offered for transportation in one package by passenger-carrying aircraft or passenger-carrying rail car (column (9A)) or by cargo-only aircraft (column (9B)). The indication of ''forbidden'' means the material may not be offered for transportation or transported in the applicable mode of transport.

In this final rule, PHMSA is amending for column (9B) a quantity limit of 75 kg for ''UN 0501, Propellant, solid, Division 1.4C.'' Previously, column (9B) forbade the transport of UN 0501 by cargo-only aircraft as proposed in the NPRM. This new quantity limit is consistent with the authorized quantity limit found in the ICAO Technical Instructions.

Amendments to Column (10) Vessel Stowage Requirements

Section 172.101(k) explains the purpose of column (10) of the HMT and prescribes the vessel stowage and segregation requirements for specific entries. Column (10) is divided into two columns: Column (10A) [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels, and column (10B) [Other provisions] specifies special stowage and segregation provisions. The meaning of each code in column (10B) is set forth in § 176.84.

Consistent with changes to Amendment 38–16 of the IMDG Code, PHMSA is making numerous changes to the vessel stowage location codes shown in column (10A) of the HMT. The majority of these changes are a result of those made to the IMDG Code to ensure the safe transportation of substances requiring stabilization when transported by vessel. Table 6 contains the changes listed in alphabetical order and showing the proper shipping name, UN identification number, current vessel stowage location code, and new vessel stowage location.

TABLE 6

Proper shipping name	UN No.	Current vessel stowage code	New vessel stowage code
Acrolein dimer, stabilized	2607	A	C
Acrylonitrile, stabilized	1093	E	D
N-Aminoethylpiperazine	2815	A	B
Butyl acrylates, stabilized	2348	A	C
n-Butyl methacrylate, stabilized	2227	A	C
Butyl vinyl ether, stabilized	2352	B	C
1,2-Butylene oxide, stabilized	3022	B	C
Ethyl acrylate, stabilized	1917	B	C
Ethyl methacrylate, stabilized	2277	B	C
Isobutyl acrylate, stabilized	2527	A	C
Isobutyl methacrylate, stabilized	2283	A	C
Isoprene, stabilized	1218	E	D
Methacrylaldehyde, stabilized	2396	E	D
Methyl acrylate, stabilized	1919	B	C
Methyl isopropenyl ketone, stabilized	1246	B	C
Methyl methacrylate monomer, stabilized	1247	B	C
Potassium superoxide	2466	E	D
Propyleneimine, stabilized	1921	B	D
Radioactive material, uranium hexafluoride *non fissile or fissile-excepted*	2978	A	B

TABLE 6—Continued

Proper shipping name	UN No.	Current vessel stowage code	New vessel stowage code
Radioactive material, uranium hexafluoride, fissile	2977	A	B
Styrene monomer, stabilized	2055	A	C
Vinyl acetate, stabilized	1301	B	C
Vinyl butyrate, stabilized	2838	B	C
Vinyl isobutyl ether, stabilized	1304	B	C
Vinylidene chloride, stabilized	1303	E	D
Vinyltoluenes, stabilized	2618	A	C

With the addition of a Division 6.1 subsidiary hazard to ''UN 2815, N-Aminoethylpiperazine,'' ''UN 2977, Radioactive material, uranium hexafluoride, fissile,'' and ''UN 2978, Radioactive material, uranium hexafluoride *non fissile or fissile-excepted,*'' PHMSA is adding code ''40,'' which indicates that the material must be stowed clear of living quarters, to column (10B) for these entries to remain consistent with the IMDG Code.

As a consequence of adding special provision 387, which addresses stabilization requirements to 51 existing entries in the HMT that are identified as requiring such, the IMO amended vessel stowage requirements for these entries. PHMSA is adding code ''25'' to column (10B) for the same 51 entries identified in Table 2. We note that the IMDG Code did not assign stowage provisions equivalent to code ''25'' to ''UN 1167, Divinyl ether, stabilized.'' Stowage code ''25'' requires these materials to be protected from sources of heat. PHMSA believes the omission of this stowage requirement in the IMDG Code to be an oversight, and we are adding stowage code ''25'' to this HMR entry. In the NPRM, we had proposed assigning stowage code ''25'' to UN 2383, Dipropylamine, but based on comments received from U.S. Amines indicating the material is not a polymerizing substance, we are not adding stowage code ''25'' to this entry. In the absence of further rulemaking actions, these provisions will sunset two years from the effective date of this rulemaking. See the ''Comment Discussion'' section of this document for further discussion.

Code ''28'' requires materials to which this code is assigned to be stowed away from flammable liquids. In this final rule, consistent with changes to the IMDG Code, PHMSA is removing code ''28'' from column (10B) for the following HMT entries: ''UN 2965, Boron trifluoride dimethyl etherate''; ''UN 2988, Chlorosilanes, water-reactive, flammable, corrosive, n.o.s''; ''UN 1183, Ethyldichlorosilane''; ''UN 1242, Methyldichlorosilane''; ''UN 3490, Toxic by inhalation liquid, water-reactive, flammable, n.o.s. *with an LC50 lower than or equal to 200 ml/m3 and saturated vapor concentration greater than or equal to 500 LC50*''; and ''UN 1295, Trichlorosilane.''

PHMSA received comments from two commenters concerning amendments to column (10). Sean Bevan provided general support for harmonization in this area, while DGAC provided multiple editorial comments related to the assignment of various vessel stowage codes. The DGAC comments are summarized as follows:

- ''*UN 3402, Alkaline earth metal amalgams, solid,*'' *lists vessel stowage code* ''*14*'' *in column (10B).* DGAC believes the code should be ''148.'' PHMSA agrees and has amended column (10B) accordingly.
- ''*UN 2968, Maneb stabilized or Maneb preparations, stabilized against self-heating,*'' *lists vessel stowage code* ''*25*'' *in column (10B).* DGAC states the current entry does not have this code and there is no discussion in the preamble of the NPRM regarding its addition. PHMSA agrees that code ''25'' should not have been proposed in association with this entry and has removed it accordingly.
- ''*UN 3395, Organometallic substance, solid, water-reactive,*'' *the PGI entry lists vessel stowage code* ''*14*'' *in column (10B).* DGAC believes the code should be ''148.'' PHMSA agrees and has amended column (10B) accordingly.
- ''*UN 3397, Organometallic substance, solid, water-reactive, self-heating,*'' *the PGII and III entries list vessel stowage code* ''*14*'' *in column (10B).* DGAC believes the code should be ''148.'' PHMSA agrees and has amended column (10B) accordingly.
- ''*UN 2257, Potassium,*'' *vessel stowage codes* ''*13*'' *and* ''*148*'' *do not appear in column (10B).* DGAC believes these codes were inadvertently omitted and should be shown. PHMSA agrees that codes ''13'' and ''148'' should not have been proposed for removal in association with this entry and has reinserted them into the HMT.
- ''*UN 3367, Trinitrobenzene, wetted, with not less than 10% water, by mass,*'' *lists vessel stowage code* ''*3*'' *in column (10B).* DGAC believes the code should be ''36.'' PHMSA agrees and has amended column (10B) accordingly.
- ''*UN1085, Vinyl bromide, stabilized,*'' *lists stowage location* ''*C*'' *in column (10A).* DGAC believes the code should be ''B.'' PHMSA agrees and has amended column (10A) accordingly.

Appendix B to § 172.101:

Appendix B to § 172.101 lists marine pollutants regulated under the HMR. PHMSA is revising the list of marine pollutants by adding five new entries to remain consistent with the IMDG Code. These changes include those substances that were either assigned a ''P'' in the dangerous goods list or identified in the alphabetical index to Amendment 38–16 of the IMDG Code—based on review of evaluations for each individual material, and associated isomers where appropriate, performed by the Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) and the GESAMP defining criteria for marine pollutants. The following entries are added to the list of marine pollutants in appendix B to § 172.101: Hypochlorite solutions; Isoprene, stabilized; N-Methylaniline; Methylcyclohexane; and Tripropylene. DGAC commented that there already exists an entry in the list of marine pollutants for ''hexane,'' so there is no need to add the entry ''hexanes.'' PHMSA agrees and is not adding a duplicative entry for ''hexanes.'' IVODGA commented with general support for the addition of these entries.

Section 172.102 special provisions:

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. In this final rule, PHMSA is making the following revisions to § 172.102 special provisions:

- *Special Provision 40:* Special provision 40 prescribes the criteria for classification of a ''Polyester resin kit.''

PHMSA is revising special provision 40 by authorizing a polyester resin kit to contain a Division 4.1 base material consistent with the new HMT entry ''UN 3527, Polyester resin kit, *solid base material,* 4.1.''

• *Special Provision 134:* Special provision 134 prescribes the applicability of the HMT entry ''UN 3171, Battery-powered vehicle *or* Battery-powered equipment.'' PHMSA is revising special provision 134 by amending the list of battery-powered vehicle examples to include trucks, locomotives, bicycles (pedal cycles with an electric motor) and other vehicles of this type (*e.g.,* self-balancing vehicles or vehicles not equipped with at least one seating position), and self-propelled farming and construction equipment. In addition, PHMSA is organizing the structure of the special provision into paragraph form for ease of reading. PHMSA received a comment from UPS stating that the amendment to special provision 134 categorizes hoverboards as battery-powered vehicles and not lithium batteries contained in equipment. UPS argued that this classification obscures to carriers the presence of lithium batteries with no indication in the proper shipping name that lithium batteries are present and requested that the United Nations reconsider this amendment during the next biennium. PHMSA notes these concerns and will consider whether the issue should be reconsidered during the next UN biennium. In the interest of ensuring proper shipping names utilized by shippers are consistent in all transport modes, we are adopting the amendments to special provision 134 as proposed in the NPRM.

• *Special Provision 135:* Special provision 135 specifies that an internal combustion engine installed in a vehicle must be consigned to the entries ''Vehicle, flammable gas powered'' or ''Vehicle, flammable liquid powered,'' as appropriate. PHMSA is revising special provision 135 by clarifying that vehicles powered by both a flammable liquid and a flammable gas internal combustion engine must be consigned to the entry ''Vehicle, flammable gas powered.'' In addition, PHMSA is revising special provision 135 by clarifying that for the purpose of this special provision, a ''vehicle'' is a self-propelled apparatus designed to carry one or more persons or goods. A list of examples is provided.

• *Special Provision 157:* PHMSA is adding new special provision 157 and assigning it to ''UN 3527, Polyester resin kit, *solid base material.*'' The special provision allows the maximum net capacity for inner packagings of flammable solids in PG II to be increased to no more than 5 kg (11 pounds) when the material is transported as a limited quantity.

• *Special Provision 181:* PHMSA is adding new special provision 181 and assigning it to ''UN 3481, Lithium ion batteries contained in equipment''; ''UN 3481, Lithium ion batteries packed with equipment''; ''UN 3091, Lithium metal batteries contained in equipment''; and ''UN 3091, Lithium metal batteries packed with equipment.'' The special provision specifies that when lithium cells or batteries packed with equipment and lithium cells or batteries contained in equipment are packed in the same package, the shipping paper (if used) and the package must use the ''packed with'' proper shipping name and UN number. Further, all packaging requirements applicable to both proper shipping names must be met and the total mass of cells or batteries in the package must not exceed the quantity limits specified in columns (9A) and (9B), as applicable.

• *Special Provision 182:* PHMSA is adding new special provision 182 and assigning it to ''UN 3072, Life-saving appliances, not self-inflating *containing dangerous goods as equipment*'' to clarify that equipment containing only lithium batteries must be classified as either UN 3091 or UN 3481, as appropriate.

• *Special Provision 238:* Special provision 238 addresses the shipment of neutron radiation detectors. PHMSA is revising special provision 238 to align with the UN Model Regulations special provision 373 by permitting the packaging to contain ''absorbent'' or ''adsorbent'' material where the previous requirement permitted ''absorbent'' material only.

• *Special Provision 369:* Special provision 369 prescribes classification criteria, consignment instructions and transport conditions for ''UN 3507, Uranium hexafluoride, radioactive material, excepted package, *less than 0.1 kg per package, non-fissile or fissile-excepted.*'' PHMSA is revising special provision 369 in conjunction with revising the primary classification for UN 3507 from Class 8 to Division 6.1. Specifically, PHMSA is clarifying that this radioactive material in an excepted package possessing toxic and corrosive properties is classified in Division 6.1 with radioactive and corrosive subsidiary risks.

• *Special Provision 379:* PHMSA is adding new special provision 379 and assigning it to the HMT entries ''UN 1005, Ammonia, anhydrous'' and ''UN 3516, Adsorbed gas, toxic, corrosive, n.o.s.'' This special provision is applicable to ammonia dispensers containing adsorbed ammonia, which are used to reduce polluting nitrogen oxide emissions from automobiles. The UN Sub-Committee found that the substance contained in the receptacles did not meet any criteria for classification in the Model Regulations, but it acknowledged that the substance did fit the recent definition of an adsorbed gas. Based on the stability of adsorption under normal transport conditions, an exception for these dispensers was adopted subject to appropriate packaging conditions. These materials are normally forbidden for transport by air on passenger-carrying and cargo-only aircraft; however, consistent with the ICAO Technical Instructions, PHMSA is authorizing them on cargo-only aircraft subject to the transport conditions prescribed in the special provision with additional approval of the Associate Administrator.

• *Special Provision 387:* PHMSA is adding new special provision 387 and assigning it to the four new ''n.o.s.'' polymerizing substance HMT entries and to the 52 existing HMT entries that are identified as requiring stabilization. This special provision sets forth the transport conditions when stabilization, or prevention of polymerization, is provided through the use of a chemical inhibitor. When a substance is stabilized via use of a chemical inhibitor, it is important to ensure that the level of stabilization is sufficient to prevent the onset of a dangerous reaction under conditions normally incident to transportation. This special provision requires a determination that the degree of chemical stabilization employed at the time the package, IBC, or tank is offered for transport must be suitable to ensure that the sustained bulk mean temperature of the substance in the package, IBC, or tank will not exceed 50 °C (122 °F), under conditions normally incident to transportation. The special provision also specifies that temperature control is required at the point where chemical stabilization becomes ineffective at lower temperatures within the anticipated duration of transport. Consistent with the ICAO Technical Instructions, PHMSA is clarifying in special provision 387 that these substances are forbidden for transport by air when temperature control is required. U.S. Amines requests that PHMSA reconsider assigning special provision 387 to Dipropylamine (UN 2383), further asserting that this material does not pose a polymerization risk. They provided safety data sheets and other associated technical data to substantiate the claim. Based on a

review of the technical information provided and the physical properties of the substance in question, PHMSA agrees and is not assigning special provision 387 to this substance. In the absence of further rulemaking actions, this provision will sunset two years from the effective date of this rulemaking. See the ''Comment Discussion'' section of this document for further discussion.

• *Special Provision 420:* PHMSA is adding new special provision 420 and assigning it to the HMT entry ''UN 2000, Celluloid.'' This special provision states that table tennis balls are not subject to the requirements of the HMR. The 19th Revised Edition of the UN Model Regulations includes a special provision assigned to ''UN 2000, Celluloid'' that excepts table tennis balls made of celluloid from the requirements of the Model Regulations if the total net mass of each table tennis ball does not exceed 3 grams and the net mass of table tennis balls does not exceed 500 grams per package. In the NPRM, PHMSA discussed not including this special provision (*see* Section V, ''Amendments Not Being Considered for Adoption in This NPRM'') as it is unnecessary based on our position—as stated in the letter of interpretation (Ref. No. 14–0141)—that table tennis balls are not subject to the requirements of the HMR and that the ''UN 2000, Celluloid'' entry only applies when the material is in a pre-manufactured state (*i.e.,* blocks rod, rolls, sheets, tubes, etc.). PHMSA received three comments from COSTHA, DGAC, and IVODGA requesting that PHMSA reconsider the position to omit the special provision. DGAC specifically commented that while they fully agree with PHMSA's view that celluloid table tennis balls are not subject to the HMR and that the HMT entry ''UN 2000, Celluloid'' only applies when celluloid is in a pre-manufactured state, this position is not universally held by other governmental transport authorities. The commenters asserted that while the letter of interpretation is helpful, as it is not formally included in the HMR, including a special provision stating that table tennis balls are not subject to the HMR would be beneficial. PHMSA agrees with the commenters that adding a special provision to clarify table tennis balls are not subject to the requirements of the HMR is warranted and may lead to a reduction in the number of shipments rejected or frustrated by carriers. The special provision 420 added in this final rule differs from special provision 383 of the Model Regulations in that it excepts articles manufactured of celluloid, such as table tennis balls, without a limit on the size of the ball or the quantity per package.

• *Special Provision 421:* PHMSA is adding new special provision 421 and assigning it to the four new polymerizing substance, n.o.s. entries. This special provision is added to indicate that after January 2, 2019 shipments may not be offered for transportation under these basic descriptions. This special provision is added as a result of sunset provisions for polymerizing substance amendments. See the ''Comment Discussion'' section of this document for a discussion on the sunset provision.

• *Special Provision 422:* PHMSA is adding new special provision 422 and assigning it to the following HMT entries: ''UN 3480, Lithium ion batteries *including lithium ion polymer batteries*''; ''UN 3481, Lithium ion batteries contained in equipment *including lithium ion polymer batteries*''; ''UN 3481, Lithium ion batteries packed with equipment *including lithium ion polymer batteries*''; ''UN 3090, Lithium metal batteries *including lithium alloy batteries*''; ''UN 3091, Lithium metal batteries contained in equipment *including lithium alloy batteries*''; and ''Lithium metal batteries packed with equipment *including lithium alloy batteries.*'' Special provision 422 states that the new lithium battery Class 9 label shown in § 172.447 is to be used for packages containing lithium batteries that require labels. Consistent with the UN Model Regulations, PHMSA is providing a transition period that would authorize labels conforming to requirements in place on December 31, 2016 to continue to be used until December 31, 2018. Class 9 placards, when used, must conform to the existing requirements in § 172.560.

• *Special Provision A210:* PHMSA is adding new special provision A210 and assigning it to the new italicized HMT entries ''Catecholborane'' and its synonym ''1, 3, 2-Benzodioxaborole.'' Consistent with the ICAO Technical Instructions, this special provision clarifies that this substance is forbidden for transport by air and may only be transported on cargo-only aircraft with the approval of the Associate Administrator.

• *Special Provision A212:* PHMSA is adding new special provision A212 and assigning it to the to the HMT entry ''UN 2031, Nitric acid *other than red fuming, with more than 20 percent and less than 65 percent nitric acid.*'' Consistent with the ICAO Technical Instructions, this special provision allows sterilization devices containing nitric acid conforming to the conditions in the special provision to be offered for transportation by passenger-carrying aircraft irrespective of column (9A) of the § 172.101 HMT listing the material as forbidden.

• *Special Provision B134:* PHMSA is adding new special provision B134 and assigning it to UN Numbers 1309, 1376, 1483, 1869, 2793, and 2878. This special provision states that when in Large Packagings offered for transport by vessel, flexible or fiber inner packages containing these materials would need to be sift-proof and water-resistant, or fitted with a sift-proof and water-resistant liner. Consistent with the IMDG Code, these provisions will increase the ability of these packages to perform their containment function and reduce the likelihood of a fire on board cargo vessels when used to transport substances that either generate large amounts of heat or give off flammable or corrosive toxic gases on contact with water or moisture.

• *Special Provision B135:* PHMSA is adding new special provision B135 and assigning it to UN Numbers 1932, 2008, 2545, 2546, 2881, and 3189. This special provision states that when in Large Packagings offered for transport by vessel, flexible or fiber inner packages containing these materials would need to be hermetically sealed. Consistent with the IMDG Code, these provisions will increase the ability of these packages to perform their containment function and reduce the likelihood of a fire on board cargo vessels when used to transport substances that either generate large amounts of heat or give off flammable or corrosive toxic gases on contact with water or moisture.

• *IP Code 19:* PHMSA is adding a new IP Code 19 and assigning it to UN 3531, UN 3532, UN 3553, and UN 3534. Consistent with international regulations, this special provision requires that IBCs are designed and constructed to permit the release of gas or vapor, thereby preventing a build-up of pressure that could rupture the IBCs in the event of loss of stabilization.

• *IP Code 21:* PHMSA is adding a new IP Code 21 and assigning it to UN Numbers 1309, 1376, 1390, 1394, 1396, 1400, 1401, 1402 (PG II), 1405, 1417, 1483 (PG III), 1869, 1932, 2545 (PG III), 2546 (PG III), 2624, 2793, 2813 (PG II and III), 2830, 2878, 2881 (PG III), 3078, 3170, and 3208 (PG II and III). Consistent with the IMDG Code, this special provision requires that flexible, fiberboard, or wooden IBCs must be sift-proof and water-resistant or be fitted with a sift-proof and water-resistant liner.

• *Special Provision N90:* Special provision N90 is assigned to the HMT entry ''UN 3474, 1-Hydroxybenzotriazole, monohydrate'' and prohibits the use of metal packages. Consistent with the UN Model Regulations, PHMSA is revising special provision N90 by clarifying that the prohibition of metal packages does not include packagings constructed of other material with a small amount of metal (*e.g.,* metal closures or other metal fittings). However, packagings constructed with a small amount of metal must be designed such that the hazardous material does not contact the metal.

• *Special Provision N92:* PHMSA is adding special provision N92 to the four new polymerizing substance, n.o.s. entries. This special provision requires packages that are utilized for the transportation of polymerizing substances to be designed and constructed to permit the release of gas or vapor to prevent a build-up of pressure that could rupture the packagings in the event of loss of stabilization.

• *Special Provision W31:* PHMSA is adding new special provision W31 and assigning it to the 155 HMT entries identified in Table 5 in the ''Amendments to column (7) special provisions'' section of this rulemaking. With the addition of this special provision, PHMSA is requiring packages assigned as such to be hermetically sealed when offered for transportation by vessel.

The addition of W31 to these commodities harmonizes the HMR with changes made in Amendment 38–16 of the IMDG Code, as well as the transportation requirements of the HMR with the IMDG Code for other commodities where they were not previously harmonized. The IMDG Code has had provisions in place equivalent to proposed W31 (PP31) for certain commodities since at least 1998.[5] Other hazardous materials regulations (ICAO Technical Instructions, HMR, and UN Model Regulations) do not currently contain provisions similar to W31. Amendment 38–16 of the IMDG Code is adding this hermetically sealed packaging requirement to 15 entries in its Dangerous Goods List (some with multiple packing groups).

The amendments would reduce the risk of fire on board cargo vessels carrying hazardous materials that can react dangerously with the ship's available water and carbon dioxide fire extinguishing systems. Some of the hazardous materials for which PHMSA is amending the vessel transportation packaging requirements react with water or moisture generating excessive heat or releasing toxic or flammable gases. Common causes for water entering into the container are: Water entering through ventilation or structural flaws in the container; water entering into the containers placed on deck or in the hold in heavy seas; and water entering into the cargo space upon a ship collision or leak. If water has already entered the container, the packaging is the only protection from a potential fire.

In this final rule, PHMSA is strengthening the ability of these packages transporting water-reactive substances. PHMSA received one comment from DGAC noting that the proposed text for W31 would apply to both ''non-bulk'' and ''bulk'' packagings as defined in the HMR. DGAC commented that the analogous special provision in IMDG code (PP31) only applies to what the HMR defines as ''non-bulk'' packagings. As a result, DGAC requested that special provision W31 be limited in its applicability to ''non-bulk'' packagings. PHMSA agrees with DGAC, and in this final rule, special provision W31 is added with applicability limited to non-bulk packagings.

• *Special Provision W32:* PHMSA is adding new special provision W32 and assigning it to 38 HMT entries identified in Table 5 in the ''Amendments to column (7) special provisions'' section of this rulemaking. With the addition of this special provision, PHMSA is requiring packages assigned this special provision to be hermetically sealed, except for solid fused material, when offered for transportation by vessel. The 38 entries to which this addition is made are already required to be packaged in this manner in accordance with the IMDG Code through a modified PP31 (when compared to the PP31 mentioned in the W31 discussion above) assigned to various packing instructions. See the comments in the W31 discussion above for more discussion on the reasons for this amendment.

• *Special Provision W40:* PHMSA is adding new special provision W40 and assigning it to 38 HMT entries identified in Table 5 in the ''Amendments to column (7) special provisions'' section of this rulemaking. With the addition of this special provision, PHMSA is prohibiting the use of non-bulk bags when offered for transportation by vessel. See the comments in the W31 discussion above for more discussion on the reasons for this amendment.

• *Special Provision W100:* PHMSA is adding new special provision W100 and assigning it to 27 HMT entries identified in Table 5 in the ''Amendments to column (7) special provisions'' section of this rulemaking. With the addition of this special provision, PHMSA is requiring non-bulk flexible, fiberboard, or wooden packagings that are assigned this special provision to be sift-proof and water-resistant, or to be fitted with a sift-proof and water-resistant liner. These amendments are intended to ensure that water-reactive materials transported by vessel are in packages that provide an appropriate level of protection from the ingress of water. See the comments in the W31 discussion above for more discussion on the reasons for this amendment.

Section 172.202

Section 172.202 details the requirements for the description of hazardous materials on shipping papers. PHMSA received a comment from COSTHA requesting an amendment to the transportation description requirements for consumer commodities offered for transportation by aircraft. COSTHA stated the notification of the pilot-in-command is created using information provided on the shipping papers and requested PHMSA allow a shipper offering consumer commodities to show on the shipping paper either the actual gross mass of each package or the average gross mass of all packages in the consignment. PHMSA agrees with COSTHA that without the consequential amendment they proposed in their comment, it would be difficult for airlines to implement our change to § 175.33 as proposed in the NPRM. Therefore, we are adding a new paragraph (a)(6)(viii) to provide an allowance for shippers of consumer commodities to show on the shipping paper either the actual gross mass of each package or the average gross mass of all packages in the consignment.

Section 172.407

Section 172.407 prescribes specifications for labels. On January 8, 2015, PHMSA published a final rule [Docket No. PHMSA–2013–0260 (HM–215M); 80 FR 1075] that required labels to have a solid line forming the inner border 5 mm from the outside edge of the label and a minimum line width of 2 mm. Transitional exceptions were provided allowing labels authorized prior to this rulemaking to be used until December 31, 2016.

The rulemaking authorized a reduction in label dimensions and

[5] These provisions have potentially been in place before 1998. PHMSA reviewed hard copy IMDG Codes dating back to 1998 but was unable to locate the origin of these provisions.

features if the size of the packaging so requires. This allowance for reduction in label dimensions, consistent with the requirements for standard size labels, was contingent on the solid line forming the inner border remaining 5 mm from the outside edge of the label and the minimum width of the line remaining 2 mm. PHMSA has become aware that maintaining these inner border size requirements, while reducing the size of other label elements, may potentially result in the symbols on the reduced size labels no longer being identifiable. Consequently, we are revising paragraph (c)(i) to remove the existing inner border size requirements for reduced dimension labels and authorizing the entire label to be reduced proportionally.

In the same January 8, 2015 final rule, PHMSA authorized the continued use of a label in conformance with the requirements of this paragraph in effect on December 31, 2014, until December 31, 2016. PHMSA has been made aware that the transition period provided may not be sufficient to allow the regulated community to implement necessary changes to business practices or to deplete inventories of previously authorized labels. PHMSA is extending the transition date provided in paragraph (c)(1)(iii) until December 31, 2018 for domestic transportation in order to provide additional time for implementation and depletion of existing stocks of labels. PHMSA received a comment of support for this amendment from Arkema Inc. and is adopting this transition date as proposed.

Section 172.447

PHMSA is creating a new section containing a new Class 9 hazard warning label for lithium batteries. The label consists of the existing Class 9 label with the addition of a figure depicting a group of batteries with one broken and emitting a flame in the lower half. This label will appear on packages containing lithium batteries required to display hazard warning labels and is intended to better communicate the specific hazards posed by lithium batteries. This action is consistent with the most recent editions of the UN Model Regulations, the ICAO Technical Instructions, and the IMDG Code. Packages of lithium batteries displaying the existing Class 9 label may continue to be used until December 31, 2018. We are adopting this transition period to allow shippers time to exhaust existing stocks of labels and pre-printed packagings. However, we are not adopting any modifications to the existing Class 9 placard or the creation of a Class 9 placard specifically for cargo transport units transporting lithium batteries. PHMSA received a comment from UPS providing support for this amendment.

Section 172.505

Section 172.505 details the transport situations that require subsidiary placarding. Uranium hexafluoride is a volatile solid that may present both chemical and radiological hazards. It is one of the most highly soluble industrial uranium compounds and, when airborne, hydrolyzes rapidly on contact with water to form hydrofluoric acid (HF) and uranyl fluoride (UO_2F_2).[6]

As previously discussed in the review of changes to § 172.102, the UN Sub-Committee determined it necessary that a 6.1 subsidiary hazard be added to the Dangerous Goods List of uranium hexafluoride entries. Currently, in addition to the radioactive placard that may be required by § 172.504(e), each transport vehicle, portable tank, or freight container that contains 454 kg (1,001 pounds) or more gross weight of non-fissile, fissile-excepted, or fissile uranium hexafluoride must be placarded with a corrosive placard on each side and each end. PHMSA is adding a requirement for these shipments currently requiring corrosive subsidiary placards to also placard with 6.1 poison or toxic placards.

Part 173

Section 173.4a

Section 173.4a prescribes transportation requirements for excepted packages. In this final rule, consistent with changes to the UN Model Regulations, PHMSA is amending paragraph (e)(3) to allow required absorbent materials to be placed in either the intermediate or outer packaging.

Section 173.9

Section 173.9 prescribes requirements for the fumigant marking. In this final rule, PHMSA is amending § 173.9 to require that the fumigant marking and its required information are capable of withstanding a 30-day exposure to open weather conditions. This requirement is consistent with the survivability requirements for placards found in § 172.519. Therefore, we are making amendments to this section consistent with the survivability requirements for placards as proposed in the NPRM.

[6] *https://www.epa.gov/sites/production/files/2014-11/documents/tsd58.pdf.*

Section 173.21

Section 173.21 describes situations in which the offering for transport or transportation of materials or packages is forbidden. Examples include materials designated as ''Forbidden'' in column (3) of the HMT; electrical devices that are likely to generate sparks and/or a dangerous amount of heat; and materials that are likely to decompose or polymerize and generate dangerous quantities of heat or gas during decomposition or polymerization. In § 173.21, PHMSA is lowering the temperature threshold at which a polymerizing substance is forbidden for transport, unless the material is stabilized or inhibited, from 54 °C (130 °F) to 50 °C (122 °F) and amending the table in paragraph (f)(1) to accommodate the specific temperature controls applicable to polymerizing substances. This 50 °C (122 °F) temperature is consistent with existing requirements for Division 4.1 (self-reactive) and Division 5.2 (Organic peroxide) hazardous materials, as well as the 19th Revised Edition of UN Model Regulations for the transport of polymerizing substances in packages and IBCs, which requires temperature control in transport if the SAPT is 45 °C (113 °F) only for polymerizing substances offered for transport in portable tanks.

PHMSA received comments from DGAC and Dow proposing an editorial amendment to paragraph (f) to distinguish between a material that is likely to decompose with a self-accelerated decomposition temperature and a material that will polymerize. PHMSA agrees with the commenters and is revising paragraph (f) to clarify that materials with a SADT decompose and those with a SAPT polymerize. Additionally, PHMSA received a comment from Arkema Inc. asking if there are equivalent or alternative test methods that may be utilized other than the four test methods described in Part II of the UN Manual of Tests and Criteria for determining classification as a polymerizing substance. The only tests authorized to determine SAPT in § 173.21 are the Test Series H tests described in Part II of the UN Manual of Tests and Criteria.

We are not adopting a different temperature threshold before temperature control is required for portable tanks transporting polymerizing substances. At this time, we believe there is not sufficient data to support a different threshold for polymerizing substances in portable tanks.

PHMSA received comments from BAMM & MPA, Deltech Corporation, and DGAC concerning our proposal to maintain a minimum SAPT temperature of 50 °C for portable tanks versus the internationally adopted 45 °C. The commenters cited PHMSA's failure to harmonize in the past for transport provisions applicable to self-reactive materials and organic peroxides, as well as potential non-compliance concerns for imported materials that were evaluated and offered for transport at different temperatures than the proposal would require in the HMR. PHMSA continues to maintain that 50 °C is the maximum temperature reasonably expected to be experienced by any self-reactive, organic peroxide, and/or polymerizing substance. This 50 °C (122 °F) temperature is consistent with existing requirements for Division 4.1 (self-reactive) and Division 5.2 (organic peroxide) hazardous materials. In the absence of further rulemaking actions, these provisions will sunset two years from the effective date of this rulemaking. See the ''Comment Discussion'' section of this document for a discussion on the sunset provision. See the ''Comment Discussion'' section of this document for full discussion.

Section 173.40

Section 173.40 provides general packaging requirements for toxic materials packaged in cylinders. In this final rule, PHMSA is revising paragraph (a)(1) to clarify that TC, CTC, CRC, and BTC cylinders authorized in § 171.12, except for acetylene cylinders, may be used for toxic materials. PHMSA received a comment from COSTHA stating that the current § 173.40(a)(1) prohibits acetylene cylinders and non-refillable cylinders from carrying toxic by inhalation gases, and that ''non-refillable cylinders'' seem to have been inadvertently deleted from the proposed regulatory text in the NPRM. PHMSA agrees and is adding non-refillable cylinders to this prohibition in paragraph (a)(1).

Section 173.50

Section 173.50 provides definitions for the various divisions of Class 1 (Explosive) materials referenced in part 173, subpart C. Paragraph (b) of this section notes that Class 1 (Explosive) materials are divided into six divisions and that the current definition of Division 1.6 states that ''this division comprises articles which contain only extremely insensitive substances.'' PHMSA is amending the definition of Division 1.6 to note that the division is made up of articles that predominately contain extremely insensitive substances. Consistent with the recent changes to the UN Model Regulations, the new definition means that an article does not need to contain solely extremely insensitive substances to be classified as a Division 1.6 material.

Section 173.52

Section 173.52 contains descriptions of classification codes for explosives assigned by the Associate Administrator. These compatibility codes consist of the division number followed by the compatibility group letter. Consistent with changes proposed to § 173.50 and those made in the UN Model Regulations, PHMSA is amending the descriptive text for the 1.6N classification code entry in the existing table in this section to indicate that these explosives are articles predominantly containing extremely insensitive substances.

Section 173.62

Section 173.62 provides specific packaging requirements for explosives. Consistent with the UN Model Regulations, PHMSA is revising § 173.62 relating to specific packaging requirements for explosives.

In paragraph (b), in the Explosives Table, the entry for ''UN 0510, Rocket motors'' is added and assigned Packing Instruction 130 consistent with other rocket motor entries.

In paragraph (c), in the Table of Packing Methods, Packing Instruction 112(c) is revised by adding a particular packaging requirement applicable to UN 0504 requiring that metal packagings must not be used. It is also clarified that the prohibition of metal packagings does not include packagings constructed of other material with a small amount of metal (*e.g.,* metal closures or other metal fittings). Packing Instruction 114(b) is revised to clarify in the particular packaging requirement applicable to UN 0508 and UN 0509 that the prohibition of metal packagings does not include packagings constructed of other material with a small amount of metal (*i.e.,* metal closures or other metal fittings). Packing Instruction 130 is revised by adding UN 0510 to the list of large and robust explosives articles that may be transported unpackaged. PHMSA received a comment from Brent Knoblett asking if a rocket motor could be classified as a 1.4C article and qualify as large and robust. Given weight to power ratios, it is unlikely that a rocket motor would have the minimal energetics that would lead to a Division 1.4C classification. However, in the interest of harmonization and the inability to rule out the possibility of a large and robust rocket motor meeting the criteria for classification as a 1.4C article, PHMSA is adopting this unpackaged article authorization as proposed.

PHMSA is adding UN 0502 to Packing Instruction P130. This addition corrects an existing error in the HMR. Packing Instruction 130 is referenced for UN 0502 but contains no mention of UN 0502 in the actual instruction. In the NPRM, we proposed amending Packing Instruction 137 by amending the particular packaging instruction applicable to UN Numbers 0059, 0439, 0440, and 0441 by replacing the marking requirement ''THIS SIDE UP'' with a reference to the package orientation marking prescribed in § 172.312(b). PHMSA received comments from COSTHA, DOD, and IME noting that § 172.312(b) only provides a limitation on the use of orientation arrows and does not provide details for the manner in which they are to be displayed. PHMSA agrees that the paragraph referenced in the NPRM does not provide shippers of shape charges with an indication of the appropriate marking. Therefore, in this final rule, we are changing the reference to orientation markings meeting the requirements of § 172.312(a)(2).

Section 173.121

Section 173.121 provides criteria for the assignment of packing groups to Class 3 materials. Paragraph (b)(1)(iv) provides criteria for viscous flammable liquids of Class 3—such as paints, enamels, lacquers and varnishes—to be placed in PG III on the basis of their viscosity, coupled with other criteria. In this final rule and consistent with the changes to the UN Model regulations, PHMSA is amending paragraph (b)(1)(iv) to include additional viscosity criteria that can be used as an alternative where a flow cup test is unsuitable. PHMSA received a comment from the ACA providing support for this amendment.

Section 173.124

Section 173.124 outlines defining criteria for Divisions 4.1 (Flammable solid), 4.2 (Spontaneously combustible), and 4.3 (Dangerous when wet material). Division 4.1 (Flammable solid) includes desensitized explosives, self-reactive materials, and readily combustible solids. The UN Model Regulations adopted amendments to include polymerizing materials to the list of materials that meet the definition of Division 4.1. Transport conditions for polymerizing materials are not new under the HMR.

PHMSA received questions from Arkema Inc., BAMM & MPA, and Dow about exclusions from classification as

polymerizing substances for combustible liquids and Class 9 substances. These commenters further asked about testing requirements for materials currently identified in the HMT that may also polymerize and requested clarification that—as proposed in the NPRM—it would not be necessary to offer materials meeting the definition of a combustible liquid and a polymerizing substance as a polymerizing substance. Arkema Inc. and BAMM & MPA similarly asked if substances meeting the definitions of Class 9 and polymerizing substances need to be offered as a polymerizing substance. The definition of polymerizing substance adopted by the UN Model Regulations excludes substances that meet the criteria for inclusion in Classes 1–8. In the NPRM, we proposed to exclude all materials that meet the definition of any other hazard class. To further harmonize the HMR definition of polymerizing substances with that found in the Model Regulations, PHMSA is amending § 173.124(a)(4)(iii) to exclude substances that meet the criteria for inclusion in Classes 1–8, including combustible liquids. It is our belief that polymerizing substances that also meet the definition of Class 9 would be limited to environmentally hazardous substances. Much like the UN, we believe that the polymerizing properties of these materials should take precedence in the identification of these materials and that the applicable additional description elements (*i.e.,* marine pollutant or ''RQ'' for hazardous substance) should be appropriately identified by shippers. Substances that meet the defining criteria for combustible liquids and polymerizing substances are only required to be offered for transportation as a combustible liquid.

Section 173.21 presently contains approval provisions for the transport of polymerizing materials. Unlike the present HMR requirements, the classification requirements adopted in the UN Model Regulations do not require testing to determine the rate of vapor production when heated under confinement. This rate should be the deciding factor when determining whether a polymerizing substance should be authorized for transportation in an IBC or portable tank. PHMSA is adding polymerizing materials to the list of materials that meet the definition of Division 4.1 with the additional requirement that that polymerizing substances are only authorized for transport if they pass the UN Test Series E at the ''None'' or ''Low'' level when tested for heating under confinement, or other equivalent test methods.

Specifically, we are adding a new paragraph (a)(4) that defines polymerizing materials generally and specifies defining criteria. Polymerizing materials are materials that are liable to undergo an exothermic reaction resulting in the formation of polymers under conditions normally encountered in transport. Additionally, polymerizing materials in Division 4.1 have a self-accelerating polymerization temperature of 75 °C (167 °F) or less; have an appropriate packaging determined by successfully passing the UN Test Series E at the ''None'' or ''Low'' level or by an equivalent test method; exhibit a heat of reaction of more than 300 J/g; and do not meet the definition of any other hazard class. PHMSA received questions from Arkema Inc. and Dow requesting clarification that for materials specifically listed by name in the HMT no testing is required to determine SAPT or appropriate transport provisions. Additionally, Arkema Inc. requested PHMSA more closely align our definition with that in the UN Model Regulations by including the phrase ''which, without stabilization'' in paragraph (a). Arkema Inc. and Dow are correct in their understanding that for materials specifically identified in the HMT by name (including n.o.s. entries) no additional testing is required to determine if the material is polymerizing. PHMSA agrees that the text as noted by Arkema Inc. is helpful in determining the applicability of the defining criteria for polymerizing substances and is making the recommended change to the definition of polymerizing substances.

PHMSA received comments from Arkema Inc., BAMM & MPA, Deltech, and DGAC raising concerns over PHMSA's proposal to require polymerizing substances intended to be transported in portable tanks or IBCs to undergo the Test Series E heating under confinement testing from the UN Manual of Tests and Criteria. The commenters stated that when polymerizing substances react in the test apparatus they often clog its orifice. They further stated this testing leads to unreliable, overly conservative results that suggest the material under test poses a greater hazard from heating under confinement than it actually does. Additionally, the commenters requested PHMSA align with the international approach for testing these substances, which only requires testing the substances under Test Series H to determine the substances SAPT.

While testing in accordance with UN Series E does present difficulties, this testing has been performed in the past in support of approval applications for various polymerizing substances. Additionally, while a clogged orifice within the Series E tests could be overly conservative, it is important to note that similar situations may occur during transport. For instance, a polymerizing substance that clogs the orifice during testing could potentially clog the pressure relief device on a portable tank. In such an incident, the testing would provide similar results to what could be expected within a transportation situation. Test Series E and H do not measure and/or predict the same phenomena. PHMSA notes Test Series E (or an equivalent performance measure) provides information on how the material behaves when heated under confinement. Test Series H provides information on the SAPT, and thus the potential need for temperature controls. These two tests are synergistic and not mutually exclusive. For these reasons, PHMSA is maintaining the testing requirements for polymerizing substances as proposed in the NPRM.

In the NPRM, PHMSA proposed to allow ''equivalent test methods'' to the Test Series E and specifically solicited comments on this topic. The only comment received concerning equivalent test methods was from BAMM & MPA, who noted their belief that Test Series H plus modeling could potentially provide equivalent results to Test Series E. In this final rule, PHMSA is authorizing additional test methods for determining heating under confinement with the approval of the Associate Administrator. In the absence of further rulemaking actions, this definition will sunset two years from the effective date of this rulemaking. See the ''Comment Discussion'' section of this document for further discussion.

Section 173.165

Section 173.165 prescribes the transport and packaging requirements for polyester resin kits. PHMSA is revising § 173.165 by adding the requirements for polyester resin kits with a flammable solid base consistent with the new HMT entry ''UN 3527, Polyester resin kit, solid base material, 4.1.''

Section 173.185

Section 173.185 prescribes transportation requirements for lithium batteries. Paragraph (c) describes alternative packaging and alternative hazard communication for shipments of up to 8 small lithium cells or 2 small batteries per package (up to 1 gram per

lithium metal cell, 2 grams per lithium metal battery, 20 Wh per lithium ion cell, and 100 Wh per lithium ion battery). Specifically, PHMSA is amending paragraph (c) to require strong outer packagings for small lithium cells or batteries to be rigid and to replace the current text markings that communicate the presence of lithium batteries and the flammability hazard that exists if damaged with a single lithium battery mark. The package must be of adequate size that the lithium battery mark can be displayed on one side of the package without folding. In addition, the lithium battery mark will be required to appear on packages containing lithium cells or batteries, or lithium cells or batteries packed with, or contained in, equipment when there are more than two packages in the consignment. This requirement would not apply to a package containing button cell batteries installed in equipment (including circuit boards) or when no more than four lithium cells or two lithium batteries are installed in the equipment. We are further clarifying what is meant by the term ''consignment'' by defining the term used in § 173.185 as one or more packages of hazardous materials accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address.

PRBA submitted a comment to the NPRM noting that PHMSA's proposed definition for ''consignment'' would be applied to all modes of transport and that, while ICAO's definition applies only to air transportation, the proposed text is consistent with that found in the ICAO Technical Instructions. The ICAO Technical Instructions, IMDG Code, and UN Model Regulations do not have the same definition for ''consignment.'' Therefore, PRBA requested PHMSA amend the definition of consignment to indicate that it is only applicable to transportation by air. PRBA is correct that the definitions for ''consignment'' vary slightly between the various international standards. However, we note that the UN Model Regulations, IMDG Code, and ICAO Technical Instructions all include the term ''consignment'' when referencing exceptions from the lithium battery mark. The intent of these standards is to require the marking when multiple packages are offered from one shipper to one consignee. The definition as proposed in the NPRM best represents this requirement and allows for consistent application across all modes of transportation. PHMSA notes that under the HMR this definition is limited to its usage in § 173.185. Therefore, we are amending the definition of ''consignment'' as proposed in the NPRM.

Under current HMR requirements, a package of cells or batteries that meets the requirements of § 173.185(c) may be packed in strong outer packagings that meet the general requirements of §§ 173.24 and 173.24a instead of the standard UN performance packaging. Lithium batteries packed in accordance with § 173.185(c) must be packed in strong outer packagings that meet the general packaging requirements of §§ 173.24 and 173.24a and be capable of withstanding a 1.2 meter (3.9 ft) drop test without damage to the cells or batteries contained in the package, shifting of the contents that would allow battery-to-battery or cell-to-cell contact, or release of contents. Alternative hazard communication requirements also apply. The Class 9 label is replaced with text indicating the presence of lithium batteries; an indication that the package must be handled with care and that a flammability hazard exists if damaged; procedures to take in the event of damage; and a telephone number for additional information. Instead of a shipping paper, the shipper can provide the carrier with an alternative document that includes the same information as provided on the package.

In this rulemaking, PHMSA is replacing the existing text for marking requirements in § 173.185(c)(3) with a standard lithium battery mark for use in all transport modes and to remove the requirement in § 173.185(c)(3) for shippers to provide an alternative document. The lithium battery mark communicates key information (*i.e.,* the package contents and that a flammability hazard exists if damaged). The mark utilizes recognizable symbols that permit transport workers and emergency responders to quickly ascertain the package contents and take appropriate action. A single mark that is understood and accepted for all transport modes will increase the effectiveness. A transition period until December 31, 2018, is provided to allow adequate time for shippers to transition the new lithium battery mark and exhaust existing stocks of preprinted packagings or markings. UPS asks if the transition period also includes the requirement to mark packages when there are more than two packages per consignment of lithium ion or metal batteries contained in equipment. As proposed this transition was only intended to apply to the requirements for the mark itself and not to the exception from marking. After reviewing the international standards this rulemaking is harmonizing the HMR with, PHMSA has determined that for modes of transportation other than air an additional year was provided for consignment limit changes. In this final rule, PHMSA is amending § 173.185(c)(3(ii) to state that for modes of transportation other than by aircraft the provisions in paragraph (c)(3), including the exceptions from marking, in effect on December 31, 2016 may continue to be used until December 31, 2018. For transportation by aircraft only the provisions concerning the lithium battery handling marking itself in paragraph (c)(3)(ii) may be used until December 31, 2018. The current documentation requirement is redundant given the existing marking requirement and provides minimal additional safety value to that provided by the mark.

At the 49th session of the UN Sub-Committee, a late design revision to the lithium battery mark was adopted to authorize the mark on a background of ''suitable contrasting color'' in addition to white. This is consistent with design requirements for limited quantity marks and other marks in the Model Regulations. In this rulemaking, PHMSA is allowing the mark on a background of suitable contrasting color in addition to white.

Additionally, PHMSA is amending § 173.185(c)(2) and (c)(3)(i) to specify that outer packagings used to contain small lithium batteries must be rigid and of adequate size so the handling mark can be affixed on one side without the mark being folded. The HMR currently do not prescribe minimum package dimensions or specific requirements for package performance other than the requirements described in §§ 173.24 and 173.24a. We are aware of several instances in which either the package dimensions were not adequate to accommodate the required marks and labels or the package was not sufficiently strong to withstand the rigors of transport. These amendments will enhance the communication and recognition of lithium batteries and better ensure that packaging is strong enough to withstand normal transport conditions. PHMSA received comments from COSTHA, DGAC, Labelmaster Services, and PRBA requesting that an exception from the requirement for rigid packaging for batteries contained in equipment be provided if the equipment that contains the battery offers an equivalent level of protection. COSTHA noted some key fobs and remote control devices as examples of equipment that generally provide an equivalent level of

protection to a rigid packaging, further noting that these devices are currently shipped in padded envelopes safely. PHMSA agrees that rigid packaging is not necessary if the equipment containing lithium batteries provides a level of protection that is equivalent to rigid packaging and is therefore amending paragraph (c)(2) to address these comments.

PHMSA is amending § 173.185(e) to permit the transport of prototype and low production runs of lithium batteries contained in equipment. These amendments are mostly consistent with amendments adopted into the 19th Revised Edition of the UN Model Regulations and Amendment 38–16 of the IMDG Code, which authorize the transportation of prototype and low production runs of lithium batteries contained in equipment in packaging tested to the PG II level. The ICAO Technical Instructions authorize the transportation of prototype and low production runs of lithium batteries contained in equipment in packaging tested to the PG I level. In the NPRM, PHMSA proposed to continue to require prototype and low production batteries to be placed in packaging tested to the PG I performance level. We believe that the higher integrity packaging provides an additional layer of protection for cells and batteries not otherwise subjected to the UN design tests.

PRBA stated in their comment that PHMSA proposed to require PG I packaging and prohibit the use of fiberboard boxes when shipping prototype and low production lithium batteries by motor vehicle or vessel. PRBA noted this change is not consistent with the UN Model Regulations and IMDG Code because both standards authorize the use of PG II packaging and 4G fiberboard boxes. They further stated this lack of harmonization, particularly with the IMDG Code, will create compliance problems for our members shipping prototype or low production lithium batteries into the U.S. in accordance with the IMDG Code. Nothing in subpart C of part 171 would prohibit prototype or low production run batteries from being transported in accordance with the packaging authorizations in the IMDG Code (*i.e.,* a 4G fiberboard box at the PG II performance level) as authorized by § 171.22. PRBA requests PHMSA authorize a PG II 4G fiberboard box for shipments offered for transportation by motor vehicle and vessel and a PG I 4G fiberboard box for transportation by aircraft.

PHMSA notes that the proposals in the NPRM were primarily to provide authorizations for prototype or low production run batteries contained in equipment and additional flexibility in packaging multiple batteries and equipment in tested packaging, using existing packaging authorizations for the batteries to determine appropriate packaging. PRBA further noted that if PHMSA prohibits the use of PG I 4G fiberboard boxes for shipping prototype or low production lithium batteries by air, the HMR will conflict with the requirements of the ICAO Technical Instructions and will not comply with Section 828 of the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012. Shipments of prototype batteries require an approval for air transport. If the shipper wishes to offer by air in a PG I 4G fiberboard box, they may request such authorization in their approval request. Each request will be examined on its own merits.

Consistent with changes to the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions, PHMSA is adding a new paragraph (e)(7) to require shipments of low production runs and prototype lithium batteries to note conformance with the requirements of § 173.185(e) on shipping papers.

Additionally, PHMSA is amending § 173.185(f)(4) to harmonize with a requirement in the 19th Revised Edition of the UN Model Regulations that the ''Damaged/defective lithium ion battery'' and/or ''Damaged/defective lithium metal battery'' marking as appropriate be in characters at least 12 mm (0.47 inches) high.

Section 173.217

Section 173.217 establishes packaging requirements for dry ice (carbon dioxide, solid). Paragraph (c) prescribes additional packaging requirements for air transport. Consistent with the ICAO Technical Instructions, PHMSA is removing the term ''other type of pallet'' in paragraph (c)(3) that excepts dry ice being used as a refrigerant for other non-hazardous materials from the quantity limits per package shown in columns (9A) and (9B) of the § 172.101 HMT.

Section 173.220

Section 173.220 prescribes transportation requirements and exceptions for internal combustion engines, vehicles, machinery containing internal combustion engines, battery-powered equipment or machinery, and fuel cell-powered equipment or machinery. The UN Model Regulations adopted amendments to the existing UN 3166 engine and vehicle entries during the last biennium. These changes are continuations of efforts undertaken by the UN Sub-Committee to ensure appropriate hazard communication is provided for engines containing large quantities of fuels.

The 17th Edition of the UN Model Regulations added special provision 363, which required varying levels of hazard communication depending on the type and quantity of fuel present, in attempts to ensure the hazards associated with engines containing large quantities of fuel were sufficiently communicated. PHMSA did not adopt the provisions found in special provision 363 at the time they were introduced.

As previously discussed in the review of the new HMT entries, the existing UN 3166 identification number was maintained for the various vehicle entries in the Model Regulations, and three new UN identification numbers and proper shipping names were created for engines or machinery internal combustion and assigned a hazard classification based on the type of fuel used. The three new UN numbers and proper shipping names are as follows: A Class 3 entry ''UN 3528, Engine, internal combustion engine, flammable liquid powered, *or* Engine fuel cell, flammable liquid powered, *or* Machinery, internal combustion, flammable liquid powered, *or* Machinery, fuel cell, flammable liquid powered''; a Division 2.1 entry ''UN 3529, Engine, internal combustion engine, flammable gas powered, *or* Engine fuel cell, flammable gas powered, *or* Machinery, internal combustion, flammable gas powered, *or* Machinery, fuel cell, flammable gas powered''; and a Class 9 entry ''UN 3530, Engine, internal combustion, *or* Machinery, internal combustion.''

Consistent with the UN Model Regulations, PHMSA is adding to the HMR the new UN identification numbers and proper shipping names for engines and machinery. PHMSA is maintaining the existing transportation requirements and exceptions for engines and machinery found in § 173.220 for all modes of transportation other than vessel. To harmonize as closely as possible with Amendment 38–16 of the IMDG Code, PHMSA is making the following amendments to § 173.220: (1) Amending paragraph (b)(1)(ii) to include a reference to engines powered by fuels that are marine pollutants but do not meet the criteria of any other Class or Division; (2) amending paragraph (b)(4)(ii) to include a reference to the proposed new § 176.906 containing requirements for shipments of engines or machinery offered for transportation by vessel; (3) amending paragraph (d) to authorize the

transportation of securely installed prototype or low production run lithium batteries in engines and machinery by modes of transportation other than air; and (4) adding paragraph (h)(3) to include references to existing and amended exceptions for vehicles, engines, and machinery in §§ 176.905 and 176.906.

ICAO adopted a provision that requires battery-powered vehicles that could be handled in other than an upright position to be placed into a strong rigid outer package. This provision better ensures that small vehicles—particularly those powered by lithium batteries—are adequately protected from damage during transport. In this final rule, PHMSA is amending paragraphs (c) and (d) consistent with this requirement. However, while ICAO's requirement is specific to air transport, we are further applying this requirement to transportation by all transport modes for greater overall benefit.

Section 173.221

Section 173.221 prescribes the packaging requirements for Polymeric beads (or granules), expandable, *evolving flammable vapor*. PHMSA is adding a procedure for declassification of polymeric beads, expandable. PHMSA received a comment from UPS supporting this amendment and is adopting it as proposed in the NPRM.

Section 173.225

Section 173.225 prescribes packaging requirements and other provisions for organic peroxides. Consistent with the UN Model Regulations, PHMSA is revising the Organic Peroxide Table in paragraph (c) by amending the entries for: ''Dibenzoyl peroxide,'' ''tert-Butyl cumyl peroxide,'' ''Dicetyl peroxydicarbonate,'' and ''tert-Butyl peroxy-3,5,5-trimethylhexanoate.'' PHMSA received one comment from DGAC noting two editorial errors in the proposed Organic Peroxide Table in paragraph (c). In this final rule, the entry ''Di-2,4-dichlorobenzoyl peroxide [as a paste]'' is revised by moving the text in columns (5), (6), and (7) by one position to the right into columns (6), (7), and (8); and the entry ''1,1-Di-(tert-butylperoxy)cyclohexane + tert-Butyl peroxy-2-ethylhexanoate'' is added for consistency with the UN Model Regulations. We are revising the Organic Peroxide IBC Table in paragraph (e) to maintain alignment with the UN Model Regulations by adding new entries for ''tert-Butyl cumyl peroxide'' and ''1,1,3,3-Tetramethylbutyl peroxy-2-ethylhexanoate, not more than 67%, in diluent type A'' and adding a type 31HA1 IBC authorization to the existing entry for ''Di-(2-ethylhexyl) peroxydicarbonate, not more than 62%, stable dispersion, in water.'' We are republishing the complete Organic Peroxide and Organic Peroxide IBC tables to ensure the revisions are correctly inserted and adding the missing ''UN'' code to several identification numbers assigned to existing entries in the Organic Peroxide Table.

Section 173.301

Section 173.301 prescribes general requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles, and spherical pressure vessels. PHMSA is amending the list of authorized packaging specifications in paragraph (a)(1) by adding a new footnote (1) and assigning it to the ''packagings'' heading. This footnote directs readers to § 171.12(a)(4)(iii) to determine authorized Canadian cylinders that correspond with DOT specification cylinders. Additionally, PHMSA is amending paragraph (a)(2) to address filling of TC cylinders. As TC cylinders are metric marked and their filling requirements vary slightly between the TDG Regulations and the HMR, PHMSA is requiring that TC cylinders be filled in accordance with the TDG Regulations. The remaining Canadian cylinders authorized in this rulemaking must be filled in accordance with the requirements of part 173. In a comment to the NPRM, Worthington Cylinder Corporation stated that TC cylinders have the service pressure marked in bar while DOT cylinders are marked in psi. They further noted that TC marked cylinders for liquefied gases have the tare weight and water capacity metric marked (kg and liter) and asked what action PHMSA has taken to assure fillers know how to convert these metric units to U.S. standard units. PHMSA is aware of the differences in metric markings on TC cylinders compared to DOT specification cylinders. In this final rule, we are requiring that TC cylinders be filled in accordance with the TDG requirements. There is a table of conversion factors in § 171.10 to assist fillers in appropriately converting from metric to U.S. standard. Additionally, PHMSA plans to produce guidance material shortly after publication of this rulemaking for both fillers and requalifiers of Canadian cylinders.

Additionally, Worthington Cylinder Corporation stated the National Fire Protection Association (NFPA) document NFPA–58 presently does not permit TC cylinders to be filled with LP-Gas and asked if PHMSA considered this a conflict in regulations. PHMSA does not see an authorization to requalify, fill, or transport a Canadian cylinder with liquefied petroleum gas as a conflict with the requirements of NFPA–58. However, PHMSA may consult with NFPA on the appropriateness of updating their standard to include references to Canadian cylinders in the future.

Section 173.301b

Section 173.301b contains additional general requirements for shipment of UN pressure receptacles. PHMSA is amending paragraph (a)(2) to include the most recent ISO standard for UN pressure receptacles and valve materials for non-metallic materials in ISO 11114–2:2013. Additionally, we are amending paragraph (c)(1) to include the most recent ISO standard on cylinder valves ISO 10297:2014. This paragraph also contains end dates for when the manufacture of cylinders and service equipment is no longer authorized in accordance with the outdated ISO standard. Finally, we are revising § 173.301b(g) to amend a reference to marking requirements for composite cylinders used for underwater applications. The current reference to the ''UW'' marking in § 173.301b(g) direct readers to § 178.71(o)(17), while the correct reference for the ''UW'' marking is actually § 178.71(q)(18).

Section 173.303

Section 173.303 prescribes requirements for the charging of cylinders with compressed gas in solution (acetylene). PHMSA is amending paragraph (f)(1) to require UN cylinders for acetylene use to comply with the current ISO standard ISO 3807:2013. This paragraph also contains end dates for when the manufacture of cylinders and service equipment is no longer authorized in accordance with the outdated ISO standard.

Section 173.304b

Section 173.304b prescribes filling requirements for liquefied gases in UN pressure receptacles. The UN Model Regulations amended packing instruction P200 by adding requirements for liquefied gases charged with compressed gases. In this rulemaking, PHMSA is amending § 173.304b specifically by adding a new paragraph (b)(5) to include filling limits when a UN cylinder filled with a liquefied gas is charged with a compressed gas. We are not including similar filling limits for DOT specification cylinders filled with a

liquefied gas and charged with a compressed gas, as we feel the situation is adequately addressed by the requirements found in § 173.301(a)(8).

Section 173.310

Section 173.310 provides the transport conditions for certain specially designed radiation detectors containing a Division 2.2 (Non-flammable) gas. The 19th Revised Edition of the UN Model Regulations added a new special provision 378 applicable to radiation detectors containing certain Division 2.2 gases. Special provision 378 outlines conditions for the use of a non-specification pressure receptacle and strong outer packaging requirements. As § 173.310 currently prescribes similar transport conditions for radiation detectors containing Division 2.2 gases, we are not adding a new special provision.

Consistent with special provision 378 of the UN Model Regulations, PHMSA is making the following revisions to the transport conditions in § 173.310: [1] In the section header, clarify that Division 2.2 gases must be in non-refillable cylinders; [2] in paragraph (b), increase the maximum design pressure from 4.83 MPa (700 psig) to 5.00 MPa (725 psig) and increase the capacity from 355 fluid ounces (641 cubic inches) to 405 fluid ounces (731 cubic inches); [3] in new paragraph (d), require specific emergency response information to accompany each shipment and be available from the associated emergency response telephone number; [4] in new paragraph (e), require that transport in accordance with this section be noted on the shipping paper; and [5] in new paragraph (f), except radiation detectors, including detectors in radiation detection systems, containing less than 50 ml (1.7 fluid ounces) capacity, from the requirements of the subchapter if they conform to paragraphs (a) through (d) of this section.

PHMSA received one comment from UPS suggesting a revision to paragraphs (e) and (f) to clarify that radiation detectors, including detectors in radiation detection systems, containing less than 50 ml (1.7 fluid ounces) capacity are not subject to shipping paper requirements. Although consistent with special provision 378 of the UN Model Regulations, PHMSA agrees that the proposed text in paragraph (e) requiring that transport in accordance with this section must be noted on the shipping paper may be misinterpreted to also apply to radiation detectors excepted from the requirements of the subchapter in paragraph (e). Therefore, in efforts to avoid confusion, PHMSA is revising paragraphs (e) and (f) as suggested by UPS.

In the NPRM, the proposed text for the conversion from 50 ml to fluid ounces was 1.69. Consistent with other 50 ml provisions in the HMR we are indicating the conversion at 1.7 ounces.

Section 173.335

Section 173.335 contains requirements for cylinders filled with chemicals under pressure. The 19th Revised Edition of the UN Recommendations includes new instructions in P200 and P206 on how to calculate the filling ratio and test pressure when a liquid phase of a fluid is charged with a compressed gas. PHMSA is revising the requirements of § 173.335 for chemical under pressure n.o.s. to include a reference to § 173.304b, which specifies additional requirements for liquefied compressed gases in UN pressure receptacles. PHMSA is further amending § 173.304b specifically by adding a new paragraph (b)(5) to include these filling and test pressure requirements consistent with the UN Recommendations. See ''Section 173.304b'' for further discussion.

Part 175

Section 175.10

Section 175.10 specifies the conditions for which passengers, crew members, or an operator may carry hazardous materials aboard an aircraft. Paragraph (a)(7) permits the carriage of medical or clinical mercury thermometers, when carried in a protective case in carry-on or checked baggage. Consistent with revisions to the ICAO Technical Instructions, in this final rule, PHMSA is revising paragraph (a)(7) by limiting thermometers containing mercury to checked baggage only. PHMSA received no comments on this proposed amendment and is adopting the changes as proposed in the NPRM.

Section 175.25

Section 175.25 prescribes the notification that operators must provide to passengers regarding restrictions on the types of hazardous material they may or may not carry aboard an aircraft either on their person or in checked or carry-on baggage. Passenger notification of hazardous materials restrictions addresses the potential risks that passengers can introduce on board aircraft. PHMSA's predecessor, the Materials Transportation Bureau, introduced passenger notification requirements in 1980 [Docket No. HM–166B; 45 FR 13087]. Although this section had been previously amended to account for ticket purchase or check-in via the internet, new technological innovations have continued to outpace these provisions. Notwithstanding the several rounds of revisions, the rule remains unduly prescriptive.

The 2017–2018 ICAO Technical Instructions have removed prescriptive requirements concerning the manners in which information concerning dangerous goods that passengers are forbidden to transport must be conveyed to passengers. Specifically, they have done so by removing references to the phrases ''prominently displayed'' and ''in sufficient numbers.'' Additional changes to the ICAO Technical Instructions include removal of prescriptive requirements that the information be in ''text or pictorial form'' when checking in remotely, or ''pictorial form'' when not checking in remotely. ICAO's decision to move to a performance-based requirement will account for changes in technology as well as the unique characteristics of some air carrier operations. ICAO noted that these provisions lagged behind the latest technology and could sometimes hinder the effectiveness and efficiency of notifying passengers about hazardous materials. To account for the utilization of different technologies as well as air carrier specific differences in operating or business practices, ICAO adopted changes that require air carriers to describe their procedures for informing passengers about dangerous goods in their operations manual and/or other appropriate manuals.

PHMSA agrees with this approach and is harmonizing with the amendments made to the ICAO Technical Instructions part 7; 5.1. Harmonization is appropriate not only to account for evolving technologies or air carrier specific conditions, but also because we believe that this amendment will result in a more effective notification to passengers.

Under the revisions to § 175.25, in accordance with 14 CFR parts 121 and 135, air carriers operating under 14 CFR part 121 or 135 will need to describe their procedures in an operations manual and/or other appropriate manuals in accordance with the applicable provisions of 14 CFR. The manual(s) will be required to provide procedures and information necessary to allow personnel to implement and maintain their air carrier's specific passenger notification system. Aside from the manual provisions, all persons engaging in for hire air transportation of passengers will continue to be subject to § 175.25.

PHMSA received a comment from COSTHA stating that existing requirements provide a clear standard to which all air operators are held. Removal of this requirement, while giving air operators flexibility in providing such notification, may lead to various interpretations of what is required for notification. Operational manuals are subject to review and approval by different FAA regions. It is the opinion of the commenter that varying interpretations could lead operators to have different requirements in their operational manuals, thereby putting other operators in different regions at a competitive disadvantage. COSTHA further noted an FAA-sponsored Aviation Rulemaking Committee (ARC) for Passenger Notification of Hazardous Materials Regulations that resulted in a report and draft Advisory Circular (AC) finalized in November 2013. The AC was not issued by the FAA. COSTHA maintained that the recommendations on passenger notification systems contained in the AC are valid and would provide a better option than simply removing the prescriptive text from the HMR. COSTHA requested PHMSA discuss the results of the ARC with FAA before modifying the current language in § 175.25. PHMSA is aware of the recommendations resulting from the ARC meetings. The FAA intends to produce and distribute guidance material to assist operators and the FAA in determining an effective passenger notification system. The FAA will utilize the ARC report recommendations, ICAO Technical Instructions Supplement information, and any other available information in the drafting of the guidance material.

Section 175.33

Section 175.33 establishes requirements for shipping papers and the notification of the pilot-in-command when hazardous materials are transported by aircraft. The pilot notification requirements of part 7; 4.1.1.1 of the ICAO Technical Instructions include an exception for consumer commodities (ID8000) to allow for the average gross mass of the packages to be shown instead of the actual gross mass of each individual package. This exception is limited to consumer commodities offered to the operator by the shipper in a unit load device (ULD). Consistent with the ICAO Technical Instructions packing instruction applicable to consumer commodities (PI Y963), which permits the shipper to show on the shipping paper either the actual gross mass of each package or the average gross mass of all packages in the consignment, the notification to the pilot-in-command requirement for consumer commodities was revised to remove the exception applicability to ULDs only. This exception did not previously exist under the HMR. In this final rule, PHMSA is revising § 175.33(a)(3) by adding the text ''For consumer commodities, the information provided may be either the gross mass of each package or the average gross mass of the packages as shown on the shipping paper.'' This revision aligns the consumer commodity notification of the pilot-in-command requirements in the HMR with the ICAO Technical Instructions. PHMSA received a comment from UPS providing general support for this amendment. See ''Section 172.202'' for related changes in this final rule.

Section 175.75

Section 175.75 prescribes quantity limitation and cargo location requirements for hazardous materials carried aboard passenger-carrying and cargo-only aircraft. PHMSA received comments from Alaska Airlines, COSTHA, UPS, and an anonymous commenter noting impacts on aircraft loading requirements as a result of incorporating new UN identification numbers and proper shipping names for engines and machinery. In accordance with § 175.75(c), an aircraft operator must not load more than 25 kg (55 lbs) of hazardous materials in an inaccessible manner on a passenger-carrying aircraft; however, there is an exception for Class 9 materials. In addition, paragraph (e)(1) excepts Class 9 materials from the 25 kg limitation when loaded in an inaccessible manner aboard cargo-only aircraft. The commenters noted that as a result of separating engines and machinery from the Class 9 entry for vehicles (UN 3166) and creating new hazardous materials table entries in Class 2.1 (UN 3529) and Class 3 (UN 3528), these materials that have historically been excepted from the 25 kg limit when loaded in an inaccessible manner would now be subject to this restriction. The commenters also noted that paragraph (e)(1) excepts Class 3, PG III materials (unless also labeled as a corrosive) from the 25 kg limit; however, the new entry UN 3528 is not assigned to a packing group and therefore not eligible for the exception. COSTHA also commented, ''Aircraft operators routinely ship engines for overhaul and repair. As Class 9 materials, these have been transported safely without incident for years.''

Consistent with the UN Model Regulations, PHMSA is adding to the HMR the new UN identification numbers and proper shipping names for engines and machinery while maintaining the existing transportation requirements and exceptions for engines and machinery for all modes of transportation other than vessel. It was never our intent to subject these articles that have historically received relief from the accessibility requirements of § 175.75 to these requirements. An article with identification numbers UN 3528 or UN 3529—and properly packaged accordance with § 173.220—is excepted from the requirements of § 175.75(c) and (e)(1). In this final rule, we are making clarifying amendments to paragraphs § 175.75(c) and (e)(1) and adding a new provision to Note 1 in paragraph (f), in the QUANTITY AND LOADING TABLE.

Section 175.900

Section 175.900 prescribes the handling requirements for air carriers that transport dry ice. Consistent with the ICAO Technical Instructions, PHMSA is removing the phrase ''other type of pallet'' with regard to packages containing dry ice prepared by a single shipper. See ''Section 173.217'' of this rulemaking for a detailed discussion of the revision.

Part 176

Section 176.83

Section 176.83 prescribes segregation requirements applicable to all cargo spaces on all types of vessels and to all cargo transport units. Paragraph (a)(4)(ii) has several groups of hazardous materials of different classes, which comprise a group of substances that do not react dangerously with each other and that are excepted from the segregation requirements of § 176.83. Consistent with changes made in Amendment 38–16 of the IMDG Code, PHMSA is adding a new group of hazardous materials that do not react dangerously with each other to this paragraph. The following materials are added in a new paragraph (a)(4)(ii)(C): ''UN 3391, Organometallic substance, solid, pyrophoric''; ''UN 3392, Organometallic substance, liquid, pyrophoric''; ''UN 3393, Organometallic substance, solid, pyrophoric, water-reactive''; ''UN 3394, Organometallic substance, liquid, pyrophoric, water-reactive''; ''UN 3395, Organometallic substance, solid, water-reactive''; ''UN 3396, Organometallic substance, solid, water-reactive, flammable''; ''UN 3397, Organometallic substance, solid, water-reactive, self-heating''; ''UN 3398,

Organometallic substance, liquid, water-reactive''; ''UN 3399, Organometallic substance, liquid, water-reactive, flammable''; and ''UN 3400, Organometallic substance, solid, self-heating.''

Section 176.84

Section 176.84 prescribes the meanings and requirements for numbered or alpha-numeric stowage provisions for vessel shipments listed in column (10B) of the § 172.101 HMT. The provisions in § 176.84 are broken down into general stowage provisions, which are defined in the ''table of provisions'' in paragraph (b), and the stowage provisions applicable to vessel shipments of Class 1 explosives, which are defined in the table to paragraph (c)(2). PHMSA is creating a new stowage provision 149 and assigning it to the new UN 3528 engines or machinery powered by internal combustion engine flammable liquid entry. This new stowage provision requires engines or machinery containing fuels with a flash point equal or greater than 23 °C (73.4 °F) to be stowed in accordance with the stowage requirements of stowage Category A. Engines and machinery containing fuels with a flash point less than 23 °C (73.4 °F) are required to comply with the requirements of stowage Category E.

Additionally, consistent with Amendment 38–16 of the IMDG Code, PHMSA is creating a new stowage provision 150 to replace existing stowage provision 129 for ''UN 3323, Radioactive material, low specific activity (LSA–III) *non fissile or fissile excepted.*'' This new stowage provision requires that any material that is classified as UN 3323, which is either uranium metal pyrophoric or thorium metal pyrophoric, be stowed in accordance with stowage Category D requirements.

Section 176.905

Section 176.905 prescribes transportation requirements and exceptions for vessel transportation of motor vehicles and mechanical equipment. PHMSA is revising § 176.905 to update the transport requirements and exceptions for vehicles transported by vessel. These changes are necessary to remove references to machinery (see ''Section 176.906'') and to maintain consistency with changes made in Amendment 38–16 of the IMDG Code.

The changes being made to the transport requirements for vehicles transported by vessel are as follows: [1] In paragraph (a)(2) for flammable liquid powered vehicles, the requirement that flammable liquid must not exceed 250 L (66 gal) unless otherwise approved by the Associate Administrator; [2] in paragraph (a)(4), the authorization to transport vehicles containing prototype or low production run batteries securely installed in vehicles; [3] also in paragraph (a)(4), the requirement that damaged or defective lithium batteries must be removed and transported in accordance with § 173.185(f); and [4] in paragraph (i)(1)(i), the inclusion of text to ensure the lithium batteries in vehicles stowed in a hold or compartment designated by the administration of the country in which the vessel is registered as specially designed and approved for vehicles have successfully passed the tests found in the UN Manual of Tests and Criteria (except for prototypes and low production runs).

Section 176.906

Consistent with changes made in Amendment 38–16 of the IMDG Code, PHMSA is creating a new section § 176.906 to prescribe transportation requirements for engines and machinery. Requirements found in paragraphs (a)–(h) are identical to existing requirements for engines and machinery contained in § 176.905, and their reproduction in this section is made necessary by the splitting of the provisions for engines/machinery and vehicles. Paragraph (i) contains exceptions that are divided into two separate categories: [1] Engines and machinery meeting one of the conditions provided in (i)(1), which are not subject to the requirements of subchapter C of the HMR; and [2] engines and machinery not meeting the conditions provided in (i)(1), which are subject to the requirements found in (i)(2) that prescribe general conditions for transport and varying degrees of hazard communication required for engines and machinery based on the actual fuel contents and capacity of the engine or machinery. IVODGA noted in their comment that § 172.203(i)(2) requires a flashpoint be provided on shipping papers for hazardous materials with a flashpoint at or below 140 °F and requested that PHMSA add a reference to this requirement in paragraph (i)(2)(v) to ensure shippers are aware that they must provide this information. PHMSA believes the requirement is sufficiently clear. The creation of the new Class 3 entries will enhance hazard communication of engines offered for transportation by vessel as well as ensure this flashpoint information is conveyed to carriers.

Tables 7 and 8 provide a summary of the hazard communication requirements for vessel transportation of engines and machinery that are not empty of fuel based on fuel content and capacity. The column titled ''Additional Hazard Communication Requirements'' indicates requirements that will differ from existing hazard communication requirements for engines or machinery.

TABLE 7—LIQUID FUELS CLASS 3 (UN 3528) AND CLASS 9 (UN 3530)

Contents	Capacity	Additional hazard communication requirements
≤60 L	Unlimited	Transport Document.
>60 L	Not more than 450 L	Label, Transport Document.
>60 L	More than 450 L but not more than 3000 L	Labeled on two opposing sides, Transport Document.
>60 L	More than 3000 L	Placarded on two opposing sides, Transport Document.

TABLE 8—GASEOUS FUELS DIVISION 2.1 (UN 3529)

Water Capacity	Additional hazard communication requirements
Not more than 450 L	Label, Transport Document.
More than 450 L but not more than 1000 L	Labeled on two opposing sides, Transport Document.
More than 1000 L	Placarded on two opposing sides, Transport Document.

Part 178

Section 178.71

Section 178.71 prescribes specifications for UN pressure receptacles. Consistent with the UN Model Regulations, PHMSA is amending paragraphs (d)(2), (h), (k)(2), and (l)(1) to reflect the adoption of the latest ISO standards for the design, construction, and testing of gas cylinders and their associated service equipment. Paragraph (l)(1) will require that composite cylinders be designed for a design life of not less than 15 years, as well as that composite cylinders and tubes with a design life longer than 15 years must not be filled after 15 years from the date of manufacture, unless the design has successfully passed a service life test program. The service life test program must be part of the initial design type approval and must specify inspections and tests to demonstrate that cylinders manufactured accordingly remain safe to the end of their design life. The service life test program and the results must be approved by the competent authority of the country of approval that is responsible for the initial approval of the cylinder design. The service life of a composite cylinder or tube must not be extended beyond its initial approved design life. These paragraphs also contain end dates for when the manufacture of cylinders and service equipment is no longer authorized in accordance with the outdated ISO standard.

PHMSA received a comment from Western International Gas Cylinders asking several questions about the requirements for service life test programs. Specifically, they asked: (1) Whether DOT would maintain a database of service life extensions that a requalifier will be able to search or if we plan to mandate the cylinder manufacturers maintain the information; and (2) if DOT will require the manufacturers to post this information on their Web sites. Information concerning service life extensions will be available from both PHMSA and the manufactures.

Additionally, consistent with the UN Model Regulations, PHMSA is revising paragraph (o)(2) to adopt the current ISO standard relating to material compatibility and adding paragraph (g)(4) to adopt the current ISO standard relating to design, construction, and testing of stainless steel cylinders with an Rm value of less than 1,100 MPa.

Finally, paragraphs (q) and (r) are revised to indicate the required markings for composite cylinders and tubes with a limited design life of 15 years or for cylinders and tubes with a design life greater than 15 years, or a non-limited design life.

PHMSA received a comment from Christopher Adams asking if we intended to replace the authorization to use a valve conforming to the requirements in ISO 10297:1999 with the transition date for the use of valves conforming to ISO 10297:2006. PHMSA intentionally left the references to all three ISO 10297 standards to mirror the authorizations shown in the UN Model Regulations. Additionally, PHMSA received comments from Wesley Scott and Western International Gas Cylinders requesting that the current § 178.71(h) prohibition on the use of aluminum alloy 6351–T6 or equivalent be extended to alloy 6082 for cylinders authorized under ISO 7866:1999. The commenters stated that alloy 6082 is known to ISO Working Group 11 and that it develops sustained load cracks similar in manner to those developed when using aluminum alloy 6351–T6. PHMSA is not aware of anyone manufacturing with this particular alloy but will continue to monitor the ongoing work at ISO and consider changes as addressed by the international community.

Section 178.75

Section 178.75 contains specifications for Multiple-element gas containers (MEGCs). Consistent with the UN Model Regulations, PHMSA is renumbering existing paragraph (d)(3)(iv) as (d)(3)(v) and adding a new paragraph (d)(3)(iv) to incorporate ISO 9809–4:2014 for stainless steel cylinders with an Rm value of less than 1,100 MPa.

Section 178.1015

Section 178.1015 prescribes general standards for the use of flexible bulk containers (FBCs). Consistent with changes to the UN Model Regulations, PHMSA is revising paragraph (f) to require that FBCs be fitted with a vent that is designed to prevent the ingress of water in situations where a dangerous accumulation of gases may develop absent such a vent. It is our understanding that only one particular material authorized for transportation in FBCs—UN 3378, Sodium carbonate peroxyhydrate—is known to decompose causing a dangerous accumulation of gas.

Part 180

Section 180.205

Section 180.205 outlines general requirements for requalification of specification cylinders. In the NPRM, PHMSA proposed amending paragraph (c) to require that Transport Canada cylinders be requalified and marked in accordance with the Transport Canada TDG Regulations. CTC Certified Training Co. commented stating that CRC, BTC, and CTC are the same as DOT specification cylinders and should be allowed to be requalified to either the Transport Canada TDG Regulations or under the provisions of the HMR. PHMSA agrees and is amending paragraph (c) to require CRC, BTC, or CTC cylinders be requalified and marked as specified in the Requalification Table in this subpart or requalified and marked by a facility registered by Transport Canada in accordance with the TDG Regulations. Canadian specification cylinders marked solely with TC must be requalified in accordance with the Transport Canada TDG Regulations. Cylinders that are dual marked with both TC and a corresponding DOT specification marking may be requalified to either the Transport Canada TDG Regulations or the provisions of the HMR.

PHMSA received a comment from Christopher Adams noting a typographical error in paragraph (c)(4). Mr. Adams noted that the current HMR text has ''3AXX'' instead of ''3AAX'' and requested PHMSA make this correction. We agree with the commenter that this is a typographical error and are making the suggested change. CTC Training Co. commented stating the TDG Regulations reference CSA B339, which references CGA C–1 (not referenced in the HMR) for the testing of cylinders, and other different versions of CGA pamphlets for visual inspection of cylinders not referenced by the HMR. The commenter further stated that requiring a DOT RIN holder to requalify a cylinder in accordance with the TDG Regulations places an unnecessary financial burden on the retester to purchase all of these differing versions of CGA pamphlets, as well as the challenge to try to determine which version to use for which cylinder they are requalifying. PHMSA notes that while the TDG Regulations do incorporate some cylinder requalification standards that are not in the HMR, there is no requirement for a requalifier to requalify TC cylinders. In fact, in order to begin requalifying TC cylinders, requalifiers will have to register with PHMSA and indicate—among other things—that they have all the necessary standards. This business decision will therefore be made by individual companies.

Section 180.207

Section 180.207 prescribes requirements for requalification of UN

pressure receptacles. Consistent with changes to the UN Model Regulations, PHMSA is revising paragraph (d)(3) to incorporate ISO 10462:2013 concerning requalification of dissolved acetylene cylinders. This paragraph also includes an authorization to requalify acetylene cylinders in accordance with the current ISO standard until December 31, 2018.

Section 180.211

Section 180.211 prescribes requirements for the repair, rebuilding, and reheat treatment of DOT–4 series specification cylinders. In the NPRM preamble, PHMSA clearly indicated an intention to authorize DOT RIN holders to perform repair, rebuilding, and reheat treatment of Canadian cylinders (see ''Section 107.805'' and ''Section 171.12''). However, PHMSA did not specifically propose the authorization of reciprocal treatment to facilities registered in Canada in accordance with the Transport Canada TDG Regulations. In line with the reciprocal treatment provided for requalification of Canadian cylinders, PHMSA is amending paragraph (a) and adding a new paragraph (g) to authorize the repair, rebuilding, and reheat treatment of DOT–4 series specification cylinders by authorized facilities registered in Canada and in accordance with the Transport Canada TDG Regulations.

Section 180.212

Section 180.212 prescribes requirements for the repair of seamless DOT–3 series specification cylinders and seamless UN pressure receptacles. PHMSA is amending paragraph (a)(1)(ii) to authorize repairs of DOT–3series cylinders by a facility registered by Transport Canada in accordance with the Transport Canada TDG Regulations.

Section 180.413

Section 180.413 provides the requirements for the repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks. Currently, § 180.413(a)(1) requires that each repair of a specification cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp and must be made in accordance with the edition of the National Board Inspection Code in effect at the time the work is performed. ''Repair'' is defined in § 180.403 as ''any welding on a cargo tank wall done to return a cargo tank or a cargo tank motor vehicle to its original design and construction specification, or to a condition prescribed for a later equivalent specification in effect at the time of the repair.'' As previously discussed in this final rule, stakeholders participating in the U.S.-Canada RCC identified this requirement as being burdensome to United States carriers who also operate in Canada. In accordance with the Transport Canada TDG Regulations, a facility in Canada can perform a repair on a specification cargo tank if it holds either a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp or a valid Certificate of Authorization from a provincial pressure vessel jurisdiction for repair. The latter authorization becomes problematic for United States carriers requiring the repair of a DOT specification cargo tank while in Canada. Section 180.413 currently only authorizes the repair of a DOT specification cargo tank by a facility holding a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp. If a DOT specification cargo tank is repaired in Canada at a facility holding a Certificate of Authorization from a provincial pressure vessel jurisdiction for repair and not a National Board Certificate of Authorization for use of the National Board ''R'' stamp, the DOT specification of the cargo tank is placed in jeopardy.

Based on this input from RCC stakeholders, PHMSA conducted a comparison of the HMR requirements for the repair of specification cargo tanks and the corresponding requirements of the Transport Canada TDG Regulations. In consultation with FMCSA, PHMSA determined that the requirements for the repair of a specification cargo tank conducted in accordance with the Transport Canada TDG Regulations by a facility in Canada holding a valid Certificate of Authorization from a provincial pressure vessel jurisdiction for repair provide for at least an equivalent level of safety as those provided by the HMR. Further, the Transport Canada TDG Regulations authorize the repair of TC specification cargo tanks by facilities in the U.S. that are registered in accordance with part 107 subpart F.

Accordingly, PHMSA is expanding the authorization for the repair of DOT specification cargo tanks by revising § 180.413(a)(1). Specifically, PHMSA is adding a new paragraph (a)(1)(iii) authorizing a repair, as defined in § 180.403, of a DOT specification cargo tank used for the transportation of hazardous materials in the United States performed by a facility in Canada in accordance with the Transport Canada TDG Regulations, provided the [1] facility holds a valid Certificate of Authorization from a provincial pressure vessel jurisdiction for repair; [2] the facility is registered in accordance with the Transport Canada TDG Regulations to repair the corresponding TC specification; and [3] all repairs are performed using the quality control procedures used to obtain the Certificate of Authorization. PHMSA received a comment from FIBA stating that we are only including an authorization for a Canadian facility that holds a valid Certificate of Authorization from a provincial pressure vessel jurisdiction and not a Canadian facility holding a valid National Board Certificate of Authorization for the use of the National Board ''R'' stamp. FIBA requested that we authorize either type of repair facility. PHMSA notes that the use of the ''R'' Stamp by Canadian facilities is currently authorized in § 180.413(a)(1), and no changes to this authorization were proposed or adopted.

PHMSA is also making an incidental revision to § 180.413(b) to except facilities in Canada that perform a repair in accordance with the new § 180.413(a)(1)(iii) from the requirement that each repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. The Transport Canada TDG Regulations provide requirements for the oversight of welding repairs and do not use the term ''Registered Inspector.''

These provisions would not place any additional financial or reporting burden on U.S. companies. Rather, the enhanced regulatory reciprocity between the United States and Canada as a result of these provisions would provide the companies with additional flexibility and cost savings due to opportunities for obtaining repairs to DOT specification cargo tanks in Canada. PHMSA received a comment of general support for this effort from NTTC.

Section 180.605

Section 180.605 prescribes requirements for the qualification of portable tanks. Consistent with the UN Model Regulations, PHMSA is amending paragraph (g)(1) to require as a part of internal and external examination that the wall thickness must be verified by appropriate measurement if this inspection indicates a reduction of wall thickness. This amendment will require the inspector to verify that the shell thickness is equal to or greater than the minimum shell thickness indicated on the portable tanks metal plate (see § 178.274(i)(1)).

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the statutory authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation (Secretary) to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This final rule amends regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. To this end, the final rule amends the HMR to more fully align with the biennial updates of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions.

Harmonization serves to facilitate international commerce, while also promoting the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment based on its own merit, on its overall impact on transportation safety, and on the economic implications associated with its adoption into the HMR. Our goal is to harmonize internationally without sacrificing the current level of safety or imposing undue burdens on the regulated community. Thus, as explained in the corresponding sections above, we are not harmonizing with certain specific provisions of the UN Model Regulations, the IMDG Code, and the ICAO Technical Instructions. Moreover, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community. The following external agencies were consulted in the development of this rule: Federal Aviation Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, and U.S. Coast Guard.

Section 49 U.S.C. 5120(b) of Federal hazardous materials law authorizes the Secretary to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. The large volume of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. This final rule amends the HMR to maintain alignment with international standards by incorporating various amendments to facilitate the transport of hazardous material in international commerce. To this end, as discussed in detail above, PHMSA is incorporating changes into the HMR based on the 19th Revised Edition of the UN Model Regulations, Amendment 38–16 of the IMDG Code, and the 2017–2018 Edition of the ICAO Technical Instructions, which become effective January 1, 2017 (Amendment 38–16 to the IMDG Code may be voluntarily applied on January 1, 2017; however, the previous amendment remains effective through December 31, 2017).

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' [58 FR 51735 (Oct. 4, 1993)] and therefore was not reviewed by the Office of Management and Budget. Accordingly, this final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation of February 26, 1979. *See* 44 FR 11034. Executive Order 13563, ''Improving Regulation and Regulatory Review,'' supplements and reaffirms Executive Order 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives. *See* 76 FR 3821 (Jan. 21, 2011).

The HM–215N NPRM and the associated RIA (Docket ID: PHMSA–2015–0273) requested stakeholder comments and data on the benefit and cost estimates of the NPRM. While some commenters questioned the benefits and costs of individual provisions, no comments specifically provided data or alternative analysis to change our original analysis of benefits and costs. In addition, PHMSA has not identified additional data or analysis to change the costs and benefits presented in the NPRM and the associated RIA. As a result, PHMSA adopts the benefits and costs presented in the RIA of the NPRM for this final rule. The following table summarizes the benefits and costs as found in the RIA for the following amendments as discussed in detail above: 1. Updates to references in HMT; 2. Revising HMT for polymerizing substances; 3. Amending HMT to update certain proper shipping names, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and vessel stowage requirements; 4. Adding various substances to the list of marine pollutants; 5. Modifying part 173 packaging requirements and authorizations; 6. Amending packaging requirements for vessel transportation of water-reactive substances; 7. Revising hazardous communication requirements for shipments of lithium batteries; and, 8. Recognizing Transport Canada cylinders, certificates of equivalencies, and inspection and repair of cargo tanks.

SUMMARY OF ESTIMATED BENEFITS AND COSTS

Category	Year 1	Each subsequent year
Benefits		
Quantified Benefits:		
Amendment 1	$73.3 million	$73.3 million.
Amendment 8	$693,804–$6,555,234	$693,804–$6,555,234.
Paperwork Reduction Act	$887,635	$887,635.
Non-Quantified Benefits:		
Amendment 2	Potential prevention of fire aboard vessels carrying certain polymerized substances.	Potential prevention of fire aboard vessels carrying certain polymerized substances.

SUMMARY OF ESTIMATED BENEFITS AND COSTS—Continued

Category	Year 1	Each subsequent year
Amendment 3	Allow shippers of polyester resin kits to use one proper shipping name. Standard classification of low-power rocket motors. Benefit to public from placarding uranium hexafluoride toxicity. Appropriate hazard communication for engines and machines with large amounts of fuel.	Allow shippers of polyester resin kits to use one proper shipping name. Standard classification of low-power rocket motors. Benefit to public from placarding uranium hexafluoride toxicity. Appropriate hazard communication for engines and machines with large amounts of fuel.
Amendment 4	Facilitate consistent communication of presence of certain marine pollutants.	Facilitate consistent communication of presence of certain marine pollutants.
Amendment 5	Allow flexibility in packaging for leaking or deteriorated cylinders.	Allow flexibility in packaging for leaking or deteriorated cylinders.
Amendment 6	Reduce risk of fire aboard domestic vessels carrying certain hazardous materials that react dangerously with water.	Reduce risk of fire aboard domestic vessels carrying certain hazardous materials that react dangerously with water.
Amendment 7	Facilitate intermodal movements of certain consignments of lithium batteries packed in or with equipment. Elimination of document for packages of small lithium batteries.	Facilitate intermodal movements of certain consignments of lithium batteries packed in or with equipment. Elimination of document for packages of small lithium batteries.
Total Quantified Benefits	$74,881,439–$80,742,869	$74,881,439–$80,742,869.
Costs		
Quantified Costs:		
Amendment 1	$11,701,506	None.
Amendment 3	$288–$39,312	$288–$39,312.
Amendment 7	None	Up to $4.9 million (beginning with Year 3 due to transition period).
Non-Quantified Costs:		
Amendment 2	Additional costs for temperature control or stabilization of certain polymerized substances.	Additional costs for temperature control or stabilization of certain polymerized substances.
Amendment 3	Additional costs of hazard communication for some large engines containing fuel.	Additional costs of hazard communication for some large engines containing fuel.
Amendment 4	Notation on shipping papers and display of marine pollutant mark on certain international air or vessel transportation of certain quantities of six marine pollutants.	Notation on shipping papers and display of marine pollutant mark on certain international air or vessel transportation of certain quantities of six marine pollutants.
Amendment 5	None	None.
Amendment 6	Require shippers of certain water-reactive substances to use sift-proof or water-resistant packaging when transporting by domestic vessel.	Require shippers of certain water-reactive substances to use sift-proof or water-resistant packaging when transporting by domestic vessel.
Amendment 8	None	None.
Total Quantified Costs	$11,701,794–$11,740,818	$4,900,288–$4,939,312.
Total Quantified Net Benefits	$63,179,645–$69,002,051	$69,981,151–$75,803,557.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism,'' which requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' *See* 64 FR 43255 (Aug. 10, 1999). The regulatory changes in this rule preempt State, local, and Indian tribe requirements but do not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazmat law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (1), (2), (3), (4), and (5) above and preempts State, local, and

Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2017. If the changes are not adopted in the HMR, U.S. companies—including numerous small entities competing in foreign markets—would be at an economic disadvantage because of their need to comply with a dual system of regulations. The changes in this rulemaking are intended to avoid this result. Federal hazmat law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA is setting the effective date of Federal preemption to be 90 days from publication of this final rule.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' which requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect Indian communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Indian tribes. *See* 65 FR 67249 (Nov. 9, 2000). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, upon tribes, and does not affect the relationship or power distribution between the Federal Government and Indian tribes, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. It applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users and suppliers, packaging manufacturers, distributors, and training companies. As previously discussed under ''Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures,'' the majority of amendments in this final rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this final rule will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, we certify that these amendments will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' [67 FR 53461 (Aug. 16, 2002)], as well as DOT's Policies and Procedures, to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Number 2137–0557, ''Approvals for Hazardous Materials,'' and OMB Control Number 2137–0034, ''Hazardous Materials Shipping Papers & Emergency Response Information.'' We anticipate that this final rule will result in an increase in the annual burden for OMB Control Number 2137–0034 due to an increase in the number of applications for modifications to existing holders of DOT-issued RINs. PHMSA is amending § 107.805(f)(2) to allow RIN holders to submit an application containing all the required information prescribed in § 107.705(a); identifying the TC, CTC, CRC, or BTC specification cylinder(s) or tube(s) to be inspected; certifying the requalifier will operate in compliance with the applicable TDG Regulations; and certifying the persons performing requalification have been trained and have the information contained in the TDG Regulations. This application is in addition to any existing application and burden encountered during the initial RIN application.

We anticipate this final rule will result in a decrease in the annual burden and costs of OMB Control Number 2137–0034. This burden and cost decrease is primarily attributable to the removal of the alternative document currently required for lithium cells or batteries offered in accordance with § 173.185(c). Additional increased burdens and costs to OMB Control Number 2137–0034 in this final rule are attributable to a new indication on shipping papers that a shipment of prototype or low production run lithium batteries or cells is in accordance with § 173.185(e)(7) and the addition of new marine pollutant entries.

This rulemaking identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this final rule and estimates the information collection and recordkeeping burdens in this rule are as follows:

OMB Control Number 2137–0557

Annual Increase in Number of Respondents: 3,600.

Annual Increase in Annual Number of Responses: 3,600.

Annual Increase in Annual Burden Hours: 1,800.

Annual Increase in Annual Burden Costs: $63,000.

OMB Control Number 2137–0034

Annual Decrease in Number of Respondents: 972,551.

Annual Decrease in Annual Number of Responses: 9,765,507.

Annual Decrease in Annual Burden Hours: 27,161.

Annual Decrease in Annual Burden Costs: $950,635.

PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of

1995. It does not result in costs of $141.3 million or more, adjusted for inflation, to either State, local, or Tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4375, requires that Federal agencies analyze actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations that implement NEPA (40 CFR parts 1500 through 1508) require Federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) probable environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process.

1. Purpose and Need

This action is necessary to incorporate changes adopted in the IMDG Code, the ICAO Technical Instructions, and the UN Model Regulations, effective January 1, 2017. If the changes in this final rule are not adopted in the HMR by this effective date, U.S. companies—including numerous small entities competing in foreign markets—would be at an economic disadvantage because of their need to comply with a dual system of regulations. The changes to the HMR contained in this rulemaking are intended to avoid this result.

The intended effect of this action is to harmonize the HMR with international transport standards and requirements to the extent practicable in accordance with Federal hazmat law (*see* 49 U.S.C. 5120). When considering the adoption of international standards under the HMR, PHMSA reviews and evaluates each amendment on its own merit, on its overall impact on transportation safety, and on the economic implications associated with its adoption. Our goal is to harmonize internationally without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated public. PHMSA has provided a brief summary of each revision, the justification for the revision, and a preliminary estimate of economic impact.

2. Alternatives

In developing this rulemaking, PHMSA considered the following alternatives:

No Action Alternative

If PHMSA had selected the No Action Alternative, current regulations would remain in place and no new provisions would be added. However, efficiencies gained through harmonization in updates to transport standards, lists of regulated substances, definitions, packagings, stowage requirements/codes, flexibilities allowed, enhanced markings, segregation requirements, etc., would not be realized. Foregone efficiencies in the No Action Alternative include freeing up limited resources to concentrate on vessel transport hazard communication (hazcom) issues of potentially much greater environmental impact. Adopting the No Action Alternative would result in a lost opportunity for reducing environmental and safety-related incidents.

Preferred Alternative

This alternative is the current rule. The amendments included in this alternative are more fully addressed in the preamble and regulatory text sections of this final rule.

3. Probable Environmental Impact of the Alternatives

No Action Alternative

If PHMSA had selected select the No Action Alternative, current regulations would remain in place and no new provisions would be added. However, efficiencies gained through harmonization in updates to transport standards, lists of regulated substances, definitions, packagings, stowage requirements/codes, flexibilities allowed, enhanced markings, segregation requirements, etc., would not be realized. Foregone efficiencies in the No Action Alternative include freeing up limited resources to concentrate on vessel transport hazcom issues of potentially much greater environmental impact.

Additionally, the Preferred Alternative encompasses enhanced and clarified regulatory requirements, which would result in increased compliance and a decreased number of environmental and safety incidents. Not adopting the environmental and safety requirements in the final rule under the No Action Alternative would result in a lost opportunity for reducing environmental and safety-related incidents.

Preferred Alternative

PHMSA selected the preferred alternative. Potential environmental impacts of each proposed amendment in the preferred alternative are discussed as follows:

- *Incorporation by Reference:* PHMSA is updating references to various international hazardous materials transport standards, including the 2017–2018 ICAO Technical Instructions; Amendment 38–16 of the IMDG Code; the 19th Revised Edition of the UN Model Regulations; the 6th Revised Edition of the UN Manual of Tests and Criteria; and the latest amendments to the Canadian TDG Regulations. In addition, PHMSA is adding one new reference and updating eight other references to standards applicable to the manufacture, use, and requalification of pressure vessels published by the International Organization for Standardization.

The HMR authorize shipments prepared in accordance with the ICAO Technical Instructions and by motor vehicle either before or after being transported by aircraft. Similarly, the HMR authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel. The authorizations to use the ICAO Technical Instructions and the IMDG Code are subject to certain conditions and limitations outlined in part 171 subpart C.

- *Hazardous Materials Table (HMT):* PHMSA is adopting amendments to the HMT to add, revise, or remove certain proper shipping names, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and vessel stowage requirements. Amendments to HMT proper shipping names include: assigning the existing ''Engines, internal combustion'' entries to their own new UN numbers and provisions; amending existing ''Uranium Hexafluoride'' entries to include a new Division 6.1 subsidiary hazard class designation; adding a new entry for ''Polyester resin kit, solid base material; and adding a Division 1.4C new entry for ''Rocket motors.'' Additionally, we are adding and revising special provisions, large packaging authorizations, and IBC authorizations consistent with the UN Model Regulations to provide a wider range of packaging options to shippers of hazardous materials.

New and revised entries to the HMT reflect emerging technologies and a need to better describe or differentiate between existing entries. These changes mirror those made to the Dangerous Goods List of the 19th Revised Edition of the UN Model Regulations, the 2017–2018 ICAO Technical Instructions, and Amendment 38–16 of the IMDG Code. It is extremely important for the domestic HMR to mirror these international standards regarding the entries in the HMT to allow for consistent naming

conventions across modes and international borders.

Inclusion of entries in the HMT reflects a degree of danger associated with a particular material and identifies appropriate packaging. This change provides a level of consistency for all articles specifically listed in the HMT, without diminishing environmental protection and safety.

• *Provisions for Polymerizing Substances:* Consistent with amendments adopted into the UN Model Regulations, PHMSA is revising the HMT in § 172.101 to include four new Division 4.1 entries for polymerizing substances. Additionally, we are adding into the HMR defining criteria, authorized packagings, and safety requirements including, but not limited to, stabilization methods and operational controls.

New and revised entries to the HMT reflect emerging technologies and a need to better describe or differentiate between existing entries. These changes mirror those made to the Dangerous Goods List of the 19th Revised Edition of the UN Model Regulations, the 2017–2018 ICAO Technical Instructions, and Amendment 38–16 of the IMDG Code. It is extremely important for the domestic HMR to mirror these international standards regarding the entries in the HMT to allow for consistent naming conventions across modes and international borders.

Inclusion of entries in the HMT reflects a degree of danger associated with a particular material and identifies appropriate packaging. This change provides a level of consistency for all articles specifically listed in the HMT, without diminishing environmental protection and safety.

• *Modification of the Marine Pollutant List:* PHMSA is adding the following substances to the list of marine pollutants in appendix B to § 172.101: Hypochlorite solutions; Isoprene, stabilized; N-Methylaniline; Methylcyclohexane; and Tripropylene. These additions are based on the criteria contained in the IMDG Code for substances classified as toxic to the aquatic environment. The HMR maintain a list as the basis for regulating substances toxic to the aquatic environment and allow use of the criteria in the IMDG Code if a listed material does not meet the criteria for a marine pollutant. PHMSA periodically updates this list based on changes to the IMDG Code and evaluation of listed materials against the IMDG Code criteria. Amending the marine pollutant list facilitates consistent communication of the presence of marine pollutants, as well as safe and efficient transportation, without imposing significant burden associated with characterizing mixtures as marine pollutants.

• *Packaging Revisions:* These changes include design, construction, and performance testing criteria of composite reinforced tubes between 450 L and 3,000 L water capacity.

These amendments permit additional flexibility for authorized packages without compromising environmental protection or safety. Manufacturing and performance standards for gas pressure receptacles strengthen the packaging without being overly prescriptive. Increased flexibility will also add to environmental protection by increasing the ease of regulatory compliance.

• *Packaging Requirements for Water-Reactive Materials Transported by Vessel:* PHMSA is adopting various amendments to packaging requirements for the vessel transportation of water-reactive substances. The amendments include requiring certain commodities to have hermetically sealed packaging and requiring other commodities—when packed in flexible, fiberboard, or wooden packagings—to have sift-proof and water-resistant packaging or packaging fitted with a sift-proof and water-resistant liner. This amendment reduces the risk of fire on board cargo vessels carrying hazardous materials that can react dangerously with the ship's available water and carbon dioxide fire extinguishing systems.

PHMSA is amending the packaging requirements for vessel transportation of hazardous materials that react with water or moisture to generate excessive heat or release toxic or flammable gases. Common causes for water entering into the container are: Water entering through ventilation or structural flaws in the container; water entering into the containers placed on deck or in the hold in heavy seas; and water entering into the cargo space upon a ship collision or leak. If water has already entered the container, the packaging is the only protection from the fire. In this final rule, PHMSA is strengthening the ability of these packages transporting water-reactive substances. This amendment will allow for a net increase in environmental protection and safety by keeping reactive substances in their packages, thus preventing release and damage to human health and the natural environment.

• *Hazard Communication Requirements for Lithium Batteries:* PHMSA is revising hazard communication requirements for shipments of lithium batteries. Specifically, PHMSA is: Adopting a new lithium battery label in place of the existing Class 9 label; amending the existing marking requirements for small lithium battery shipments in § 173.185(c) to incorporate a new standard lithium battery mark for use across all modes; deleting the documentation requirement in § 173.185(c) for shipments of small lithium cells and batteries; and amending the exception for small lithium cells and batteries requiring the lithium battery mark from the current applicability of ''no more than four lithium cells or two lithium batteries installed in the equipment'' to ''no more than four lithium cells or two lithium batteries installed in equipment, where there are not more than two packages in the consignment.''

Greenhouse gas emissions would remain the same under this amendment.

• *U.S.-Canada Regulatory Cooperation Council (RCC) Amendments:* PHMSA is making amendments to the HMR resulting from coordination with Canada under the U.S.-Canada RCC. We are adopting provisions for recognition of TC cylinders, equivalency certificates, and inspection and repair of cargo tanks. The additions intend to provide reciprocal treatment of DOT Special Permits and TC equivalency certificates, DOT cylinders and TC cylinders, and cargo tank repair capabilities in both countries. Amending the HMR facilitates consistent communication for substances transported by cylinders and cargo tanks, thus decreasing not only incident response time, but the number and severity of environmental and safety incidents. The action is consistent with concurrent actions by Transport Canada to amend the TDG Regulations.

4. Agencies Consulted

PHMSA has coordinated with the U.S. Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, and the U.S. Coast Guard, in the development of this final rule. PHMSA has considered the views expressed in comments to the NPRM.

5. Conclusion

The provisions of this final rule build on current regulatory requirements to enhance the transportation safety and security of shipments of hazardous materials transported by highway, rail, aircraft, and vessel, thereby reducing the risks of an accidental or intentional release of hazardous materials and consequent environmental damage. PHMSA concludes that the net environmental impact will be positive and that there are no significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.dot.gov/privacy.html*.

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, ''Promoting International Regulatory Cooperation'', agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. *See* 77 FR 26413 (May 4, 2012). In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public. PHMSA has assessed the effects of this rulemaking and determined that it does not cause unnecessary obstacles to foreign trade. In fact, the rule is designed to facilitate international trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This final rule involves multiple voluntary consensus standards which are discussed at length in the ''Section-by-Section Review'' for § 171.7.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Incorporation by reference, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 176

Maritime carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA amends 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

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

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 2. In § 107.502, paragraph (b) is revised to read as follows:

§ 107.502 General registration requirements.

* * * * *

(b) No person may engage in the manufacture, assembly, certification, inspection or repair of a cargo tank or cargo tank motor vehicle manufactured under the terms of a DOT specification under subchapter C of this chapter or a special permit issued under this part unless the person is registered with the Department in accordance with the provisions of this subpart. A person employed as an inspector or design certifying engineer is considered to be registered if the person's employer is registered. The requirements of this paragraph (b) do not apply to a person engaged in the repair of a DOT specification cargo tank used in the transportation of hazardous materials in the United States in accordance with § 180.413(a)(1)(iii) of this chapter.

* * * * *

■ 3. In § 107.801, paragraph (a)(2) is revised to read as follows:

§ 107.801 Purpose and scope.

(a) * * *

(2) A person who seeks approval to engage in the requalification (*e.g.* inspection, testing, or certification), rebuilding, or repair of a cylinder manufactured in accordance with a DOT specification or a pressure receptacle in accordance with a UN standard under subchapter C of this chapter or under the terms of a special permit issued

under this part, or a cylinder or tube manufactured in accordance with a TC, CTC, CRC, or BTC specification under the Transport Canada TDG Regulations (IBR; *see* § 171.7 of this chapter);

* * * * *

■ 4. In § 107.805, paragraphs (a), (c)(2), (d), and (f) are revised to read as follows:

§ 107.805 Approval of cylinder and pressure receptacle requalifiers.

(a) *General.* A person must meet the requirements of this section to be approved to inspect, test, certify, repair, or rebuild a cylinder in accordance with a DOT specification or a UN pressure receptacle under subpart C of part 178 or subpart C of part 180 of this chapter, or under the terms of a special permit issued under this part, or a TC, CTC, CRC, or BTC specification cylinder or tube manufactured in accordance with the TDG Regulations (IBR, see § 171.7 of this chapter).

* * * * *

(c) * * *

(2) The types of DOT specification or special permit cylinders, UN pressure receptacles, or TC, CTC, CRC, or BTC specification cylinders or tubes that will be inspected, tested, repaired, or rebuilt at the facility;

* * * * *

(d) *Issuance of requalifier identification number (RIN).* The Associate Administrator issues a RIN as evidence of approval to requalify DOT specification or special permit cylinders, or TC, CTC, CRC, or BTC specification cylinders or tubes, or UN pressure receptacles if it is determined, based on the applicant's submission and other available information, that the applicant's qualifications and, when applicable, facility are adequate to perform the requested functions in accordance with the criteria prescribed in subpart C of part 180 of this subchapter or TDG Regulations, as applicable.

* * * * *

(f) *Exceptions.* The requirements in paragraphs (b) and (c) of this section do not apply to:

(1) A person who only performs inspections in accordance with § 180.209(g) of this chapter provided the application contains the following, in addition to the information prescribed in § 107.705(a): Identifies the DOT specification/special permit cylinders to be inspected; certifies the requalifier will operate in compliance with the applicable requirements of subchapter C of this chapter; certifies the persons performing inspections have been trained and have the information contained in each applicable CGA publication incorporated by reference in § 171.7 of this chapter applicable to the requalifiers' activities; and includes the signature of the person making the certification and the date on which it was signed. Each person must comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart; or

(2) A person holding a DOT-issued RIN to perform the requalification (inspect, test, certify), repair, or rebuild of DOT specification cylinders, that wishes to perform any of these actions on corresponding TC, CTC, CRC, or BTC cylinders or tubes may submit an application that, in addition to the information prescribed in § 107.705(a): Identifies the TC, CTC, CRC, or BTC specification cylinder(s) or tube(s) to be inspected; certifies the requalifier will operate in compliance with the applicable TDG Regulations; certifies the persons performing requalification have been trained in the functions applicable to the requalifiers' activities; and includes the signature of the person making the certification and the date on which it was signed. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart.

(3) A person holding a certificate of registration issued by Transport Canada in accordance with the TDG Regulations to perform the requalification (inspect, test, certify), repair, or rebuild of a TC, CTC, CRC, or BTC cylinder who performs any of these actions on corresponding DOT specification cylinders.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 5. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 6. In § 171.2, paragraph (h)(1) is revised to read as follows:

§ 171.2 General requirements.

* * * * *

(h) * * *

(1) Specification identifications that include the letters ''ICC'', ''DOT'', ''TC'', ''CTC'', ''CRC'', ''BTC'', ''MC'', or ''UN'';

* * * * *

■ 7. In § 171.7:

■ a. Revise paragraphs (a)(1), (h)(44), (t), (v) introductory text, (v)(2), (w), (bb) introductory text, and (bb)(1) introductory text;

■ b, Add paragraphs (bb)(1)(xiii) through (xix); and

■ c. Revise paragraphs (dd).

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference*—(1) *General.* Certain material is incorporated by reference into subchapters A, B, and C with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, PHMSA must publish a document in the **Federal Register** and the material must be available to the public. Matters referenced by footnote are included as part of the regulations of this subchapter.

* * * * *

(h) * * *

(44) ASTM D 4359–90 Standard Test Method for Determining Whether a Material is a Liquid or a Solid, 1990 into §§ 130.5, 171.8.

* * * * *

(t) *International Civil Aviation Organization (''ICAO''),* 999 Robert-Bourassa Boulevard, Montréal, Quebec H3C 5H7, Canada, 1–514–954–8219, *http://www.icao.int.* ICAO Technical Instructions available from: ICAO Document Sales Unit, *sales@icao.int.*

(1) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2017–2018 Edition, copyright 2016, into §§ 171.8; 171.22; 171.23; 171.24; 172.101; 172.202; 172.401; 172.512; 172.519; 172.602; 173.56; 173.320; 175.10, 175.33; 178.3.

(2) [Reserved]

* * * * *

(v) *International Maritime Organization (''IMO''),* 4 Albert Embankment, London, SE1 7SR, United Kingdom, + 44 (0) 20 7735 7611, *http://www.imo.org.* IMDG Code available from: IMO Publishing, *sales@imo.org.*

* * * * *

(2) International Maritime Dangerous Goods Code (IMDG Code), Incorporating Amendment 38–16 (English Edition), 2016 Edition, into §§ 171.22; 171.23; 171.25; 172.101; 172.202; 172.203 172.401; 172.502; 172.519; 172.602; 173.21; 173.56; 176.2; 176.5; 176.11; 176.27; 176.30; 176.83; 176.84; 176.140; 176.720; 176.906; 178.3; 178.274.

(w) *International Organization for Standardization,* Case Postale 56, CH–1211, Geneve 20, Switzerland, *http://*

www.iso.org. Also available from: ANSI 25, West 43rd Street, New York, NY 10036, 1–212–642–4900, *http://www.ansi.org*.

(1) ISO 535–1991(E) Paper and board—Determination of water absorptiveness—Cobb method, 1991, into §§ 178.707; 178.708; 178.516.

(2) ISO 1496–1: 1990 (E)—Series 1 freight containers—Specification and testing, Part 1: General cargo containers. Fifth Edition, (August 15, 1990), into § 173.411.

(3) ISO 1496–3(E)—Series 1 freight containers—Specification and testing—Part 3: Tank containers for liquids, gases and pressurized dry bulk, Fourth edition, March 1995, into §§ 178.74; 178.75; 178.274.

(4) ISO 1516:2002(E), Determination of flash/no flash—Closed cup equilibrium method, Third Edition, 2002–03–01, into § 173.120.

(5) ISO 1523:2002(E), Determination of flash point—Closed cup equilibrium method, Third Edition, 2002–03–01, into § 173.120.

(6) ISO 2431–1984(E) Standard Cup Method, 1984, into § 173.121.

(7) ISO 2592:2000(E), Determination of flash and fire points—Cleveland open cup method, Second Edition, 2000–09–15, into § 173.120.

(8) ISO 2719:2002(E), Determination of flash point—Pensky-Martens closed cup method, Third Edition, 2002–11–15, into § 173.120.

(9) ISO 2919:1999(E), Radiation Protection—Sealed radioactive sources—General requirements and classification, (ISO 2919), second edition, February 15, 1999, into § 173.469.

(10) ISO 3036–1975(E) Board—Determination of puncture resistance, 1975, into § 178.708.

(11) ISO 3405:2000(E), Petroleum products—Determination of distillation characteristics at atmospheric pressure, Third Edition, 2000–03–01, into § 173.121.

(12) ISO 3574–1986(E) Cold-reduced carbon steel sheet of commercial and drawing qualities, into § 178.503; part 178, appendix C.

(13) ISO 3679:2004(E), Determination of flash point—Rapid equilibrium closed cup method, Third Edition, 2004–04–01, into § 173.120.

(14) ISO 3680:2004(E), Determination of flash/no flash—Rapid equilibrium closed cup method, Fourth Edition, 2004–04–01, into § 173.120.

(15) ISO 3807–2(E), Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs, First edition, March 2000, into §§ 173.303; 178.71.

(16) ISO 3807:2013(E), Gas cylinders—Acetylene cylinders—Basic requirements and type testing, Second edition, 2013–09–01, into §§ 173.303; 178.71.

(17) ISO 3924:1999(E), Petroleum products—Determination of boiling range distribution—Gas chromatography method, Second Edition, 1999–08–01, into § 173.121.

(18) ISO 4126–1:2004(E): Safety devices for protection against excessive pressure—Part 1: Safety valves, Second edition 2004–02–15, into § 178.274.

(19) ISO 4126–7:2004(E): Safety devices for protection against excessive pressure—Part 7: Common data, First Edition 2004–02–15 into § 178.274.

(20) ISO 4126–7:2004/Cor.1:2006(E): Safety devices for protection against excessive pressure—Part 7: Common data, Technical Corrigendum 1, 2006–11–01, into § 178.274.

(21) ISO 4626:1980(E), Volatile organic liquids—Determination of boiling range of organic solvents used as raw materials, First Edition, 1980–03–01, into § 173.121.

(22) ISO 4706:2008(E), Gas cylinders—Refillable welded steel cylinders—Test pressure 60 bar and below, First Edition, 2008–07–014, Corrected Version, 2008–07–01, into § 178.71.

(23) ISO 6406(E), Gas cylinders—Seamless steel gas cylinders—Periodic inspection and testing, Second edition, February 2005, into § 180.207.

(24) ISO 6892 Metallic materials—Tensile testing, July 15, 1984, First Edition, into § 178.274.

(25) ISO 7225(E), Gas cylinders—Precautionary labels, Second Edition, July 2005, into § 178.71.

(26) ISO 7866(E), Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing, First edition, June 1999, into § 178.71.

(27) ISO 7866:2012(E), Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing, Second edition, 2012–09–01, into § 178.71.

(28) ISO 7866:2012/Cor.1:2014(E), Gas cylinders — Refillable seamless aluminium alloy gas cylinders — Design, construction and testing, Technical Corrigendum 1, 2014–04–15, into § 178.71.

(29) ISO 8115 Cotton bales—Dimensions and density, 1986 Edition, into § 172.102.

(30) ISO 9809–1:1999(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa., First edition, June 1999, into §§ 178.37; 178.71; 178.75.

(31) ISO 9809–1:2010(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1 100 MPa., Second edition, 2010–04–15, into §§ 178.37; 178.71; 178.75.

(32) ISO 9809–2:2000(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1 100 MPa., First edition, June 2000, into §§ 178.71; 178.75.

(33) ISO 9809–2:2010(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa., Second edition, 2010–04–15, into §§ 178.71; 178.75.

(34) ISO 9809–3:2000(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, First edition, December 2000, into §§ 178.71; 178.75.

(35) ISO 9809–3:2010(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, Second edition, 2010–04–15, into §§ 178.71; 178.75.

(36) ISO 9809–4:2014(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa, First edition, 2014–07–15, into §§ 178.71; 178.75.

(37) ISO 9978:1992(E)—Radiation protection—Sealed radioactive sources—Leakage test methods. First Edition, (February 15, 1992), into § 173.469.

(38) ISO 10156:2010(E): Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Third edition, 2010–04–01, into § 173.115.

(39) ISO 10156:2010/Cor.1:2010(E): Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Technical Corrigendum 1, 2010–09–01, into § 173.115.

(40) ISO 10297:1999(E), Gas cylinders—Refillable gas cylinder valves—Specification and type testing, First Edition, 1995–05–01, into §§ 173.301b; 178.71.

(41) ISO 10297:2006(E), Transportable gas cylinders—Cylinder valves—Specification and type testing, Second Edition, 2006–01–15, into §§ 173.301b; 178.71.

(42) ISO 10297:2014(E), Gas cylinders—Cylinder valves—Specification and type testing, Third Edition, 20014–07–15, into §§ 173.301b; 178.71.

(43) ISO 10461:2005(E), Gas cylinders—Seamless aluminum-alloy gas cylinders—Periodic inspection and testing, Second Edition, 2005–02–15 and Amendment 1, 2006–07–15, into § 180.207.

(44) ISO 10462 (E), Gas cylinders—Transportable cylinders for dissolved acetylene—Periodic inspection and maintenance, Second edition, February 2005, into § 180.207.

(45) ISO 10462:2013(E), Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance, Third edition, 2013–12–15, into § 180.207.

(46) ISO 10692–2:2001(E), Gas cylinders—Gas cylinder valve connections for use in the micro-electronics industry—Part 2: Specification and type testing for valve to cylinder connections, First Edition, 2001–08–01, into §§ 173.40; 173.302c.

(47) ISO 11114–1:2012(E), Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials, Second edition, 2012–03–15, into §§ 172.102; 173.301b; 178.71.

(48) ISO 11114–2:2013(E), Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials, Second edition, 2013–04–01, into §§ 173.301b; 178.71.

(49) ISO 11117:1998(E): Gas cylinders—Valve protection caps and valve guards for industrial and medical gas cylinders.—Design, construction and tests, First edition, 1998–08–01, into § 173.301b.

(50) ISO 11117:2008(E): Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, Second edition, 2008–09–01, into § 173.301b.

(51) ISO 11117:2008/Cor.1:2009(E): Gas cylinders—Valve protection caps and valve guards—Design, construction and tests, Technical Corrigendum 1, 2009–05–01, into § 173.301b.

(52) ISO 11118(E), Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, First edition, October 1999, into § 178.71.

(53) ISO 11119–1(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop-wrapped composite gas cylinders, First edition, May 2002, into § 178.71.

(54) ISO 11119–1:2012(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing— Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l, Second edition, 2012–08–01, into § 178.71.

(55) ISO 11119–2(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 2: Fully wrapped fibre reinforced composite gas cylinders with load-sharing metal liners, First edition, May 2002, into § 178.71.

(56) ISO 11119–2:2012(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Second edition, 2012–07–15, into § 178.71.

(57) ISO 11119–2:2012/Amd.1:2014(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Amendment 1, 2014–08–15, into § 178.71.

(58) ISO 11119–3(E), Gas cylinders of composite construction—Specification and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders with non-load-sharing metallic or non-metallic liners, First edition, September 2002, into § 178.71.

(59) ISO 11119–3:2013(E), Gas cylinders— Refillable composite gas cylinders and tubes—Design, construction and testing—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners, Second edition, 2013–04–15, into § 178.71.

(60) ISO 11120(E), Gas cylinders—Refillable seamless steel tubes of water capacity between 150 L and 3000 L—Design, construction and testing, First edition, March 1999, into §§ 178.71; 178.75.

(61) ISO 11513:2011(E), Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use and periodic inspection, First edition, 2011–09–12, into §§ 173.302c; 178.71; 180.207.

(62) ISO 11621(E), Gas cylinders—Procedures for change of gas service, First edition, April 1997, into §§ 173.302, 173.336, 173.337.

(63) ISO 11623(E), Transportable gas cylinders—Periodic inspection and testing of composite gas cylinders, First edition, March 2002, into § 180.207.

(64) ISO 13340:2001(E) Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, First edition, 2004–04–01, into §§ 173.301b; 178.71.

(65) ISO 13736:2008(E), Determination of flash point—Abel closed-cup method, Second Edition, 2008–09–15, into § 173.120.

(66) ISO 16111:2008(E), Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride, First Edition, 2008–11–15, into §§ 173.301b; 173.311; 178.71.

(67) ISO 18172–1:2007(E), Gas cylinders—Refillable welded stainless steel cylinders—Part 1: Test pressure 6 MPa and below, First Edition, 2007–03–01, into § 178.71.

(68) ISO 20703:2006(E), Gas cylinders—Refillable welded aluminum-alloy cylinders—Design, construction and testing, First Edition, 2006–05–01, into § 178.71.

* * * * *

(bb) *Transport Canada,* Transport Dangerous Goods. Mailstop: ASD 330 Sparks Street, Ottawa, Ontario, Canada K1A 0N5, 416–973–1868, *http://www.tc.gc.ca*.

(1) Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), into §§ 107.801; 107.805; 171.12; 171.22; 171.23; 172.401; 172.502; 172.519; 172.602; 173.31; 173.32; 173.33; 173.301; 180.205; 180.211; 180.212; 180.413.

* * * * *

(xiii) SOR/2014–152 July 2, 2014.

(xiv) SOR/2014–159 July 2, 2014.

(xv) SOR/2014–159 Erratum July 16, 2014.

(xvi) SOR/2014–152 Erratum August 27, 2014.

(xvii) SOR/2014–306 December 31, 2014.

(xviii) SOR/2014–306 Erratum January 28, 2015.

(xix) SOR/2015–100 May 20, 2015.

* * * * *

(dd) *United Nations,* Bookshop, GA–1B–103, New York, NY 10017, 1–212–963–7680, *https://shop.un.org* or *bookshop@un.org.*

(1) UN Recommendations on the Transport of Dangerous Goods, Model Regulations (UN Recommendations), 19th revised edition, Volumes I and II (2015), into §§ 171.8; 171.12; 172.202; 172.401; 172.407; 172.502; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.302b; 173.304b; 178.75; 178.274.

(2) UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, (Manual of Tests and Criteria), Sixth revised edition (2015), into §§ 171.24, 172.102; 173.21; 173.56; 173.57; 173.58; 173.60; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.185; 173.220; 173.221;

173.225, part 173, appendix H; 176.905; 178.274.

(3) UN Recommendations on the Transport of Dangerous Goods, Globally Harmonized System of Classification and Labelling of Chemicals (GHS), Sixth revised edition (2015), into § 172.401.

* * * * *

■ 8. In § 171.8:

■ a. Revise the definition of ''Aerosol'';

■ b. Add a definition for ''Design life'' in alphabetical order;

■ c. Revise the definition of ''Large salvage packaging'';

■ d. Add definitions for ''SAPT'' and ''Service life'' in alphabetical order; and

■ e. Revise the definition of ''UN tube.''

The revisions and additions read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Aerosol means an article consisting of any non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

* * * * *

Design life, for composite cylinders and tubes, means the maximum life (in number of years) to which the cylinder or tube is designed and approved in accordance with the applicable standard.

* * * * *

Large salvage packaging means a special packaging into which damaged, defective, leaking or non-conforming hazardous materials packages, or hazardous materials that have spilled or leaked are placed for the purpose of transport for recovery or disposal, that—

(1) Is designed for mechanical handling; and

(2) Has a net mass greater than 400 kg (882 pounds) or a capacity of greater than 450 L (119 gallons), but has a volume of not more than 3 cubic meters (106 cubic feet).

* * * * *

SAPT means self-accelerated polymerization temperature. See § 173.21(f) of this subchapter. This definition will be effective until January 2, 2019.

* * * * *

Service life, for composite cylinders and tubes, means the number of years the cylinder or tube is permitted to be in service.

* * * * *

UN tube means a transportable pressure receptacle of seamless or composite construction having with a water capacity exceeding 150 L (39.6 gallons) but not more than 3,000 L (792.5 gallons) that has been marked and certified as conforming to the requirements in part 178 of this subchapter.

* * * * *

■ 9. In § 171.12, paragraphs (a)(1) and (4) are revised to read as follows:

§ 171.12 North American Shipments.

(a) * * *

(1) A hazardous material transported from Canada to the United States, from the United States to Canada, or transiting the United States to Canada or a foreign destination may be offered for transportation or transported by motor carrier and rail in accordance with the Transport Canada TDG Regulations (IBR, *see* § 171.7) or an equivalency certificate (permit for equivalent level of safety) issued under the TDG Regulations, as authorized in § 171.22, provided the requirements in §§ 171.22 and 171.23, as applicable, and this section are met. In addition, a cylinder, MEGC, cargo tank motor vehicle, portable tank or rail tank car authorized by the Transport Canada TDG Regulations may be used for transportation to, from, or within the United States provided the cylinder, MEGC, cargo tank motor vehicle, portable tank or rail tank car conforms to the applicable requirements of this section. Except as otherwise provided in this subpart and subpart C of this part, the requirements in parts 172, 173, and 178 of this subchapter do not apply for a material transported in accordance with the Transport Canada TDG Regulations.

* * * * *

(4) *Cylinders and MEGCs.* When the provisions of this subchapter require that a DOT specification or a UN pressure receptacle must be used for a hazardous material, a packaging authorized by the Transport Canada TDG Regulations may be used only if it corresponds to the DOT specification or UN standard authorized by this subchapter. Unless otherwise excepted in this subchapter, a cylinder (including a UN pressure receptacle) or MEGC may not be transported unless—

(i) The packaging is a UN pressure receptacle or MEGC marked with the letters ''CAN'' for Canada as a country of manufacture or a country of approval or is a cylinder that was manufactured, inspected and tested in accordance with a DOT specification or a UN standard prescribed in part 178 of this subchapter, except that cylinders not conforming to these requirements must meet the requirements in § 171.23. Each cylinder must conform to the applicable requirements in part 173 of this subchapter for the hazardous material involved.

(ii) A Canadian Railway Commission (CRC), Board of Transport Commissioners for Canada (BTC), Canadian Transport Commission (CTC) or Transport Canada (TC) specification cylinder manufactured, originally marked, and approved in accordance with the TDG Regulations, and in full conformance with the TDG Regulations is authorized for transportation to, from or within the United States provided:

(A) The CRC, BTC, CTC or TC specification cylinder corresponds with a DOT specification cylinder and the markings are the same as those specified in this subchapter, except that the original markings were ''CRC'', ''BTC'', ''CTC'', or ''TC'';

(B) The cylinder has been requalified under a program authorized by the TDG Regulations or subpart I of part 107 of this chapter;

(C) When the regulations authorize a cylinder for a specific hazardous material with a specification marking prefix of ''DOT,'' a cylinder marked ''CRC'', ''BTC'', ''CTC'', or ''TC'' otherwise bearing the same markings required of the specified ''DOT'' cylinder may be used; and

(D) Transport of the cylinder and the material it contains is in all other respects in conformance with the requirements of this subchapter (*e.g.* valve protection, filling requirements, operational requirements, etc.).

(iii) Authorized CRC, BTC, CTC or TC specification cylinders that correspond with a DOT specification cylinder are as follows:

TC	DOT (some or all of these specifications may instead be marked with the prefix ICC)	CTC (some or all of these specifications may instead be marked with the prefix BTC or CRC)
TC–3AM	DOT–3A [ICC–3]	CTC–3A

TC	DOT (some or all of these specifications may instead be marked with the prefix ICC)	CTC (some or all of these specifications may instead be marked with the prefix BTC or CRC)
TC–3AAM	DOT–3AA	CTC–3AA
TC–3ANM	DOT–3BN	CTC–3BN
TC–3EM	DOT–3E	CTC–3E
TC–3HTM	DOT–3HT	CTC–3HT
TC–3ALM	DOT–3AL	CTC–3AL
	DOT–3B	CTC–3B
TC–3AXM	DOT–3AX	CTC–3AX
TC–3AAXM	DOT–3AAX	CTC–3AAX
	DOT–3A480X	CTC–3A480X
TC–3TM	DOT–3T	
TC–4AAM33	DOT–4AA480	CTC–4AA480
TC–4BM	DOT–4B	CTC–4B
TC–4BM17ET	DOT–4B240ET	CTC–4B240ET
TC–4BAM	DOT–4BA	CTC–4BA
TC–4BWM	DOT–4BW	CTC–4BW
TC–4DM	DOT–4D	CTC–4D
TC–4DAM	DOT–4DA	CTC–4DA
TC–4DSM	DOT–4DS	CTC–4DS
TC–4EM	DOT–4E	CTC–4E
TC–39M	DOT–39	CTC–39
TC–4LM	DOT–4L	CTC–4L
	DOT–8	CTC–8
	DOT–8AL	CTC–8AL

* * * * *

■ 10. In § 171.23, paragraph (a) is revised to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(a) *Conditions and requirements for cylinders.* (1) Except as provided in this paragraph (a), a filled cylinder (pressure receptacle) manufactured to other than a DOT specification or a UN standard in accordance with part 178 of this subchapter, a DOT exemption or special permit cylinder, a TC, CTC, CRC, or BTC cylinder authorized under § 171.12, or a cylinder used as a fire extinguisher in conformance with § 173.309(a) of this subchapter, may not be transported to, from, or within the United States.

(2) Cylinders (including UN pressure receptacles) transported to, from, or within the United States must conform to the applicable requirements of this subchapter. Unless otherwise excepted in this subchapter, a cylinder must not be transported unless—

(i) The cylinder is manufactured, inspected and tested in accordance with a DOT specification or a UN standard prescribed in part 178 of this subchapter, or a TC, CTC, CRC, or BTC specification set out in the Transport Canada TDG Regulations (IBR, see § 171.7), except that cylinders not conforming to these requirements must meet the requirements in paragraph (a)(3), (4), or (5) of this section;

(ii) The cylinder is equipped with a pressure relief device in accordance with § 173.301(f) of this subchapter and conforms to the applicable requirements in part 173 of this subchapter for the hazardous material involved;

(iii) The openings on an aluminum cylinder in oxygen service conform to the requirements of this paragraph, except when the cylinder is used for aircraft parts or used aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. An aluminum DOT specification cylinder must have an opening configured with straight (parallel) threads. A UN pressure receptacle may have straight (parallel) or tapered threads provided the UN pressure receptacle is marked with the thread type, *e.g.* ''17E, 25E, 18P, or 25P'' and fitted with the properly marked valve; and

(iv) A UN pressure receptacle is marked with ''USA'' as a country of approval in conformance with §§ 178.69 and 178.70 of this subchapter, or ''CAN'' for Canada.

(3) *Importation of cylinders for discharge within a single port area.* A cylinder manufactured to other than a DOT specification or UN standard in accordance with part 178 of this subchapter, or a TC, CTC, BTC, or CRC specification cylinder set out in the Transport Canada TDG Regulations (IBR, see § 171.7), and certified as being in conformance with the transportation regulations of another country may be authorized, upon written request to and approval by the Associate Administrator, for transportation within a single port area, provided—

(i) The cylinder is transported in a closed freight container;

(ii) The cylinder is certified by the importer to provide a level of safety at least equivalent to that required by the regulations in this subchapter for a comparable DOT, TC, CTC, BTC, or CRC specification or UN cylinder; and

(iii) The cylinder is not refilled for export unless in compliance with paragraph (a)(4) of this section.

(4) *Filling of cylinders for export or for use on board a vessel.* A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a UN standard, DOT specification, exemption or special permit, or other than a TC, CTC, BTC, or CRC specification, may be filled with a gas in the United States and offered for transportation and transported for export or alternatively, for use on board a vessel, if the following conditions are met:

(i) The cylinder has been requalified and marked with the month and year of requalification in accordance with subpart C of part 180 of this subchapter, or has been requalified as authorized by the Associate Administrator;

(ii) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief device for each cylinder conform to the requirements of this part for the gas involved; and

(iii) The bill of lading or other shipping paper identifies the cylinder and includes the following certification: ''This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with the DOT requirements for export.''

(5) *Cylinders not equipped with pressure relief devices.* A DOT specification or a UN cylinder manufactured, inspected, tested and marked in accordance with part 178 of this subchapter and otherwise conforms to the requirements of part 173 of this subchapter for the gas involved, except that the cylinder is not equipped with a pressure relief device may be filled with a gas and offered for transportation and transported for export if the following conditions are met:

(i) Each DOT specification cylinder or UN pressure receptacle must be plainly and durably marked ''For Export Only'';

(ii) The shipping paper must carry the following certification: ''This cylinder has (These cylinders have) been retested and refilled in accordance with the DOT requirements for export.''; and

(iii) The emergency response information provided with the shipment and available from the emergency response telephone contact person must indicate that the pressure receptacles are not fitted with pressure relief devices and provide appropriate guidance for exposure to fire.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 11. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 12. In § 172.101:

■ a. The Hazardous Materials Table is amended by removing the entries under ''[REMOVE]'' and by adding the entries under ''[ADD]'' and revising the entries under ''[REVISE]'' in the appropriate alphabetical sequence; and

■ b. In appendix B to § 172.101, the List of Marine Pollutants is amended by adding five (5) entries in appropriate alphabetical order.

The additions and revisions read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

§ 172.101 Hazardous Materials Table

BILLING CODE 4910–60–P

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label Codes	Special Provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	*		*		*		*		*		*		*
	Engines, internal combustion, or Engines, fuel cell, flammable gas powered	9	UN3166		9	135, A200	220	220	220	Forbidden	No limit	A	
	Engines internal combustion, or Engines, fuel cell, flammable liquid powered	9	UN3166		9	135, A200	220	220	220	No limit	No limit	A	
	*		*		*		*		*		*		*
	Polyester resin kit	3	UN3269		3	40, 149	165	165	None	5 kg	5 kg	B	
	*		*		*		*		*		*		*
	[ADD]												
	*		*		*		*		*		*		*
	1, 3, 2-Benzodioxaborole					A210							
	*		*		*		*		*		*		*
	Catecholborane					A210							
	*		*		*		*		*		*		*
	Engine, internal combustion, flammable gas powered or Engine, fuel cell, flammable gas powered or Machinery, internal combustion, flammable gas powered or Machinery,	2.1	UN3529		2.1	135, A200	220	220	220	Forbidden	No limit	E	

	fuel cell, flammable gas powered												
	Engine, internal combustion, flammable liquid powered or Engine, fuel cell, flammable liquid powered or Machinery, internal combustion, flammable liquid powered or Machinery, fuel cell, flammable liquid powered	3	UN3528		3	135, A200	220	220	220	No limit	No limit	E	149
	Engine, internal combustion or Machinery, internal combustion	9	UN3530		9	135, A200	220	220	220	No limit	No limit	A	
	*		*		*		*		*		*		*
	Polyester resin kit, liquid base material	3	UN3269		3	40, 149	165	165	None	5 kg	5 kg	B	
	Polyester resin kit, solid base material	4.1	UN3527		4.1	40, 157	165	165	None	5 kg	5 kg	B	
	*		*		*		*		*		*		*
G	Polymerizing substance, liquid, stabilized, n.o.s.	4.1	UN3532	III	4.1	387, 421, IB3, IP19, N92, T7, TP4, TP6	None	203	241	10 L	25 L	D	25, 52, 53
G	Polymerizing substance, liquid, temperature controlled, n.o.s.	4.1	UN3534	III	4.1	387, 421, IB3, IP19, N92, T7, TP4, TP6	None	203	241	Forbidden	Forbidden	D	2, 25, 52, 53
G	Polymerizing substance, solid, stabilized, n.o.s.	4.1	UN3531	III	4.1	387, 421, IB7, IP19, N92, T7, TP4, TP6, TP33	None	213	240	10 kg	25 kg	D	25, 52, 53
G	Polymerizing substance, solid, temperature controlled, n.o.s.	4.1	UN3533	III	4.1	387, 421, IB7, IP19, N92, T7, TP4, TP6, TP33	None	213	240	Forbidden	Forbidden	D	2, 25, 52, 53
	*		*		*		*		*		*		*
	Rocket motors	1.4C	UN0510		1.4C	109	None	62	62	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	[REVISE]												
	*		*		*		*		*		*		*
	Acrolein dimer, stabilized	3	UN2607	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25, 40

	Acrolein, stabilized	6.1	UN1092	I	6.1, 3	1, 380, 387, B9, B14, B30, B42, B77, T22, TP2, TP7, TP13, TP38, TP44	None	226	244	Forbidden	Forbidden	D	25, 40
	*		*		*		*		*		*		*
	Acrylic acid, stabilized	8	UN2218	II	8, 3	387, B2, IB2, T7, TP2	154	202	243	1 L	30 L	C	25, 40
	Acrylonitrile, stabilized	3	UN1093	I	3, 6.1	387, B9, T14, TP2, TP13	None	201	243	Forbidden	30 L	D	25, 40
	*		*		*		*		*		*		*
G	Adsorbed gas, toxic, corrosive, n.o.s. Inhalation hazard zone A	2.3	UN3516		2.3, 8	1, 379	None	302c	None	Forbidden	Forbidden	D	40
G	Adsorbed gas, toxic, corrosive, n.o.s. Inhalation hazard zone B	2.3	UN3516		2.3, 8	2, 379, B9, B14	None	302c	None	Forbidden	Forbidden	D	40
G	Adsorbed gas, toxic, corrosive, n.o.s. Inhalation hazard zone C	2.3	UN3516		2.3, 8	3, 379, B14	None	302c	None	Forbidden	Forbidden	D	40
G	Adsorbed gas, toxic, corrosive, n.o.s. Inhalation hazard zone D	2.3	UN3516		2.3, 8	4, 379	None	302c	None	Forbidden	Forbidden	D	40
	*		*		*		*		*		*		*
G	Alkali metal alcoholates, self-heating, corrosive, n.o.s.	4.2	UN3206	II	4.2, 8	64, A7, IB5, IP2, T3, TP33, W31	None	212	242	15 kg	50 kg	B	
				III	4.2, 8	64, A7, IB8, IP3, T1, TP33, W31	None	213	242	25 kg	100 kg	B	
	Alkali metal alloys, liquid, n.o.s	4.3	UN1421	I	4.3	A2, A3, A7, B48, N34, W31	None	201	244	Forbidden	1 L	D	13, 52, 148
	Alkali metal amalgam, liquid	4.3	UN1389	I	4.3	A2, A3, A7, N34, W31	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
	Alkali metal amalgam, solid	4.3	UN3401	I	4.3	IB4, IP1, N40, T9, TP7, TP33, W32	None	211	242	Forbidden	15 kg	D	13, 52, 148
	Alkali metal amides	4.3	UN1390	II	4.3	A6, A7, A8, A19, A20, IB7, IP2, IP21, T3, TP33, W31, W40	151	212	241	15 kg	50 kg	E	13, 40, 52, 148
	Alkali metal dispersions, flammable or Alkaline earth metal dispersions, flammable	4.3	UN3482	I	4.3, 3	A2, A3, A7, W31	None	201	244	Forbidden	1 L	D	13, 52, 148
	Alkali metal dispersions, or Alkaline earth metal dispersions	4.3	UN1391	I	4.3	A2, A3, A7, W31	None	201	244	Forbidden	1 L	D	13, 52, 148
	*		*		*		*		*		*		*

G	Alkaline earth metal alcoholates, n.o.s.	4.2	UN3205	II	4.2	65, A7, IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	B	
				III	4.2	65, A7, IB8, IP3, T1, TP33, W31	None	213	241	25 kg	100 kg	B	
	Alkaline earth metal alloys, n.o.s	4.3	UN1393	II	4.3	A19, IB7, IP2, IP4, T3, TP33, W31, W40	151	212	241	15 kg	50 kg	E	13, 52, 148
	Alkaline earth metal amalgams, liquid	4.3	UN1392	I	4.3	A19, N34, N40, W31	None	201	244	Forbidden	1 L	E	13, 40, 52, 148
	Alkaline earth metal amalgams, solid	4.3	UN3402	I	4.3	A19, N34, N40, T9, TP7, TP33, W32	None	211	242	Forbidden	15 kg	D	13, 52, 148
	*		*		*		*		*		*		*
	Allyl isothiocyanate, stabilized	6.1	UN1545	II	6.1, 3	387, A3, A7, IB2, T7, TP2	None	202	243	Forbidden	60 L	D	25, 40
	*		*		*		*		*		*		*
	Allyltrichlorosilane, stabilized	8	UN1724	II	8, 3	387, A7, B2, B6, N34, T10, TP2, TP7, TP13	None	206	243	Forbidden	30 L	C	25, 40
	*		*		*		*		*		*		*
	Aluminum carbide	4.3	UN1394	II	4.3	A20, IB7, IP2, IP21, N41, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	A	13, 52, 148
	*		*		*		*		*		*		*
	Aluminum ferrosilicon powder	4.3	UN1395	II	4.3, 6.1	A19, IB5, IP2, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	A	13, 39, 40, 52, 53, 85, 103, 148
				III	4.3, 6.1	A19, A20, IB4	151	213	241	25 kg	100 kg	A	13, 39, 40, 52, 53, 85, 103, 148
	Aluminum hydride	4.3	UN2463	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 148
	*		*		*		*		*		*		*
	Aluminum phosphide	4.3	UN1397	I	4.3, 6.1	A8, A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 40, 52, 85, 148
	Aluminum phosphide pesticides	6.1	UN3048	I	6.1	A8, IB7, IP1, T6, TP33, W31	None	211	242	Forbidden	15 kg	E	40, 85
	Aluminum powder, coated	4.1	UN1309	II	4.1	IB8, IP2, IP21, T3, TP33, W100	151	212	240	15 kg	50 kg	A	13, 39, 52, 53, 74, 101, 147, 148
				III	4.1	B134, IB8, IP21, T1, TP33, W100	151	213	240	25 kg	100 kg	A	13, 39, 52, 53, 74, 101, 147,

													148
	Aluminum powder, uncoated	4.3	UN1396	II	4.3	A19, A20, IB7, IP2, IP21, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	A	13, 39, 52, 53, 148
				III	4.3	A19, A20, IB8, IP21, T1, TP33, W31, W40	151	213	241	25 kg	100 kg	A	13, 39, 52, 53, 148
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	Aluminum silicon powder, uncoated	4.3	UN1398	III	4.3	A1, A19, IB8, IP4, T1, TP33, W31, W40	151	213	241	25 kg	100 kg	A	13, 39, 40, 52, 53, 85, 103, 148
	Aluminum smelting by-products or Aluminum remelting by-products	4.3	UN3170	II	4.3	128, B115, IB7, IP2, IP21, T3, TP33, W31, W40	None	212	242	15 kg	50 kg	B	13, 85, 103, 148
				III	4.3	128, B115, IB8, IP21, T1, TP33, W31	None	213	241	25 kg	100 kg	B	13, 85, 103, 148
	*		*		*		*		*		*		*
	2-Amino-4,6-Dinitrophenol, wetted with not less than 20 percent water by mass	4.1	UN3317	I	4.1	23, A8, A19, A20, N41, W31	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*		*		*		*
	N-Aminoethylpiperazine	8	UN2815	III	8, 6.1	IB3, T4, TP1	154	203	241	5 L	60 L	B	12, 25, 40
	*		*		*		*		*		*		*
I	Ammonia, anhydrous	2.3	UN1005		2.3, 8	4, 379, N87, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57
D	Ammonia, anhydrous	2.2	UN1005		2.2	13, 379, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57
	*		*		*		*		*		*		*
	Ammonia solution, relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia	8	UN2672	III	8	336, IB3, IP8, T7, TP2	154	203	241	5L	60L	A	40, 52, 85
	*		*		*		*		*		*		*
	Ammonium picrate, wetted with not less than 10 percent water, by mass	4.1	UN1310	I	4.1	23, A2, N41, W31	None	211	None	0.5 kg	0.5 kg	D	28, 36
	*		*		*		*		*		*		*

	Arsenic acid, liquid	6.1	UN1553	I	6.1	T20, TP2, TP7, TP13, W31	None	201	243	1 L	30 L	B	46
	*		*		*		*		*		*		*
	Barium	4.3	UN1400	II	4.3	A19, IB7, IP2, IP21, T3, TP33, W31, W40	151	212	241	15 kg	50 kg	E	13, 52, 148
	Barium alloys, pyrophoric	4.2	UN1854	I	4.2	T21, TP7, TP33, W31	None	181	None	Forbidden	Forbidden	D	13, 148
	*		*		*		*		*		*		*
	Barium azide, wetted with not less than 50 percent water, by mass	4.1	UN1571	I	4.1, 6.1	162, A2, W31	None	182	None	Forbidden	0.5 kg	D	28, 36
	*		*		*		*		*		*		*
	Barium cyanide	6.1	UN1565	I	6.1	IB7, IP1, N74, N75, T6, TP33, W31	None	211	242	5 kg	50 kg	A	40, 52
	*		*		*		*		*		*		*
	Barium peroxide	5.1	UN1449	II	5.1, 6.1	A9, IB6, IP2, T3, TP33, W100	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
	*		*		*		*		*		*		*
	Beryllium, powder	6.1	UN1567	II	6.1, 4.1	IB8, IP2, IP4, T3, TP33, W100	153	212	242	15 kg	50 kg	A	13, 147, 148
	Bicyclo [2,2,1] hepta-2,5-diene, stabilized or 2,5-Norbornadiene, stabilized	3	UN2251	II	3	387, IB2, T7, TP2	150	202	242	5 L	60 L	D	25
	*		*		*		*		*		*		*
	Boron trifluoride diethyl etherate	8	UN2604	I	8, 3	A3, A19, T10, TP2, W31	None	201	243	0.5 L	2.5 L	D	40
	*		*		*		*		*		*		*
	Boron trifluoride dimethyl etherate	4.3	UN2965	I	4.3, 8, 3	A19, T10, TP2, TP7, TP13, W31	None	201	243	Forbidden	1 L	D	21, 25, 40, 49, 100
	*		*		*		*		*		*		*
	Bromobenzyl cyanides, liquid	6.1	UN1694	I	6.1	T14, TP2, TP13, W31	None	201	243	Forbidden	30 L	D	12, 25, 40, 52
	Bromobenzyl cyanides, solid	6.1	UN3449	I	6.1	T6, TP33, W31	None	211	242	5 kg	50 kg	D	12, 25, 40, 52

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	Butadienes, stabilized or Butadienes and Hydrocarbon mixture, stabilized containing more than 40% butadienes	2.1	UN1010		2.1	387, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40
	*		*		*		*		*		*		*
	Butyl acrylates, stabilized	3	UN2348	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*		*		*		*		*		*		*
	Butyl benzenes	3	UN2709	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	n-Butyl methacrylate, stabilized	3	UN2227	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*		*		*		*		*		*		*
	Butyl vinyl ether, stabilized	3	UN2352	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25, 40
	*		*		*		*		*		*		*
	1,2-Butylene oxide, stabilized	3	UN3022	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25, 27, 49
	*		*		*		*		*		*		*
	Calcium	4.3	UN1401	II	4.3	IB7, IP2, IP21, T3, TP33, W31, W40	151	212	241	15 kg	50kg	E	13, 52, 148
	*		*		*		*		*		*		*
	Calcium carbide	4.3	UN1402	I	4.3	A1, A8, B55, B59, IB4, IP1, N34, T9, TP7, TP33, W32	None	211	242	Forbidden	15 kg	B	13, 52, 148
				II	4.3	A1, A8, B55, B59, IB7, IP2, IP21, N34, T3, TP33, W31, W40	151	212	241	15 kg	50 kg	B	13, 52, 148
	*		*		*		*		*		*		*
	Calcium cyanamide with more than 0.1 percent of calcium carbide	4.3	UN1403	III	4.3	A1, A19, IB8, IP4, T1, TP33, W31, W40	151	213	241	25 kg	100 kg	A	13, 52, 148
	Calcium cyanide	6.1	UN1575	I	6.1	IB7, IP1, N79, N80, T6, TP33, W31	None	211	242	5 kg	50 kg	A	40, 52

	Calcium dithionite or Calcium hydrosulfite	4.2	UN1923	II	4.2	A19, A20, IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	E	13
	Calcium hydride	4.3	UN1404	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	*		*		*		*		*		*		*
	Calcium manganese silicon	4.3	UN2844	III	4.3	A1, A19, IB8, IP4, T1, TP33, W31	151	213	241	25 kg	100 kg	A	13, 52, 85, 103, 148
	*		*		*		*		*		*		*
	Calcium peroxide	5.1	UN1457	II	5.1	IB6, IP2, T3, TP33, W100	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
	Calcium phosphide	4.3	UN1360	I	4.3, 6.1	A8, A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 40, 52, 85, 148
	Calcium, pyrophoric or Calcium alloys, pyrophoric	4.2	UN1855	I	4.2	W31	None	187	None	Forbidden	Forbidden	D	13, 148
	*		*		*		*		*		*		*
	Calcium silicide	4.3	UN1405	II	4.3	A19, IB7, IP2, IP21, T3, TP33, W31	151	212	241	15 kg	50 kg	B	13, 52, 85, 103, 148
				III	4.3	A1, A19, IB8, IP21, T1, TP33, W31, W40	151	213	241	25 kg	100 kg	B	13, 52, 85, 103, 148
	*		*		*		*		*		*		*
I	Carbon, activated	4.2	UN1362	III	4.2	IB8, IP3, T1, TP33, W31	None	213	241	0.5 kg	0.5 kg	A	12, 25
	*		*		*		*		*		*		*
	Carbon disulfide	3	UN1131	I	3, 6.1	B16, T14, TP2, TP7, TP13, W31	None	201	243	Forbidden	Forbidden	D	40, 78, 115
	*		*		*		*		*		*		*
	Celluloid, in block, rods, rolls, sheets, tubes, etc., except scrap	4.1	UN2000	III	4.1	420	None	213	240	25 kg	100 kg	A	
	*		*		*		*		*		*		*
	Cerium, slabs, ingots, or rods	4.1	UN1333	II	4.1	IB8, IP2, IP4, N34, W100	None	212	240	15 kg	50 kg	A	13, 74, 91, 147, 148
	Cerium, turnings or gritty powder	4.3	UN3078	II	4.3	A1, IB7, IP2, IP21, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	E	13, 52, 148
	Cesium or Caesium	4.3	UN1407	I	4.3	A7, A19, IB4, IP1, N34, N40, W32	None	211	242	Forbidden	15 kg	D	13, 52, 148

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	Chloric acid aqueous solution, with not more than 10 percent chloric acid	5.1	UN2626	II	5.1	IB2, T4, TP1, W31	None	229	None	Forbidden	Forbidden	D	56, 58
	*		*		*		*		*		*		*
	Chloroprene, stabilized	3	UN1991	I	3, 6.1	387, B57, T14, TP2, TP13	None	201	243	Forbidden	30 L	D	25, 40
	*		*		*		*		*		*		*
	Chlorosilanes, water-reactive, flammable, corrosive, n.o.s	4.3	UN2988	I	4.3, 3, 8	A2, T14, TP2, TP7, TP13, W31	None	201	244	Forbidden	1 L	D	13, 21, 40, 49, 100, 147, 148
	*		*		*		*		*		*		*
	Chromium trioxide, anhydrous	5.1	UN1463	II	5.1, 6.1, 8	IB8, IP2, IP4, T3, TP33, W31	None	212	242	5 kg	25 kg	A	66, 90
	*		*		*		*		*		*		*
G	Corrosive solids, water-reactive, n.o.s	8	UN3096	I	8, 4.3	IB4, IP1, T6, TP33	None	211	243	1 kg	25 kg	D	13, 148
				II	8, 4.3	IB6, IP2, T3, TP33, W100	None	212	242	15 kg	50 kg	D	13, 148
	*		*		*		*		*		*		*
	Crotonaldehyde or Crotonaldehyde, stabilized	6.1	UN1143	I	6.1, 3	2, 175, 387, B9, B14, B32, B77, T20, TP2, TP13, TP38, TP45	None	227	244	Forbidden	Forbidden	D	25, 40
	*		*		*		*		*		*		*
	Cyanogen bromide	6.1	UN1889	I	6.1, 8	A6, A8, T6, TP33, W31	None	211	242	1 kg	15 kg	D	40, 52
	Cyanogen chloride, stabilized	2.3	UN1589		2.3, 8	1, 387	None	192	245	Forbidden	Forbidden	D	25, 40
	*		*		*		*		*		*		*
	Cycloheptane	3	UN2241	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	B	40

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	Decaborane	4.1	UN1868	II	4.1, 6.1	A19, A20, IB6, IP2, T3, TP33, W31	None	212	None	Forbidden	50 kg	A	74
	*		*		*		*		*		*		*
	Diketene, stabilized	6.1	UN2521	I	6.1, 3	2, 387, B9, B14, B32, T20, TP2, TP13, TP38, TP45	None	227	244	Forbidden	Forbidden	D	25, 26, 27, 40
	*		*		*		*		*		*		*
	Dinitrophenol, wetted with not less than 15 percent water, by mass	4.1	UN1320	I	4.1, 6.1	23, A8, A19, A20, N41, W31	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*		*		*		*
	Dinitrophenolates, wetted with not less than 15 percent water, by mass	4.1	UN1321	I	4.1, 6.1	23, A8, A19, A20, N41, W31	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*		*		*		*
	Dinitroresorcinol, wetted with not less than 15 percent water, by mass	4.1	UN1322	I	4.1	23, A8, A19, A20, N41, W31	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*		*		*		*
	Diphenylamine chloroarsine	6.1	UN1698	I	6.1	T6, TP33, W31	None	201	None	Forbidden	Forbidden	D	40
	Diphenylchloroarsine, liquid	6.1	UN1699	I	6.1	A8, B14, B32, N33, N34, T14, TP2, TP13, TP27, W31	None	201	243	Forbidden	30 L	D	40
	Diphenylchloroarsine, solid	6.1	UN3450	I	6.1	IB7, IP1, T6, TP33, W31	None	211	242	5 kg	50 kg	D	40
	*		*		*		*		*		*		*
	Dipicryl sulfide, wetted with not less than 10 percent water, by mass	4.1	UN2852	I	4.1	162, A2, N41, N84, W31	None	211	None	Forbidden	0.5 kg	D	28, 36
	*		*		*		*		*		*		*
	Divinyl ether, stabilized	3	UN1167	I	3	387, A7, T11, TP2	None	201	243	1 L	30 L	E	25, 40
	*		*		*		*		*		*		*
	Ethyl acrylate, stabilized	3	UN1917	II	3	387, IB2, T4, TP1, TP13	150	202	242	5 L	60 L	C	25, 40

	*		*		*		*		*		*		*
	Ethyl methacrylate, stabilized	3	UN2277	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
	*		*		*		*		*		*		*
	Ethylacetylene, stabilized	2.1	UN2452		2.1	387, N88	None	304	314, 315	Forbidden	150 kg	B	25, 40
	*		*		*		*		*		*		*
	Ethyldichlorosilane	4.3	UN1183	I	4.3, 8, 3	A2, A3, A7, N34, T14, TP2, TP7, TP13, W31	None	201	244	Forbidden	1 L	D	21, 40, 49, 100
	*		*		*		*		*		*		*
	Ethyleneimine, stabilized	6.1	UN1185	I	6.1, 3	1, 387, B9, B14, B30, B77, N25, N32, T22, TP2, TP13, TP38, TP44	None	226	244	Forbidden	Forbidden	D	25, 40
	*		*		*		*		*		*		*
	Ferrocerium	4.1	UN1323	II	4.1	59, A19, IB8, IP2, IP4, T3, TP33, W100	151	212	240	15 kg	50 kg	A	13, 147, 148
	Ferrosilicon with 30 percent or more but less than 90 percent silicon	4.3	UN1408	III	4.3, 6.1	A1, A19, B6, IB8, IP4, IP7, T1, TP33, W100	151	213	240	25 kg	100 kg	A	13, 40, 52, 53, 85, 103, 148
	*		*		*		*		*		*		*
	Ferrous metal borings or Ferrous metal shavings or Ferrous metal turnings or Ferrous metal cuttings in a form liable to self-heating	4.2	UN2793	III	4.2	A1, A19, B134, IB8, IP3, IP21, IP7, W100	None	213	241	25 kg	100 kg	A	13, 148
	*		*		*		*		*		*		*
A W	Fibers or Fabrics, animal or vegetable or Synthetic, n.o.s. with animal or vegetable oil	4.2	UN1373	III	4.2	137, IB8, IP3, T1, TP33, W31	None	213	241	Forbidden	Forbidden	A	
	*		*		*		*		*		*		*
	Fish meal, unstablized or Fish scrap, unstabilized	4.2	UN1374	II	4.2	155, A1, A19, IB8, IP2, IP4, T3, TP33, W31, W40	None	212	241	Forbidden	Forbidden	B	18, 25, 128
	*		*		*		*		*		*		*

	Hafnium powder, dry	4.2	UN2545	I	4.2	W31	None	211	242	Forbidden	Forbidden	D	13, 148
				II	4.2	A19, A20, IB6, IP2, N34, T3, TP33, W31	None	212	241	15 kg	50 kg	D	13, 148
				III	4.2	B135, IB8, IP21, T1, TP33, W31	None	213	241	25 kg	100 kg	D	13, 148
	Hafnium powder, wetted with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns	4.1	UN1326	II	4.1	A6, A19, A20, IB6, IP2, N34, T3, TP33, W31, W40	None	212	241	15 kg	50 kg	E	74
	*		*		*		*		*		*		*
	Heptanes	3	UN1206	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	B	
	*		*		*		*		*		*		*
	Hexanes	3	UN1208	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	E	
	*		*		*		*		*		*		*
	Hydrogen cyanide, stabilized with less than 3 percent water	6.1	UN1051	I	6.1, 3	1, 387, B35, B61, B65, B77, B82	None	195	244	Forbidden	Forbidden	D	25, 40
	Hydrogen cyanide, stabilized, with less than 3 percent water and absorbed in a porous inert material	6.1	UN1614	I	6.1	5, 387	None	195	None	Forbidden	Forbidden	D	25, 40
	*		*		*		*		*		*		*
	Iron oxide, spent, or Iron sponge, spent obtained from coal gas purification	4.2	UN1376	III	4.2	B18, B134, IB8, IP21, T1, TP33, W100	None	213	240	Forbidden	Forbidden	E	13, 148

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	Isobutyl acrylate, stabilized	3	UN2527	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*		*		*		*		*		*		*
	Isobutyl methacrylate, stabilized	3	UN2283	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*		*		*		*		*		*		*
G	Isocyanates, flammable, toxic, n.o.s. or Isocyanate solutions, flammable, toxic, n.o.s. flash point less than 23 degrees C	3	UN2478	II	3, 6.1	5, A3, A7, IB2, T11, TP2, TP13, TP27, W31	150	202	243	1 L	60 L	D	40
				III	3, 6.1	5, A3, A7, IB3, T7, TP1, TP13, TP28, W31	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Isoprene, stabilized	3	UN1218	I	3	387, T11, TP2	150	201	243	1 L	30 L	D	25
	*		*		*		*		*		*		*
	Life-saving appliances, not self inflating containing dangerous goods as equipment	9	UN3072		None	182	None	219	None	No limit	No limit	A	122
	*		*		*		*		*		*		*
	Lithium	4.3	UN1415	I	4.3	A7, A19, IB4, IP1, N45, T9, TP7, TP33, W32	151	211	244	Forbidden	15 kg	D	13, 52, 148
	*		*		*		*		*		*		*
	Lithium aluminum hydride	4.3	UN1410	I	4.3	A19, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	*		*		*		*		*		*		*
	Lithium borohydride	4.3	UN1413	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	Lithium ferrosilicon	4.3	UN2830	II	4.3	A19, IB7, IP2, IP21, T3, TP33, W31, W40	151	212	241	15 kg	50 kg	E	13, 40, 85, 103, 148
	Lithium hydride	4.3	UN1414	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148

	Lithium hydride, fused solid	4.3	UN2805	II	4.3	A8, A19, A20, IB4, T3, TP33, W31, W40	151	212	241	15 kg	50 kg	E	13, 52, 148
	*		*		*		*		*		*		*
	Lithium ion batteries including lithium ion polymer batteries	9	UN3480		9	422, A51, A54	185	185	185	5 kg	35 kg	A	
	Lithium ion batteries contained in equipment including lithium ion polymer batteries	9	UN3481		9	181, 422, A54	185	185	185	5 kg	35 kg	A	
	Lithium ion batteries packed with equipment including lithium ion polymer batteries	9	UN3481		9	181, 422, A54	185	185	185	5 kg	35 kg	A	
	Lithium metal batteries including lithium alloy batteries	9	UN3090		9	422, A54	185	185	185	Forbidden	35 kg	A	
	Lithium metal batteries contained in equipment including lithium alloy batteries	9	UN3091		9	181, 422, A54, A101	185	185	185	5 kg	35 kg	A	
	Lithium metal batteries packed with equipment including lithium alloy batteries	9	UN3091		9	181, 422, A54	185	185	185	5 kg	35 kg	A	
	*		*		*		*		*		*		*
	Lithium nitride	4.3	UN2806	I	4.3	A19, IB4, IP1, N40, W32	None	211	242	Forbidden	15 kg	E	
	Lithium peroxide	5.1	UN1472	II	5.1	A9, IB6, IP2, N34, T3, TP33, W100	152	212	None	5 kg	25 kg	C	13, 52, 66, 75, 148
	Lithium silicon	4.3	UN1417	II	4.3	A19, A20, IB7, IP2, IP21, T3, TP33, W31, W40	151	212	241	15 kg	50 kg	A	13, 85, 103, 148
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	Magnesium aluminum phosphide	4.3	UN1419	I	4.3, 6.1	A19, N34, N40, W32	None	211	242	Forbidden	15 kg	E	13, 40, 52, 85, 148
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	Magnesium diamide	4.2	UN2004	II	4.2	A8, A19, A20, IB6, T3, TP33, W31	None	212	241	15 kg	50 kg	C	13, 148
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	Magnesium granules, coated, particle size not less than 149 microns	4.3	UN2950	III	4.3	A1, A19, IB8, IP4, T1, TP33, W100	151	213	240	25 kg	100 kg	A	13, 52, 148
	Magnesium hydride	4.3	UN2010	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148

	Magnesium or Magnesium alloys with more than 50 percent magnesium in pellets, turnings or ribbons	4.1	UN1869	III	4.1	A1, B134, IB8, IP21, T1, TP33, W100	151	213	240	25 kg	100 kg	A	13, 39, 52, 53, 74, 101, 147, 148
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	Magnesium peroxide	5.1	UN1476	II	5.1	IB6, IP2, T3, TP33, W100	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
	Magnesium phosphide	4.3	UN2011	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
	Magnesium, powder or Magnesium alloys, powder	4.3	UN1418	I	4.3, 4.2	A19, B56, W32	None	211	244	Forbidden	15 kg	A	13, 39, 52, 148
				II	4.3, 4.2	A19, B56, IB5, IP2, T3, TP33, W31, W40	None	212	241	15 kg	50 kg	A	13, 39, 52, 148
				III	4.3, 4.2	A19, B56, IB8, IP4, T1, TP33, W31	None	213	241	25 kg	100 kg	A	13, 39, 52, 148
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	Magnesium silicide	4.3	UN2624	II	4.3	A19, A20, IB7, IP2, IP21, T3, TP33, W31, W40	151	212	241	15 kg	50 kg	B	13, 85, 103, 148
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	Maneb or Maneb preparations with not less than 60 percent maneb	4.2	UN2210	III	4.2, 4.3	57, A1, A19, IB6, T1, TP33, W100	None	213	242	25 kg	100 kg	A	13, 34, 148
	Maneb stabilized or Maneb preparations, stabilized against self-heating	4.3	UN2968	III	4.3	54, A1, A19, IB8, IP4, T1, TP33, W100	151	213	242	25 kg	100 kg	B	13, 34, 52, 148
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+	Mercuric potassium cyanide	6.1	UN1626	I	6.1	IB7, IP1, N74, N75, T6, TP33, W31	None	211	242	5 kg	50 kg	A	52
	*		*		*		*		*		*		*
G	Metal catalyst, dry	4.2	UN2881	I	4.2	N34, T21, TP7, TP33, W31	None	187	None	Forbidden	Forbidden	C	13, 147, 148
				II	4.2	IB6, IP2, N34, T3, TP33, W31	None	187	242	Forbidden	50 kg	C	13, 147, 148
				III	4.2	B135, IB8, IP21, N34, T1, TP33, W31	None	187	241	25 kg	100 kg	C	13, 147, 148
G	Metal catalyst, wetted with a visible excess of liquid	4.2	UN1378	II	4.2	A2, A8, IB1, N34, T3, TP33, W31, W40	None	212	None	Forbidden	50 kg	C	
	Metal hydrides, flammable, n.o.s.	4.1	UN3182	II	4.1	A1, IB4, T3, TP33, W31, W40	151	212	240	15 kg	50 kg	E	

				III	4.1	A1, IB4, T1, TP33, W31	151	213	240	25 kg	100 kg	E	
	Metal hydrides, water reactive, n.o.s	4.3	UN1409	I	4.3	A19, N34, N40, W32	None	211	242	Forbidden	15 kg	D	13, 52, 148
				II	4.3	A19, IB4, N34, N40, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	D	13, 52, 148
	Metal powder, self-heating, n.o.s	4.2	UN3189	II	4.2	IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	C	13, 148
				III	4.2	B135, IB8, IP4, T1, TP33, W31	None	213	241	25 kg	100 kg	C	13, 148
	Metal powders, flammable, n.o.s	4.1	UN3089	II	4.1	IB8, IP2, IP4, T3, TP33, W100	151	212	240	15 kg	50 kg	B	13, 74, 147, 148
				III	4.1	IB8, IP2, IP4, T1, TP33, W100	151	213	240	25 kg	100 kg	B	13, 74, 147, 148
	*		*		*		*		*		*		*
G	Metal salts of organic compounds, flammable, n.o.s.	4.1	UN3181	II	4.1	A1, IB8, IP2, IP4, T3, TP33, W31	151	212	240	15 kg	50 kg	B	40
				III	4.1	A1, IB8, IP3, T1, TP33, W31	151	213	240	25 kg	100 kg	B	40
	*		*		*		*		*		*		*
G	Metallic substance, water-reactive, n.o.s	4.3	UN3208	I	4.3	A7, IB4, W32	None	211	242	Forbidden	15 kg	E	13, 40, 148
				II	4.3	A7, IB7, IP2, IP21, T3, TP33, W31	151	212	242	15 kg	50 kg	E	13, 40, 148
				III	4.3	A7, IB8, IP21, T1, TP33, W31, W40	151	213	241	25 kg	100 kg	E	13, 40, 148
G	Metallic substance, water-reactive, self-heating, n.o.s	4.3	UN3209	I	4.3, 4.2	A7, W32	None	211	242	Forbidden	15 kg	E	13, 40, 148
				II	4.3, 4.2	A7, IB5, IP2, T3, TP33, W32, W40	None	212	242	15 kg	50 kg	E	13, 40, 148
				III	4.3, 4.2	A7, IB8, IP4, T1, TP33, W32	None	213	242	25 kg	100 kg	E	13, 40, 148
	Methacrylaldehyde, stabilized	3	UN2396	II	3, 6.1	45, 387, IB2, T7, TP1, TP13	150	202	243	1 L	60 L	D	25, 40
	Methacrylic acid, stabilized	8	UN2531	II	8	41, 387, IB2, T7, TP1, TP18, TP30	154	202	242	1 L	30 L	C	25, 40
+	Methacrylonitrile, stabilized	6.1	UN3079	I	6.1, 3	2, 387, B9, B14, B32, T20, TP2, TP13, TP38, TP45	None	227	244	Forbidden	Forbidden	D	12, 25, 40

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	Methyl acetylene and propadiene mixtures, stabilized	2.1	UN1060		2.1	387, N88, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40
	Methyl acrylate, stabilized	3	UN1919	II	3	387, IB2, T4, TP1, TP13	150	202	242	5 L	60 L	C	25
	*		*		*		*		*		*		*
	Methyl isopropenyl ketone, stabilized	3	UN1246	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
	*		*		*		*		*		*		*
	Methyl methacrylate monomer, stabilized	3	UN1247	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25, 40
	*		*		*		*		*		*		*
	Methyl vinyl ketone, stabilized	6.1	UN1251	I	6.1, 3, 8	1, 387, B9, B14, B30, T22, TP2, TP13, TP38, TP44	None	226	244	Forbidden	Forbidden	B	21, 25, 40, 100
	*		*		*		*		*		*		*
	N-Methylaniline	6.1	UN2294	III	6.1	IB3, T4, TP2	153	203	241	60 L	220 L	A	
	*		*		*		*		*		*		*
	Methylcyclohexane	3	UN2296	II	3	B1, IB2, T4, TP2	150	202	242	5 L	60 L	B	
	*		*		*		*		*		*		*
	Methyldichlorosilane	4.3	UN1242	I	4.3, 8, 3	A2, A3, A7, B6, B77, N34, T14, TP2, TP7, TP13, W31	None	201	243	Forbidden	1 L	D	21, 40, 49, 100
	Nitric acid other than red fuming, with more than 20 percent and less than 65 percent nitric acid	8	UN2031	II	8	A6, A212, B2, B47, B53, IB2, IP15, T8, TP2	None	158	242	Forbidden	30 L	D	44, 66, 74, 89, 90
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	Nitrocellulose, with not more than 12.6 percent nitrogen, by dry mass mixture with or without plasticizer, with or without pigment	4.1	UN2557	II	4.1	44, W31	151	212	240	1 kg	15 kg	D	28, 36
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	Nitrocellulose with alcohol with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass	4.1	UN2556	II	4.1	W31	151	212	None	1 kg	15 kg	D	28, 36
	Nitrocellulose with water with not less than 25 percent water by mass	4.1	UN2555	II	4.1	W31	151	212	None	15 kg	50 kg	E	28, 36
	*		*		*		*		*		*		*
	Nitroguanidine, wetted or Picrite, wetted with not less than 20 percent water, by mass	4.1	UN1336	I	4.1	23, A8, A19, A20, N41, W31	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*		*		*		*
	4-Nitrophenylhydrazine, with not less than 30 percent water, by mass	4.1	UN3376	I	4.1	162, A8, A19, A20, N41, W31	None	211	None	Forbidden	15 kg	E	28, 36
	*		*		*		*		*		*		*
	Nitrostarch, wetted with not less than 20 percent water, by mass	4.1	UN1337	I	4.1	23, A8, A19, A20, N41, W31	None	211	None	1 kg	15 kg	D	28, 36
	*		*		*		*		*		*		*
	Nonanes	3	UN1920	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Octanes	3	UN1262	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	B	
	*		*		*		*		*		*		*
G	Organometallic substance, liquid, water-reactive	4.3	UN3398	I	4.3	T13, TP2, TP7, TP36, TP47, W31	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
				II	4.3	IB1, IP2, T7, TP2, TP7, TP36, TP47, W31	None	202	243	1 L	5 L	D	13, 40, 52, 148
				III	4.3	IB2, IP4, T7, TP2, TP7, TP36, TP47, W31	None	203	242	5 L	60 L	E	13, 40, 52, 148
G	Organometallic substance, liquid, water-reactive, flammable	4.3	UN3399	I	4.3, 3	T13, TP2, TP7, TP36, TP47, W31	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
				II	4.3, 3	IB1, IP2, T7, TP2, TP7, TP36, TP47, W31	None	202	243	1 L	5 L	D	13, 40, 52, 148

				III	4.3, 3	IB2, IP4, T7, TP2, TP7, TP36, TP47, W31	None	203	242	5 L	60 L	E	13, 40, 52, 148
	*		*		*		*		*		*		*
G	Organometallic substance, solid, water-reactive	4.3	UN3395	I	4.3	N40, T9, TP7, TP33, TP36, TP47, W31	None	211	242	Forbidden	15 kg	E	13, 40, 52, 148
				II	4.3	IB4, T3, TP33, TP36, TP47, W31	151	212	242	15 kg	50 kg	E	13, 40, 52, 148
				III	4.3	IB6, T1, TP33, TP36, TP47, W31	151	213	241	25 kg	100 kg	E	13, 40, 52, 148
G	Organometallic substance, solid, water-reactive, flammable	4.3	UN3396	I	4.3, 4.1	N40, T9, TP7, TP33, TP36, TP47, W31	None	211	242	Forbidden	15 kg	E	13, 40, 52, 148
				II	4.3, 4.1	IB4, T3, TP33, TP36, TP47, W31	151	212	242	15 kg	50 kg	E	13, 40, 52, 148
				III	4.3, 4.1	IB6, T1, TP33, TP36, TP47, W31	151	213	241	25 kg	100 kg	E	13, 40, 52, 148
G	Organometallic substance, solid, water-reactive, self-heating	4.3	UN3397	I	4.3, 4.2	N40, T9, TP7, TP33, TP36, TP47, W31	None	211	242	Forbidden	15 kg	E	13, 40, 52, 148
				II	4.3, 4.2	IB4, T3, TP33, TP36, TP47, W31	None	212	242	15 kg	50 kg	E	13, 40, 52, 148
				III	4.3, 4.2	IB6, T1, TP33, TP36, TP47, W31	None	213	241	25 kg	100 kg	E	13, 40, 52, 148
	*		*		*		*		*		*		*
	Osmium tetroxide	6.1	UN2471	I	6.1	A8, IB7, IP1, N33, N34, T6, TP33, W31	None	211	242	5 kg	50 kg	B	40
	*		*		*		*		*		*		*
	Paper, unsaturated oil treated incompletely dried (including carbon paper)	4.2	UN1379	III	4.2	IB8, IP3, W31	None	213	241	Forbidden	Forbidden	A	
	*		*		*		*		*		*		*
	Peroxides, inorganic, n.o.s	5.1	UN1483	II	5.1	A7, A20, IB6, IP2, N34, T3, TP33, W100	None	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
				III	5.1	A7, A20, B134, IB8, IP21, N34, T1, TP33, W100	152	213	240	25 kg	100 kg	C	13, 52, 66, 75, 148
	*		*		*		*		*		*		*

	9-Phosphabicyclononanes or Cyclooctadiene phosphines	4.2	UN2940	II	4.2	A19, IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	A	
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	Phosphorus heptasulfide, free from yellow or white phosphorus	4.1	UN1339	II	4.1	A20, IB4, N34, T3, TP33, W31	None	212	240	15 kg	50 kg	B	13, 74, 147, 148
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	Phosphorus pentasulfide, free from yellow or white phosphorus	4.3	UN1340	II	4.3, 4.1	A20, B59, IB4, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	B	13, 74, 148
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	Phosphorus sesquisulfide, free from yellow or white phosphorus	4.1	UN1341	II	4.1	A20, IB4, N34, T3, TP33, W31	None	212	240	15 kg	50 kg	B	74
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	Phosphorus trisulfide, free from yellow or white phosphorus	4.1	UN1343	II	4.1	A20, IB4, N34, T3, TP33, W31	None	212	240	15 kg	50 kg	B	13, 74, 147, 148
	Phosphorus, white dry or Phosphorus, white, under water or Phosphorus white, in solution or Phosphorus, yellow dry or Phosphorus, yellow, under water or Phosphorus, yellow, in solution	4.2	UN1381	I	4.2, 6.1	B9, B26, N34, T9, TP3, TP31, W31	None	188	243	Forbidden	Forbidden	E	
	*		*		*		*		*		*		*
	Pine oil	3	UN1272	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	alpha-Pinene	3	UN2368	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Polyhalogenated biphenyls, liquid or Halogenated monomethyldiphenyl-methanes, liquid or Polyhalogenated terphenyls, liquid	9	UN3151	II	9	IB2	155	204	241	100 L	220 L	A	95
	Polyhalogenated biphenyls, solid or Halogenated monomethyldiphenyl-methanes, solid or Polyhalogenated terphenyls, solid	9	UN3152	II	9	IB8, IP2, IP4, T3, TP33	155	204	241	100 kg	200 kg	A	95
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	Potassium	4.3	UN2257	I	4.3	A7, A19, A20, B27, IB4, IP1, N6, N34, T9, TP7, TP33, W32	151	211	244	Forbidden	15 kg	D	13, 52, 148
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	Potassium borohydride	4.3	UN1870	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
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	Potassium cyanide, solid	6.1	UN1680	I	6.1	B69, B77, IB7, IP1, N74, N75, T6, TP33, W31	None	211	242	5 kg	50 kg	B	52
	*		*		*		*		*		*		*
	Potassium cyanide solution	6.1	UN3413	I	6.1	B69, B77, N74, N75, T14, TP2, TP13, W31	None	201	243	1 L	30 L	B	52
				II	6.1	B69, B77, IB2, N74, N75, T11, TP2, TP13, TP27, W31	153	202	243	5 L	60 L	B	52
				III	6.1	B69, B77, IB3, N74, N75, T7, TP2, TP13, TP28, W31	153	203	241	60 L	220 L	A	52
	*		*		*		*		*		*		*
	Potassium dithionite or Potassium hydrosulfite	4.2	UN1929	II	4.2	A8, A19, A20, IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	E	13
	*		*		*		*		*		*		*
	Potassium, metal alloys, liquid	4.3	UN1420	I	4.3	A7, A19, A20, B27, W31	None	201	244	Forbidden	1 L	E	13, 40, 52, 148
	Potassium, metal alloys, solid	4.3	UN3403	I	4.3	A19, A20, B27, IB4, IP1, T9, TP7, TP33, W32	None	211	244	Forbidden	15 kg	D	13, 52, 148
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	Potassium phosphide	4.3	UN2012	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
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	Potassium sodium alloys, liquid	4.3	UN1422	I	4.3	A7, A19, B27, N34, N40, T9, TP3, TP7, TP31, W31	None	201	244	Forbidden	1 L	E	13, 40, 52, 148
	Potassium sodium alloys, solid	4.3	UN3404	I	4.3	A19, B27, N34, N40, T9, TP7, TP33, W32	None	211	244	Forbidden	15 kg	D	13, 52, 148

	Potassium sulfide, anhydrous or Potassium sulfide with less than 30 percent water of crystallization	4.2	UN1382	II	4.2	A19, A20, B16, IB6, IP2, N34, T3, TP33, W31, W40	None	212	241	15 kg	50 kg	A	52
	*		*		*		*		*		*		*
	Potassium superoxide	5.1	UN2466	I	5.1	A20, IB6, IP1	None	211	None	Forbidden	15 kg	D	13, 52, 66, 75, 148
	*		*		*		*		*		*		*
	Propadiene, stabilized	2.1	UN2200		2.1	387	None	304	314, 315	Forbidden	150 kg	B	25, 40
	*		*		*		*		*		*		*
	Propellant, solid	1.4C	UN0501	II	1.4C		None	62	None	Forbidden	75 kg	2	25
	*		*		*		*		*		*		*
	Propylene tetramer	3	UN2850	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Propyleneimine, stabilized	3	UN1921	I	3, 6.1	387, A3, N34, T14, TP2, TP13	None	201	243	1 L	30 L	D	25, 40
	*		*		*		*		*		*		*
G	Pyrophoric liquids, organic, n.o.s	4.2	UN2845	I	4.2	B11, T22, TP2, TP7, W31	None	187	244	Forbidden	Forbidden	D	13, 78, 148
G	Pyrophoric metals, n.o.s., or Pyrophoric alloys, n.o.s	4.2	UN1383	I	4.2	B11, T21, TP7, TP33, W31	None	187	242	Forbidden	Forbidden	D	13, 148
G	Pyrophoric solid, inorganic, n.o.s	4.2	UN3200	I	4.2	T21, TP7, TP33, W31	None	187	242	Forbidden	Forbidden	D	13, 148
G	Pyrophoric solids, organic, n.o.s	4.2	UN2846	I	4.2	W31	None	187	242	Forbidden	Forbidden	D	13, 148
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	Radioactive material, low specific activity (LSA-III) non fissile or fissile excepted	7	UN3322		7	A56, T5, TP4, W7	421, 422, 428	427	427			A	95, 150
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	Radioactive material, uranium hexafluoride non fissile or fissile-excepted	7	UN2978		7, 6.1, 8		423	420, 427	420, 427			B	40, 95, 132

	Radioactive material, uranium hexafluoride, fissile	7	UN2977		7, 6.1, 8		453	417, 420	417, 420			B	40, 95, 132
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	Rubidium	4.3	UN1423	I	4.3	22, A7, A19, IB4, IP1, N34, N40, N45, W32	None	211	242	Forbidden	15 kg	D	13, 52, 148
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G	Self-heating liquid, corrosive, inorganic, n.o.s.	4.2	UN3188	II	4.2, 8	IB2, W31	None	202	243	1 L	5 L	C	
				III	4.2, 8	IB2, W31	None	203	241	5 L	60 L	C	
G	Self-heating liquid, corrosive, organic, n.o.s.	4.2	UN3185	II	4.2, 8	IB2, W31	None	202	243	1 L	5 L	C	
				III	4.2, 8	IB2, W31	None	203	241	5 L	60 L	C	
G	Self-heating liquid, inorganic, n.o.s.	4.2	UN3186	II	4.2	IB2, W31	None	202	242	1 L	5 L	C	
				III	4.2	IB2, W31	None	203	241	5 L	60 L	C	
G	Self-heating liquid, organic, n.o.s.	4.2	UN3183	II	4.2	IB2, W31	None	202	242	1 L	5 L	C	
				III	4.2	IB2, W31	None	203	241	5 L	60 L	C	
G	Self-heating liquid, toxic, inorganic, n.o.s.	4.2	UN3187	II	4.2, 6.1	IB2, W31	None	202	243	1 L	5 L	C	
				III	4.2, 6.1	IB2, W31	None	203	241	5 L	60 L	C	
G	Self-heating liquid, toxic, organic, n.o.s.	4.2	UN3184	II	4.2, 6.1	IB2, W31	None	202	243	1 L	5 L	C	
				III	4.2, 6.1	IB2, W31	None	203	241	5 L	60 L	C	
	*		*		*		*		*		*		*
G	Self-heating solid, inorganic, n.o.s.	4.2	UN3190	II	4.2	IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	C	
				III	4.2	IB8, IP3, T1, TP33, W31	None	213	241	25 kg	100 kg	C	
G	Self-heating solid, organic, n.o.s	4.2	UN3088	II	4.2	IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	C	

				III	4.2	B116, B130, IB8, IP3, T1, TP33, W31	None	213	241	25 kg	100 kg	C	
	*		*		*		*		*		*		*
	Silver picrate, wetted with not less than 30 percent water, by mass	4.1	UN1347	I	4.1	23, W31	None	211	None	Forbidden	Forbidden	D	28, 36
	*		*		*		*		*		*		*
	Sodium	4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP7, TP33, TP46, W32	151	211	244	Forbidden	15 kg	D	13, 52, 148
	*		*		*		*		*		*		*
	Sodium aluminum hydride	4.3	UN2835	II	4.3	A8, A19, A20, IB4, T3, TP33, W31, W40	151	212	242	Forbidden	50 kg	E	13, 52, 148
	*		*		*		*		*		*		*
	Sodium borohydride	4.3	UN1426	I	4.3	N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	*		*		*		*		*		*		*
	Sodium cyanide, solid	6.1	UN1689	I	6.1	B69, B77, IB7, N74, N75, T6, TP33, W31	None	211	242	5 kg	50 kg	B	52
	Sodium cyanide solution	6.1	UN3414	I	6.1	B69, B77, N74, N75, T14, TP2, TP13, W31	None	201	243	1 L	30 L	B	52
				II	6.1	B69, B77, IB2, N74, N75, T11, TP2, TP13, TP27, W31	153	202	243	5 L	60 L	B	52
				III	6.1	B69, B77, IB3, N74, N75, T7, TP2, TP13, TP28, W31	153	203	241	60 L	220 L	A	52
	*		*		*		*		*		*		*
	Sodium dinitro-o-cresolate, wetted with not less than 10% water, by mass	4.1	UN3369	I	4.1	162, A8, A19, N41, N84, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Sodium dinitro-o-cresolate, wetted with not less than 15 percent water, by mass	4.1	UN1348	I	4.1, 6.1	23, A8, A19, A20, N41, W31	None	211	None	1 kg	15 kg	E	28, 36
	Sodium dithionite or Sodium hydrosulfite	4.2	UN1384	II	4.2	A19, A20, IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	E	13
	*		*		*		*		*		*		*

	Sodium hydride	4.3	UN1427	I	4.3	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 52, 148
	*		*		*		*		*		*		*
	Sodium hydrosulfide, with less than 25 percent water of crystallization	4.2	UN2318	II	4.2	A7, A19, A20, IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	A	52
	*		*		*		*		*		*		*
	Sodium methylate	4.2	UN1431	II	4.2, 8	A7, A19, IB5, IP2, T3, TP33, W31	None	212	242	15 kg	50 kg	B	
	*		*		*		*		*		*		*
	Sodium phosphide	4.3	UN1432	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
	*		*		*		*		*		*		*
	Sodium picramate, wetted with not less than 20 percent water, by mass	4.1	UN1349	I	4.1	23, A8, A19, N41, W31	None	211	None	Forbidden	15 kg	E	28, 36
	*		*		*		*		*		*		*
	Sodium sulfide, anhydrous or Sodium sulfide with less than 30 percent water of crystallization	4.2	UN1385	II	4.2	A19, A20, IB6, IP2, N34, T3, TP33, W31, W40	None	212	241	15 kg	50 kg	A	52
	*		*		*		*		*		*		*
	Stannic phosphide	4.3	UN1433	I	4.3, 6.1	A19, N40, W32	None	211	242	Forbidden	15 kg	E	13, 40, 52, 85, 148
	*		*		*		*		*		*		*
	Strontium peroxide	5.1	UN1509	II	5.1	IB6, IP2, T3, TP33, W100	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
	Strontium phosphide	4.3	UN2013	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
	*		*		*		*		*		*		*
	Styrene monomer, stabilized	3	UN2055	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*		*		*		*		*		*		*
+	Sulfur trioxide, stabilized	8	UN1829	I	8, 6.1	2, 387, B9, B14, B32, B49, B77, N34, T20, TP4, TP13, TP25, TP26, TP38, TP45	None	227	244	Forbidden	Forbidden	A	25, 40

	*		*		*		*		*		*		*
G	Tear gas substances, liquid, n.o.s.	6.1	UN1693	I	6.1	W31	None	201	None	Forbidden	Forbidden	D	40
				II	6.1	IB2, W31	None	202	None	Forbidden	5 L	D	40
G	Tear gas substance, solid, n.o.s.	6.1	UN3448	I	6.1	T6, TP33, W31	None	211	242	Forbidden	Forbidden	D	40
				II	6.1	IB8, IP2, IP4, T3, TP33, W31	None	212	242	Forbidden	25 kg	D	40
	*		*		*		*		*		*		*
	Tetrafluoroethylene, stabilized	2.1	UN1081		2.1	387	306	304	None	Forbidden	150 kg	E	25, 40
	*		*		*		*		*		*		*
	4-Thiapentanal	6.1	UN2785	III	6.1	IB3, T4, TP1, W31	153	203	241	60 L	220 L	D	25, 49
	*		*		*		*		*		*		*
	Thiourea dioxide	4.2	UN3341	II	4.2	IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	D	
				III	4.2	IB8, IP3, T1, TP33, W31	None	213	241	25 kg	100 kg	D	
	*		*		*		*		*		*		*
	Titanium disulphide	4.2	UN3174	III	4.2	IB8, IP3, T1, TP33, W31	None	213	241	25 kg	100 kg	A	
	Titanium hydride	4.1	UN1871	II	4.1	A19, A20, IB4, N34, T3, TP33, W31, W40	None	212	241	15 kg	50 kg	E	
	Titanium powder, dry	4.2	UN2546	I	4.2	W31	None	211	242	Forbidden	Forbidden	D	13, 148
				II	4.2	A19, A20, IB6, IP2, N5, N34, T3, TP33, W31	None	212	241	15 kg	50 kg	D	13, 148
				III	4.2	B135, IB8, IP21, T1, TP33, W31	None	213	241	25 kg	100 kg	D	13, 148
	Titanium powder, wetted with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840	4.1	UN1352	II	4.1	A19, A20, IB6, IP2, N34, T3, TP33, W31, W40	None	212	240	15 kg	50 kg	E	74

	microns												
	Titanium sponge granules or Titanium sponge powders	4.1	UN2878	III	4.1	A1, B134, IB8, IP21, T1, TP33, W100	None	213	240	25 kg	100 kg	D	13, 74, 147, 148
	*		*		*		*		*		*		*
	Titanium trichloride, pyrophoric or Titanium trichloride mixtures, pyrophoric	4.2	UN2441	I	4.2, 8	N34, W31	None	181	244	Forbidden	Forbidden	D	13, 40, 148
	*		*		*		*		*		*		*
G	Toxic by inhalation liquid, water-reactive, flammable, n.o.s. with an LC50 lower than or equal to 200 ml/m3 and saturated vapor concentration greater than or equal to 500 LC50	6.1	UN3490	I	6.1, 4.3, 3	1, B9, B14, B30, T22, TP2, TP13, TP27, TP38, TP44	None	226	244	Forbidden	Forbidden	D	13, 21, 40, 49, 148
	*		*		*		*		*		*		*
G	Toxic solids, water-reactive, n.o.s	6.1	UN3125	I	6.1, 4.3	A5, T6, TP33, W100	None	211	242	5 kg	15 kg	D	13, 40, 148
	*		*		*		*		*		*		*
	Trichlorosilane	4.3	UN1295	I	4.3, 3, 8	N34, T14, TP2, TP7, TP13, W31	None	201	244	Forbidden	Forbidden	D	21, 40, 49, 100
	*		*		*		*		*		*		*
	Trifluorochloroethylene, stabilized or Refrigerant gas R 1113	2.3	UN1082		2.3, 2.1	3, 387, B14, T50	None	304	314, 315	Forbidden	Forbidden	D	25, 40
	*		*		*		*		*		*		*
	1,3,5-Trimethylbenzene	3	UN2325	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Trinitrobenzene, wetted, with not less than 10% water, by mass	4.1	UN3367	I	4.1	162, A8, A19, N41, N84, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Trinitrobenzene, wetted with not less than 30 percent water, by mass	4.1	UN1354	I	4.1	23, A2, A8, A19, N41, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	*		*		*		*		*		*		*

	Trinitrobenzoic acid, wetted with not less than 10% water by mass	4.1	UN3368	I	4.1	162, A8, A19, N41, N84, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Trinitrobenzoic acid, wetted with not less than 30 percent water, by mass	4.1	UN1355	I	4.1	23, A2, A8, A19, N41, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	*		*		*		*		*		*		*
	Trinitrochlorobenzene (picryl chloride), wetted, with not less than 10% water by mass	4.1	UN3365	I	4.1	162, A8, A19, N41, N84, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	*		*		*		*		*		*		*
	Trinitrophenol (picric acid), wetted, with not less than 10 percent water by mass	4.1	UN3364	I	4.1	23, A8, A19, N41, N84, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	*		*		*		*		*		*		*
	Trinitrophenol, wetted with not less than 30 percent water, by mass	4.1	UN1344	I	4.1	162, A8, A19, N41, W31	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*		*		*		*
	Trinitrotoluene (TNT), wetted, with not less than 10 percent water by mass	4.1	UN3366	I	4.1	162, A8, A19, N41, N84, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Trinitrotoluene, wetted or TNT, wetted, with not less than 30 percent water by mass	4.1	UN1356	I	4.1	23, A2, A8, A19, N41, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	*		*		*		*		*		*		*
	Tripropylene	3	UN2057	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	B	
				III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Turpentine	3	UN1299	III	3	B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Uranium hexafluoride, radioactive material, excepted package, less than 0.1 kg per package, non-fissile or fissile-excepted	6.1	UN3507	I	6.1, 7, 8	369	420	None	None	Less than .1 kg	Less than .1 kg	A	132
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	Urea nitrate, wetted, with not less than 10 percent water by mass	4.1	UN3370	I	4.1	162, A8, A19, N41, N84, W31	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Urea nitrate, wetted with not less than 20 percent water, by mass	4.1	UN1357	I	4.1	23, 39, A8, A19, N41, W31	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*		*		*		*
	Vinyl acetate, stabilized	3	UN1301	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
	Vinyl bromide, stabilized	2.1	UN1085		2.1	387, N86, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40
	Vinyl butyrate, stabilized	3	UN2838	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
	Vinyl chloride, stabilized	2.1	UN1086		2.1	21, 387, B44, N86, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40
	Vinyl ethyl ether, stabilized	3	UN1302	I	3	387, A3, T11, TP2	None	201	243	1 L	30 L	D	25
	Vinyl fluoride, stabilized	2.1	UN1860		2.1	387, N86	306	304	314, 315	Forbidden	150 kg	E	25, 40
	Vinyl isobutyl ether, stabilized	3	UN1304	II	3	387, IB2, T4, TP1	150	202	242	5 L	60 L	C	25
	Vinyl methyl ether, stabilized	2.1	UN1087		2.1	387, B44, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40
	*		*		*		*		*		*		*
	Vinylidene chloride, stabilized	3	UN1303	I	3	387, T12, TP2, TP7	150	201	243	1 L	30 L	D	25, 40
	Vinylpyridines, stabilized	6.1	UN3073	II	6.1, 3, 8	387, IB1, T7, TP2, TP13	153	202	243	1 L	30 L	B	21, 25, 40, 52, 100
	Vinyltoluenes, stabilized	3	UN2618	III	3	387, B1, IB3, T2, TP1	150	203	242	60 L	220 L	C	25
	*		*		*		*		*		*		*
G	Water-reactive liquid, n.o.s	4.3	UN3148	I	4.3	T13, TP2, TP7, TP41, W31	None	201	244	Forbidden	1 L	E	13, 40, 148
				II	4.3	IB1, T7, TP2, TP7, W31	None	202	243	1 L	5 L	E	13, 40, 148
				III	4.3	IB2, T7, TP2, TP7, W31	None	203	242	5 L	60 L	E	13, 40, 148
	*		*		*		*		*		*		*
G	Water-reactive solid, corrosive, n.o.s	4.3	UN3131	I	4.3, 8	IB4, IP1, N40, T9, TP7, TP33, W31	None	211	242	Forbidden	15 kg	D	13, 148

				II	4.3, 8	IB6, IP2, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	E	13, 85, 148
				III	4.3, 8	IB8, IP4, T1, TP33, W31	151	213	241	25 kg	100 kg	E	13, 85, 148
G	Water-reactive solid, flammable, n.o.s	4.3	UN3132	I	4.3, 4.1	IB4, N40, W31	None	211	242	Forbidden	15 kg	D	13, 148
				II	4.3, 4.1	IB4, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	E	13, 148
				III	4.3, 4.1	IB6, T1, TP33, W31	151	213	241	25 kg	100 kg	E	13, 148
G	Water-reactive solid, n.o.s	4.3	UN2813	I	4.3	IB4, N40, T9, TP7, TP33, W32	None	211	242	Forbidden	15 kg	E	13, 40, 148
				II	4.3	B132, IB7, IP2, IP21, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	E	13, 40, 148
				III	4.3	B132, IB8, IP21, T1, TP33, W31	151	213	241	25 kg	100 kg	E	13, 40, 148
	*		*		*		*		*		*		*
G	Water-reactive solid, self-heating, n.o.s	4.3	UN3135	I	4.3, 4.2	N40, W31	None	211	242	Forbidden	15 kg	E	13, 148
				II	4.3, 4.2	IB5, IP2, T3, TP33, W31, W40	None	212	242	15 kg	50 kg	E	13, 148
				III	4.3, 4.2	IB8, IP4, T1, TP33, W31	None	213	241	25 kg	100 kg	E	13, 148
G	Water-reactive solid, toxic, n.o.s	4.3	UN3134	I	4.3, 6.1	A8, IB4, IP1, N40, W31	None	211	242	Forbidden	15 kg	D	13, 148
				II	4.3, 6.1	IB5, IP2, T3, TP33, W31, W40	151	212	242	15 kg	50 kg	E	13, 85, 148
				III	4.3, 6.1	IB8, IP4, T1, TP33, W31	151	213	241	25 kg	100 kg	E	13, 85, 148
	*		*		*		*		*		*		*
	Xanthates	4.2	UN3342	II	4.2	IB6, IP2, T3, TP33, W31	None	212	241	15 kg	50 kg	D	40
				III	4.2	IB8, IP3, T1, TP33, W31	None	213	241	25 kg	100 kg	D	40
	*		*		*		*		*		*		*
	Xylyl bromide, liquid	6.1	UN1701	II	6.1	A3, A6, A7, IB2, N33, T7, TP2, TP13, W31	None	340	None	Forbidden	60 L	D	40

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	Zinc ashes	4.3	UN1435	III	4.3	A1, A19, IB8, IP4, T1, TP33, W100	151	213	241	25 kg	100 kg	A	13, 148
	*		*		*		*		*		*		*
	Zinc chloride, solution	8	UN1840	III	8	IB3, T4, TP2	154	203	241	5 L	60 L	A	
	*		*		*		*		*		*		*
	Zinc peroxide	5.1	UN1516	II	5.1	IB6, IP2, T3, TP33, W100	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
	Zinc phosphide	4.3	UN1714	I	4.3, 6.1	A19, N40, W32	None	211	None	Forbidden	15 kg	E	13, 40, 52, 85, 148
	Zinc powder or Zinc dust	4.3	UN1436	I	4.3, 4.2	A19, IB4, IP1, N40, W31	None	211	242	Forbidden	15 kg	A	13, 52, 53, 148
				II	4.3, 4.2	A19, IB7, IP2, T3, TP33, W31, W40	None	212	242	15 kg	50 kg	A	13, 52, 53, 148
				III	4.3, 4.2	IB8, IP4, T1, TP33, W31	None	213	242	25 kg	100 kg	A	13, 52, 53, 148
	*		*		*		*		*		*		*
	Zirconium hydride	4.1	UN1437	II	4.1	A19, A20, IB4, N34, T3, TP33, W31, W40	None	212	240	15 kg	50 kg	E	
	*		*		*		*		*		*		*
	Zirconium, dry, coiled wire, finished metal sheets, strip (thinner than 254 microns but not thinner than 18 microns)	4.1	UN2858	III	4.1	A1, W100	151	213	240	25 kg	100 kg	A	13, 147, 148
	Zirconium, dry, finished sheets, strip or coiled wire	4.2	UN2009	III	4.2	A1, A19, W31	None	213	240	25 kg	100 kg	D	13, 148
	*		*		*		*		*		*		*
	Zirconium picramate, wetted with not less than 20 percent water, by mass	4.1	UN1517	I	4.1	23, N41, W31	None	211	None	1 kg	15 kg	D	28, 36
	Zirconium powder, dry	4.2	UN2008	I	4.2	T21, TP7, TP33, W31	None	211	242	Forbidden	Forbidden	D	13, 148
				II	4.2	A19, A20, IB6, IP2, N5, N34, T3, TP33, W31	None	212	241	15 kg	50 kg	D	13, 148
				III	4.2	B135, IB8, IP4, T1, TP33, W31	None	213	241	25 kg	100 kg	D	13, 148

	Zirconium powder, wetted with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns	4.1	UN1358	II	4.1	A19, A20, IB6, IP2, N34, T3, TP33, W31, W40	None	212	241	15 kg		E	13, 74, 147, 148	
	Zirconium scrap	4.2	UN1932	III	4.2	B135, IB8, IP21, N34, T1, TP33, W31	None	213	240	Forbidden	50 kg	D		13, 148

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Appendix B to § 172.101—List of Marine Pollutants.

* * * * *

LIST OF MARINE POLLUTANTS

S. M. P. (1)	Marine pollutant (2)
* * * * *	
	Hypochlorite solutions
* * * * *	
	Isoprene, stabilized
* * * * *	
	N-Methylaniline
* * * * *	
	Methylcyclohexane
* * * * *	
	Tripropylene
* * * * *	

■ 13. In § 172.102:
■ a. In paragraph (c)(1):
■ i. Revise special provisions 40, 134, and 135;
■ ii. Add special provisions 157, 181, and 182 in numerical order;
■ iii. Revise special provisions 238 and 369; and
■ iv. Add special provisions, 379, 387, 420, 421 and 422 in numerical order.
■ b. In paragraph (c)(2), special provisions A210 and A212 are added in numerical order.
■ c. In paragraph (c)(3), special provisions B134 and B135 are added in numerical order.
■ d. In paragraph (c)(4), Table 2—IP Codes is revised.
■ e. In paragraph (c)(5), special provision N90 is revised and N92 is added in numerical order.
■ f. In paragraph (c)(9), special provisions W31, W32, W40, and W100 are added in numerical order.

The additions and revisions read as follows:

§ 172.102 Special Provisions.

* * * * *

(c) * * *

(1) * * *

40 Polyester resin kits consist of two components: A base material (either Class 3 or Division 4.1, Packing Group II or III) and an activator (organic peroxide), each separately packed in an inner packaging. The organic peroxide must be type D, E, or F, not requiring temperature control. The components may be placed in the same outer packaging provided they will not interact dangerously in the event of leakage. The Packing Group assigned will be II or III, according to the classification criteria for either Class 3 or Division 4.1, as appropriate, applied to the base material. Additionally, unless otherwise excepted in this subchapter, polyester resin kits must be packaged in specification combination packagings based on the performance level of the base material contained within the kit.

* * * * *

134 This entry only applies to vehicles powered by wet batteries, sodium batteries, lithium metal batteries or lithium ion batteries and equipment powered by wet batteries or sodium batteries that are transported with these batteries installed.

a. For the purpose of this special provision, vehicles are self-propelled apparatus designed to carry one or more persons or goods. Examples of such vehicles are electrically-powered cars, motorcycles, scooters, three- and four-wheeled vehicles or motorcycles, trucks, locomotives, bicycles (pedal cycles with an electric motor) and other vehicles of this type (*e.g.* self-balancing vehicles or vehicles not equipped with at least one seating position), lawn tractors, self-propelled farming and construction equipment, boats, aircraft, wheelchairs and other mobility aids. This includes vehicles transported in a packaging. In this case some parts of the vehicle may be detached from its frame to fit into the packaging.

b. Examples of equipment are lawnmowers, cleaning machines or model boats and model aircraft. Equipment powered by lithium metal batteries or lithium ion batteries must be consigned under the entries ''Lithium metal batteries contained in equipment'' or ''Lithium metal batteries packed with equipment'' or ''Lithium ion batteries contained in equipment'' or ''Lithium ion batteries packed with equipment'' as appropriate.

c. Self-propelled vehicles or equipment that also contain an internal combustion engine must be consigned under the entries ''Engine, internal combustion, flammable gas powered'' or ''Engine, internal combustion, flammable liquid powered'' or ''Vehicle, flammable gas powered'' or ''Vehicle, flammable liquid powered,'' as appropriate. These entries include hybrid electric vehicles powered by both an internal combustion engine and batteries. Additionally, self-propelled vehicles or equipment that contain a fuel cell engine must be consigned under the entries ''Engine, fuel cell, flammable gas powered'' or ''Engine, fuel cell, flammable liquid powered'' or ''Vehicle, fuel cell, flammable gas

powered'' or ''Vehicle, fuel cell, flammable liquid powered,'' as appropriate. These entries include hybrid electric vehicles powered by a fuel cell engine, an internal combustion engine, and batteries.

135 Internal combustion engines installed in a vehicle must be consigned under the entries ''Vehicle, flammable gas powered'' or ''Vehicle, flammable liquid powered,'' as appropriate. If a vehicle is powered by a flammable liquid and a flammable gas internal combustion engine, it must be consigned under the entry ''Vehicle, flammable gas powered.'' These entries include hybrid electric vehicles powered by both an internal combustion engine and wet, sodium or lithium batteries installed. If a fuel cell engine is installed in a vehicle, the vehicle must be consigned using the entries ''Vehicle, fuel cell, flammable gas powered'' or ''Vehicle, fuel cell, flammable liquid powered,'' as appropriate. These entries include hybrid electric vehicles powered by a fuel cell, an internal combustion engine, and wet, sodium or lithium batteries installed. For the purpose of this special provision, vehicles are self-propelled apparatus designed to carry one or more persons or goods. Examples of such vehicles are cars, motorcycles, trucks, locomotives, scooters, three- and four-wheeled vehicles or motorcycles, lawn tractors, self-propelled farming and construction equipment, boats and aircraft.

* * * * *

157 When transported as a limited quantity or a consumer commodity, the maximum net capacity specified in § 173.151(b)(1)(i) of this subchapter for inner packagings may be increased to 5 kg (11 pounds).

* * * * *

181 When a package contains a combination of lithium batteries contained in equipment and lithium batteries packed with equipment, the following requirements apply:

a. The shipper must ensure that all applicable requirements of § 173.185 of this subchapter are met. The total mass of lithium batteries contained in any package must not exceed the quantity limits in columns (9A) and (9B) for passenger aircraft or cargo aircraft, as applicable;

b. Except as provided in § 173.185(c)(3) of this subchapter, the package must be marked ''UN 3091 Lithium metal batteries packed with equipment'', or ''UN 3481 Lithium ion batteries packed with equipment,'' as appropriate. If a package contains both lithium metal batteries and lithium ion batteries packed with and contained in equipment, the package must be marked as required for both battery types. However, button cell batteries installed in equipment (including circuit boards) need not be considered; and

c. The shipping paper must indicate ''UN 3091 Lithium metal batteries packed with equipment'' or ''UN 3481 Lithium ion batteries packed with equipment,'' as appropriate. If a package contains both lithium metal batteries and lithium ion batteries packed with and contained in equipment, then the shipping paper must indicate both ''UN 3091 Lithium metal batteries packed with equipment'' and ''UN 3481 Lithium ion batteries packed with equipment.''

182 Equipment containing only lithium batteries must be classified as either UN 3091 or UN 3481.

* * * * *

238 Neutron radiation detectors: a. Neutron radiation detectors containing non-pressurized boron trifluoride gas in excess of 1 gram (0.035 ounces) and radiation detection systems containing such neutron radiation detectors as components may be transported by highway, rail, vessel, or cargo aircraft in accordance with the following:

a. Each radiation detector must meet the following conditions:

(1) The pressure in each neutron radiation detector must not exceed 105 kPa absolute at 20 °C (68 °F);

(2) The amount of gas must not exceed 13 grams (0.45 ounces) per detector; and

(3) Each neutron radiation detector must be of welded metal construction with brazed metal to ceramic feed through assemblies. These detectors must have a minimum burst pressure of 1800 kPa as demonstrated by design type qualification testing; and

(4) Each detector must be tested to a 1×10^{-10} cm^3/s leaktightness standard before filling.

b. Radiation detectors transported as individual components must be transported as follows:

(1) They must be packed in a sealed intermediate plastic liner with sufficient absorbent or adsorbent material to absorb or adsorb the entire gas contents.

(2) They must be packed in strong outer packagings and the completed package must be capable of withstanding a 1.8 meter (5.9 feet) drop without leakage of gas contents from detectors.

(3) The total amount of gas from all detectors per outer packaging must not exceed 52 grams (1.83 ounces).

c. Completed neutron radiation detection systems containing detectors meeting the conditions of paragraph a(1) of this special provision must be transported as follows:

(1) The detectors must be contained in a strong sealed outer casing;

(2) The casing must contain include sufficient absorbent or adsorbent material to absorb or adsorb the entire gas contents;

(3) The completed system must be packed in strong outer packagings capable of withstanding a 1.8 meter (5.9 feet) drop test without leakage unless a system's outer casing affords equivalent protection.

d. Except for transportation by aircraft, neutron radiation detectors and radiation detection systems containing such detectors transported in accordance with paragraph a. of this special provision are not subject to the labeling and placarding requirements of part 172 of this subchapter.

e. When transported by highway, rail, vessel, or as cargo on an aircraft, neutron radiation detectors containing not more than 1 gram of boron trifluoride, including those with solder glass joints are not subject to any other requirements of this subchapter provided they meet the requirements in paragraph a(1) of this special provision and are packed in accordance with paragraph a(2) of this special provision. Radiation detection systems containing such detectors are not subject to any other requirements of this subchapter provided they are packed in accordance with paragraph a(3) of this special provision.

* * * * *

369 In accordance with § 173.2a of this subchapter, this radioactive material in an excepted package possessing corrosive properties is classified in Division 6.1 with a radioactive material and corrosive subsidiary risk. Uranium hexafluoride may be classified under this entry only if the conditions of §§ 173.420(a)(4) and (6) and (d) and 173.421(b) and (d) of this subchapter, and, for fissile-excepted material, the conditions of § 173.453 of this subchapter are met. In addition to the provisions applicable to the transport of Division 6.1 substances, the provisions of §§ 173.421(c) and 173.443(a) of this subchapter apply. In addition, packages shall be legibly and durably marked with an identification of the consignor, the consignee, or both. No Class 7 label is required to be displayed. The consignor shall be in possession of a copy of each applicable certificate when packages include fissile material excepted by competent authority approval. When a consignment is undeliverable, the

consignment shall be placed in a safe location and the appropriate competent authority shall be informed as soon as possible and a request made for instructions on further action. If it is evident that a package of radioactive material, or conveyance carrying unpackaged radioactive material, is leaking, or if it is suspected that the package, or conveyance carrying unpackaged material, may have leaked, the requirements of § 173.443(e) of this subchapter apply.

* * * * *

379 When offered for transport by highway, rail, or cargo vessel, anhydrous ammonia adsorbed or absorbed on a solid contained in ammonia dispensing systems or receptacles intended to form part of such systems is not subject to the requirements of this subchapter if the following conditions in this provision are met. In addition to meeting the conditions in this provision, transport on cargo aircraft only may be authorized with prior approval of the Associate Administrator.

a. The adsorption or absorption presents the following properties:

(1) The pressure at a temperature of 20 °C (68 °F) in the receptacle is less than 0.6 bar (60 kPa);

(2) The pressure at a temperature of 35 °C (95 °F) in the receptacle is less than 1 bar (100 kPa);

(3) The pressure at a temperature of 85 °C (185 °F) in the receptacle is less than 12 bar (1200 kPa).

b. The adsorbent or absorbent material shall not meet the definition or criteria for inclusion in Classes 1 to 8;

c. The maximum contents of a receptacle shall be 10 kg of ammonia; and

d. Receptacles containing adsorbed or absorbed ammonia shall meet the following conditions:

(1) Receptacles shall be made of a material compatible with ammonia as specified in ISO 11114–1:2012 (IBR, see § 171.7 of this subchapter);

(2) Receptacles and their means of closure shall be hermetically sealed and able to contain the generated ammonia;

(3) Each receptacle shall be able to withstand the pressure generated at 85 °C (185 °F) with a volumetric expansion no greater than 0.1%;

(4) Each receptacle shall be fitted with a device that allows for gas evacuation once pressure exceeds 15 bar (1500 kPa) without violent rupture, explosion or projection; and

(5) Each receptacle shall be able to withstand a pressure of 20 bar (2000 kPa) without leakage when the pressure relief device is deactivated.

e. When offered for transport in an ammonia dispenser, the receptacles shall be connected to the dispenser in such a way that the assembly is guaranteed to have the same strength as a single receptacle.

f. The properties of mechanical strength mentioned in this special provision shall be tested using a prototype of a receptacle and/or dispenser filled to nominal capacity, by increasing the temperature until the specified pressures are reached.

g. The test results shall be documented, shall be traceable, and shall be made available to a representative of the Department upon request.

* * * * *

387 When materials are stabilized by temperature control, the provisions of § 173.21(f) of this subchapter apply. When chemical stabilization is employed, the person offering the material for transport shall ensure that the level of stabilization is sufficient to prevent the material as packaged from dangerous polymerization at 50 °C (122 °F). If chemical stabilization becomes ineffective at lower temperatures within the anticipated duration of transport, temperature control is required and is forbidden by aircraft. In making this determination factors to be taken into consideration include, but are not limited to, the capacity and geometry of the packaging and the effect of any insulation present, the temperature of the material when offered for transport, the duration of the journey, and the ambient temperature conditions typically encountered in the journey (considering also the season of year), the effectiveness and other properties of the stabilizer employed, applicable operational controls imposed by regulation (*e.g.* requirements to protect from sources of heat, including other cargo carried at a temperature above ambient) and any other relevant factors. The provisions of this special provision will be effective until January 2, 2019, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

420 This entry does not apply to manufactured articles (such as table tennis balls).

421 This entry will no longer be effective on January 2, 2019 unless we terminate it earlier or extend it beyond that date by notice of a final rule in the **Federal Register**.

422 When labelling is required, the label to be used must be the label shown in § 172.447. Labels conforming to requirements in place on December 31, 2016 may continue to be used until December 31, 2018. When a placard is displayed, the placard must be the placard shown in § 172.560.

(2) * * *

A210 This substance is forbidden for transport by air. It may be transported on cargo aircraft only with the prior approval of the Associate Administrator.

A212 ''UN 2031, Nitric acid, *other than red fuming, with more than 20% and less than 65% nitric acid*'' intended for use in sterilization devices only, may be transported on passenger aircraft irrespective of the indication of ''forbidden'' in columns (9A) of the § 172.101 table provided that:

a. Each inner packaging contains not more than 30 mL;

b. Each inner packaging is contained in a sealed leak-proof intermediate packaging with sufficient absorbent material capable of containing the contents of the inner packaging;

c. Intermediate packagings are securely packed in an outer packaging of a type permitted by § 173.158(g) of this subchapter which meet the requirements of part 178 of this subchapter at the Packing Group I performance level;

d. The maximum quantity of nitric acid in the package does not exceed 300 mL; and

e. Transport in accordance with this special provision must be noted on the shipping paper.

(3) * * *

B134 For Large Packagings offered for transport by vessel, flexible or fibre inner packagings shall be sift-proof and water-resistant or shall be fitted with a sift-proof and water-resistant liner.

B135 For Large Packagings offered for transport by vessel, flexible or fibre inner packagings shall be hermetically sealed.

(4) * * *

TABLE 2—IP CODES

IP code	
IP1	IBCs must be packed in closed freight containers or a closed transport vehicle.
IP2	When IBCs other than metal or rigid plastics IBCs are used, they must be offered for transportation in a closed freight container or a closed transport vehicle.
IP3	Flexible IBCs must be sift-proof and water-resistant or must be fitted with a sift-proof and water-resistant liner.
IP4	Flexible, fiberboard or wooden IBCs must be sift-proof and water-resistant or be fitted with a sift-proof and water-resistant liner.
IP5	IBCs must have a device to allow venting. The inlet to the venting device must be located in the vapor space of the IBC under maximum filling conditions.
IP6	Non-specification bulk bins are authorized.
IP7	For UN identification numbers 1327, 1363, 1364, 1365, 1386, 1841, 2211, 2217, 2793 and 3314, IBCs are not required to meet the IBC performance tests specified in part 178, subpart N, of this subchapter.
IP8	Ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2 and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 of this subchapter at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).
IP13	Transportation by vessel in IBCs is prohibited.
IP14	Air must be eliminated from the vapor space by nitrogen or other means.
IP15	For UN2031 with more than 55% nitric acid, rigid plastic IBCs and composite IBCs with a rigid plastic inner receptacle are authorized for two years from the date of IBC manufacture.
IP16	IBCs of type 31A and 31N are only authorized if approved by the Associate Administrator.
IP19	For UN identification numbers 3531, 3532, 3533, and 3534, IBCs must be designed and constructed to permit the release of gas or vapor to prevent a build-up of pressure that could rupture the IBCs in the event of loss of stabilization.
IP20	Dry sodium cyanide or potassium cyanide is also permitted in siftproof, water-resistant, fiberboard IBCs when transported in closed freight containers or transport vehicles.
IP21	When transported by vessel, flexible, fiberboard or wooden IBCs must be sift-proof and water-resistant or be fitted with a sift-proof and water-resistant liner.

* * * * *

(5) * * *

N90 Metal packagings are not authorized. Packagings of other material with a small amount of metal, for example metal closures or other metal fittings such as those mentioned in part 178 of this subchapter, are not considered metal packagings. Packagings of other material constructed with a small amount of metal must be designed such that the hazardous material does not contact the metal.

* * * * *

N92 Notwithstanding the provisions of § 173.24(g) of this subchapter, packagings shall be designed and constructed to permit the release of gas or vapor to prevent a build-up of pressure that could rupture the packagings in the event of loss of stabilization.

* * * * *

(9) * * *

W31 Non-bulk packagings must be hermetically sealed.

W32 Non-bulk packagings shall be hermetically sealed, except for solid fused material.

W40 Non-bulk bags are not allowed.

* * * * *

W100 Non-bulk flexible, fibreboard or wooden packagings must be sift-proof and water-resistant or must be fitted with a sift-proof and water-resistant liner.

■ 14. Section 172.202(a)(6)(viii) is added to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(6) * * *

(viii) For authorized consumer commodities, the information provided may be either the gross mass of each package or the average gross mass of the packages.

* * * * *

■ 15. In § 172.407, paragraphs (c)(1)(i) and (iii) are revised to read as follows:

§ 172.407 Label specifications.

* * * * *

(c) * * *

(1) * * *

(i) If the size of the package so requires, the dimensions of the label and its features may be reduced proportionally provided the symbol and other elements of the label remain clearly visible.

* * * * *

(iii) *Transitional exception.* For domestic transportation, a label in conformance with the requirements of 49 CFR 172.407(c)(1) (revised as of October 1, 2014), may continue to be used until December 31, 2018.

* * * * *

■ 16. Section 172.447 is added to read as follows:

§ 172.447 LITHIUM BATTERY label.

(a) Except for size and color, the LITHIUM BATTERY label must be as follows:

BILLING CODE 4910–60–P

BILLING CODE 4910–60–C

(b) In addition to complying with § 172.407, the background on the LITHIUM BATTERY label must be white with seven black vertical stripes on the top half. The black vertical stripes must be spaced, so that, visually, they appear equal in width to the six white spaces between them. The lower half of the label must be white with the symbol (battery group, one broken and emitting flame) and class number ''9'' underlined and centered at the bottom in black.

(c) Labels conforming to requirements in place on December 31, 2016 may continue to be used until December 31, 2018.

■ 17. In § 172.505, paragraph (b) is revised to read as follows:

§ 172.505 Placarding for subsidiary hazards.

* * * * *

(b) In addition to the RADIOACTIVE placard which may be required by § 172.504(e), each transport vehicle, portable tank or freight container that contains 454 kg (1,001 pounds) or more gross weight of non-fissile, fissile-excepted, or fissile uranium hexafluoride must be placarded with a CORROSIVE placard and a POISON placard on each side and each end.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 18. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 19. In § 173.4a, paragraph (e)(3) is revised to read as follows:

§ 173.4a Excepted quantities.

* * * * *

(e) * * *

(3) Each inner packaging must be securely packed in an intermediate packaging with cushioning material in such a way that, under normal conditions of transport, it cannot break, be punctured or leak its contents. The completed package as prepared for transport must completely contain the contents in case of breakage or leakage, regardless of package orientation. For liquid hazardous materials, the intermediate or outer packaging must contain sufficient absorbent material that:

(i) Will absorb the entire contents of the inner packaging.

(ii) Will not react dangerously with the material or reduce the integrity or function of the packaging materials.

(iii) When placed in the intermediate packaging, the absorbent material may be the cushioning material.

* * * * *

■ 20. In § 173.9, paragraph (e) is revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

* * * * *

(e) *FUMIGANT marking.* (1) The FUMIGANT marking must consist of black letters on a white background that is a rectangle at least 400 mm (15.75 inches) wide and at least 300 mm (11.8 inches) high as measured to the outside of the lines forming the border of the marking. The minimum width of the line forming the border must be 2 mm and the text on the marking must not be less than 25 mm high. Except for size and color, the FUMIGANT marking must be as shown in the following figure. Where dimensions are not specified, all features shall be in approximate proportion to those shown.

(i) The marking, and all required information, must be capable of withstanding, without deterioration or a substantial reduction in effectiveness, a 30-day exposure to open weather conditions.

(ii) [Reserved]

BILLING CODE 4910–60–P

BILLING CODE 4910–60–C

(2) The ''*'' shall be replaced with the technical name of the fumigant.

* * * * *

■ 21. In § 173.21, paragraphs (f) introductory text and (f)(1) are revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) A package containing a material which is likely to decompose with a self-accelerated decomposition temperature (SADT) or polymerize with a self-accelerated polymerization temperature (SAPT) of 50 °C (122 °F) or less, with an evolution of a dangerous quantity of heat or gas when decomposing or polymerizing, unless the material is stabilized or inhibited in a manner to preclude such evolution. The SADT and SAPT may be determined by any of the test methods described in Part II of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

(1) A package meeting the criteria of paragraph (f) of this section may be required to be shipped under controlled temperature conditions. The control temperature and emergency temperature for a package shall be as specified in the table in this paragraph (f)(1) based upon the SADT or SAPT of the material. The control temperature is the temperature above which a package of the material may not be offered for transportation or transported. The emergency temperature is the temperature at which, due to imminent danger, emergency measures must be initiated.

§ 173.21 TABLE—DERIVATION OF CONTROL AND EMERGENCY TEMPERATURE

SADT/SAPT [1]	Control temperatures	Emergency temperature
SADT/SAPT ≤20 °C (68 °F)	20 °C (36 °F) below SADT/SAPT	10 °C (18 °F) below SADT/SAPT.
20 °C (68 °F) SADT/SAPT ≤35 °C (95 °F)	15 °C (27 °F) below SADT/SAPT	10 °C (18 °F) below SADT/SAPT.
35 °C (95 °F) SADT/SAPT ≤50 °C (122 °F)	10 °C (18 °F) below SADT/SAPT	5 °C (9 °F) below SADT/SAPT.

§ 173.21 TABLE—DERIVATION OF CONTROL AND EMERGENCY TEMPERATURE—Continued

SADT/SAPT [1]	Control temperatures	Emergency temperature
50 °C (122 °F) SADT/SAPT	([2])	([2])

[1] Self-accelerating decomposition temperature or Self-accelerating polymerization temperature.
[2] Temperature control not required.

(i) The provisions concerning polymerizing substances in paragraph (f) will be effective until January 2, 2019.

(ii) [Reserved]

* * * * *

■ 22. Effective January 2, 2019, in § 173.21, paragraphs (f) introductory text and (f)(1) are revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) A package containing a material which is likely to decompose with a self-accelerated decomposition temperature (SADT) of 50 °C (122 °F) or less, or polymerize at a temperature of 54 °C (130 °F) or less with an evolution of a dangerous quantity of heat or gas when decomposing or polymerizing, unless the material is stabilized or inhibited in a manner to preclude such evolution. The SADT may be determined by any of the test methods described in Part II of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

(1) A package meeting the criteria of paragraph (f) of this section may be required to be shipped under controlled temperature conditions. The control temperature and emergency temperature for a package shall be as specified in the table in this paragraph based upon the SADT of the material. The control temperature is the temperature above which a package of the material may not be offered for transportation or transported. The emergency temperature is the temperature at which, due to imminent danger, emergency measures must be initiated.

§ 173.21 TABLE—METHOD OF DETERMINING CONTROL AND EMERGENCY TEMPERATURE

SADT [1]	Control temperatures	Emergency temperature
SADT ≤20 °C (68 °F)	20 °C (36 °F) below SADT	10 °C (18 °F) below SADT.
20 °C (68 °F) SADT ≤35 °C (95 °F)	15 °C (27 °F) below SADT	10 °C (18 °F) below SADT.
35 °C (95 °F) SADT ≤50 °C (122 °F)	10 °C (18 °F) below SADT	5 °C (9 °F) below SADT.
50 °C (122 °F) SADT	([2])	([2])

[1] Self-accelerating decomposition temperature.
[2] Temperature control not required.

* * * * *

■ 23. In § 173.40, paragraph (a)(1) is revised to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

* * * * *

(a) * * *

(1) A cylinder must conform to a DOT specification or UN standard prescribed in subpart C of part 178 of this subchapter, or a TC, CTC, CRC, or BTC cylinder authorized in § 171.12 of this subchapter, except that acetylene cylinders and non-refillable cylinders are not authorized. The use of UN tubes and MEGCs is prohibited for Hazard Zone A materials.

* * * * *

■ 24. In § 173.50, paragraph (b)(6) is revised to read as follows:

§ 173.50 Class 1—Definitions.

* * * * *

(b) * * *

(6) *Division 1.6* [2] consists of extremely insensitive articles that do not have a mass explosion hazard. This division is comprised of articles which predominately contain extremely insensitive substances and that demonstrate a negligible probability of accidental initiation or propagation.

[2] The risk from articles of Division 1.6 is limited to the explosion of a single article.

■ 25. In § 173.52, in paragraph (b), in Table 1, remove the entry ''Articles containing only extremely insensitive substances'' and add the entry ''Articles predominantly containing extremely insensitive substances'' in its place to read as follows:

§ 173.52 Classification codes and compatibility groups of explosives.

(b) * * *

TABLE 1—CLASSIFICATION CODES

Description of substances or article to be classified	Compatibility group	Classification code
* * * * *	*	*
Articles predominantly containing extremely insensitive substances	N	1.6N
* * * * *	*	*

* * * * *

■ 26. In § 173.62:

■ a. In paragraph (b), in the Explosives Table, the entry for UN0510 is added after UN0509; and

■ b. In paragraph (c), in the Table of Packing Methods, Packing Instructions 112(c), 114(b), 130, and 137 are revised.

The addition and revisions read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(b) * * *

EXPLOSIVES TABLE

ID #	PI
* * * * *	
UN0510	130

EXPLOSIVES TABLE—Continued

ID #	PI
* * * * *	

(c) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* *	* *	* *	* *
112(c) This packing instruction applies to solid dry powders.	Bags	Bags	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS:			
1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free.	paper, multiwall, water resistant plastics, woven plastics, Receptacles, fiberboard, metal, plastics, wood.	paper, multiwall, water resistant with inner lining, plastics, Receptacles, metal, plastics, wood.	steel (4A). aluminum (4B). other metal (4N). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2). Drums. plastics (1H1 or 1H2). steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G).
2. For UN0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state. Bags must not exceed a maximum net mass of 30 kg.			
3. Inner packagings are not required if drums are used as the outer packaging.			
4. At least one of the packagings must be sift-proof.			
5. For UN 0504, metal packagings must not be used. Packagings of other material with a small amount of metal, for example metal closures or other metal fittings such as those mentioned in part 178 of this subchapter, are not considered metal packagings.			
* *	* *	* *	* *
114(b)	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS:			
1. For UN Nos. 0077, 0132, 0234, 0235 and 0236, packagings must be lead free.	paper, kraft, plastics, textile, sift-proof, woven plastics, sift-proof, Receptacles, fiberboard, metal, paper, plastics, wood, plastics, sift-proof.		natural wood, ordinary (4C1). natural wood, sift-proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel (1A1 or 1A2). aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
2. For UN0160 and UN0161, when metal drums (1A2, 1B2 or 1N2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increased internal pressure from internal or external causes, is prevented.			
3. For UN0160, UN0161, and UN0508, inner packagings are not necessary if drums are used as the outer packaging.			
4. For UN0508 and UN0509, metal packagings must not be used. Packagings of other material with a small amount of metal, for example metal closures or other metal fittings such as those mentioned in part 178 of this subchapter, are not considered metal packagings.			
* *	* *	* *	* *
130	Not necessary	Not necessary	Boxes.
Particular Packaging Requirements:			

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345, 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459, 0488, 0502 and 0510. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices. 2. Subject to approval by the Associate Administrator, large explosive articles, as part of their operational safety and suitability tests, subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, may be offered for transportation in accordance with the requirements of this subchapter.	.....	.....	Steel (4A). Aluminum (4B). Other metal (4N). Wood natural, ordinary (4C1). Wood natural, sift-proof walls 4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). Drums. Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Large Packagings. Steel (50A). Aluminum (50B). Metal other than steel or aluminum (50N). Rigid lastics (50H). Natural wood (50C). Plywood (50D). Reconstituted wood (50F). Rigid fiberboard (50G).
* *	* *	* *	* *
137	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0059, 0439, 0440 and 0441, when the shaped charges are packed singly, the conical cavity must face downwards and the package marked with orientation markings meeting the requirements of § 172.312(a)(2) of this subchapter. When the shaped charges are packed in pairs, the conical cavities must face inwards to minimize the jetting effect in the event of accidental initiation.	plastics, Boxes, fiberboard, wood, Tubes, fiberboard, metal, plastics, Dividing partitions in the outer packagings.	.....	steel (4A). aluminum (4B). other metal (4N). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plastics, solid (4H2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel (1A1 or 1A2).aluminum (1B1 or 1B2). other metal (1N1 or 1N2). plywood (1D). fiber (1G). plastics (1H1 or 1H2).
* *	* *	* *	* *

■ 27. In § 173.121, paragraph (b)(1)(iv) is revised to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(b) * * *

(1) * * *

(iv) The viscosity [1] and flash point are in accordance with the following table:

Kinematic viscosity (extrapolated) ν (at near-zero shear rate) mm2/s at 23 °C (73.4 °F)	Flow-time t in seconds	Jet diameter in mm	Flash point c.c.
20 < ν ≤ 80	20 < t ≤ 60	4	above 17 °C (62.6 °F).
80 < ν ≤ 135	60 < t ≤ 100	4	above 10 °C (50 °F).
135 < ν ≤ 220	20 < t ≤ 32	6	above 5 °C (41 °F).
220 < ν ≤ 300	32 < t ≤ 44	6	above −1 °C (31.2 °F).
300 < ν ≤ 700	44 < t ≤ 100	6	above −5 °C (23 °F).
700 < ν	100 < t	6	No limit.

[1] *Viscosity determination:* Where the substance concerned is non-Newtonian, or where a flow-cup method of viscosity determination is otherwise unsuitable, a variable shear-rate viscometer shall be used to determine the dynamic viscosity coefficient of the substance, at 23 °C (73.4 °F), at a number of shear rates. The values obtained are plotted against shear rate and then extrapolated to zero shear rate. The dynamic viscosity thus obtained, divided by the density, gives the apparent kinematic viscosity at near-zero shear rate.

* * * * *

■ 28. Section 173.124 is revised to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) *Division 4.1 (Flammable Solid).* For the purposes of this subchapter, *flammable solid* (Division 4.1) means any of the following four types of materials:

(1) Desensitized explosives that—

(i) When dry are Explosives of Class 1 other than those of compatibility group A, which are wetted with sufficient water, alcohol, or plasticizer to suppress explosive properties; and

(ii) Are specifically authorized by name either in the Hazardous Materials Table in § 172.101 of this subchapter or have been assigned a shipping name and hazard class by the Associate Administrator under the provisions of—

(A) A special permit issued under subchapter A of this chapter; or

(B) An approval issued under § 173.56(i).

(2)(i) Self-reactive materials that are thermally unstable and can undergo an exothermic decomposition even without participation of oxygen (air). A material is excluded from this definition if any of the following applies:

(A) The material meets the definition of an explosive as prescribed in subpart C of this part, in which case it must be classed as an explosive;

(B) The material is forbidden from being offered for transportation according to § 172.101 of this subchapter or § 173.21;

(C) The material meets the definition of an oxidizer or organic peroxide as prescribed in this subpart, in which case it must be so classed;

(D) The material meets one of the following conditions:

(*1*) Its heat of decomposition is less than 300 J/g; or

(*2*) Its self-accelerating decomposition temperature (SADT) is greater than 75 °C (167 °F) for a 50 kg package; or

(*3*) It is an oxidizing substance in Division 5.1 containing less than 5.0% combustible organic substances; or

(E) The Associate Administrator has determined that the material does not present a hazard which is associated with a Division 4.1 material.

(ii) *Generic types.* Division 4.1 self-reactive materials are assigned to a generic system consisting of seven types. A self-reactive substance identified by technical name in the Self-Reactive Materials Table in § 173.224 is assigned to a generic type in accordance with that table. Self-reactive materials not identified in the Self-Reactive Materials Table in § 173.224 are assigned to generic types under the procedures of paragraph (a)(2)(iii) of this section.

(A) *Type A.* Self-reactive material type A is a self-reactive material which, as packaged for transportation, can detonate or deflagrate rapidly. Transportation of type A self-reactive material is forbidden.

(B) *Type B.* Self-reactive material type B is a self-reactive material which, as packaged for transportation, neither detonates nor deflagrates rapidly, but is liable to undergo a thermal explosion in a package.

(C) *Type C.* Self-reactive material type C is a self-reactive material which, as packaged for transportation, neither detonates nor deflagrates rapidly and cannot undergo a thermal explosion.

(D) *Type D.* Self-reactive material type D is a self-reactive material which—

(*1*) Detonates partially, does not deflagrate rapidly and shows no violent effect when heated under confinement;

(*2*) Does not detonate at all, deflagrates slowly and shows no violent effect when heated under confinement; or

(*3*) Does not detonate or deflagrate at all and shows a medium effect when heated under confinement.

(E) *Type E.* Self-reactive material type E is a self-reactive material which, in laboratory testing, neither detonates nor deflagrates at all and shows only a low or no effect when heated under confinement.

(F) *Type F.* Self-reactive material type F is a self-reactive material which, in laboratory testing, neither detonates in the cavitated state nor deflagrates at all and shows only a low or no effect when heated under confinement as well as low or no explosive power.

(G) *Type G.* Self-reactive material type G is a self-reactive material which, in laboratory testing, does not detonate in the cavitated state, will not deflagrate at all, shows no effect when heated under confinement, nor shows any explosive power. A type G self-reactive material is not subject to the requirements of this subchapter for self-reactive material of Division 4.1 provided that it is thermally stable (self-accelerating decomposition temperature is 50 °C (122 °F) or higher for a 50 kg (110 pounds) package). A self-reactive material meeting all characteristics of type G except thermal stability is classed as a type F self-reactive, temperature control material.

(iii) *Procedures for assigning a self-reactive material to a generic type.* A self-reactive material must be assigned to a generic type based on—

(A) Its physical state (*i.e.* liquid or solid), in accordance with the definition of liquid and solid in § 171.8 of this subchapter;

(B) A determination as to its control temperature and emergency temperature, if any, under the provisions of § 173.21(f);

(C) Performance of the self-reactive material under the test procedures specified in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) and the provisions of paragraph (a)(2)(iii) of this section; and

(D) Except for a self-reactive material which is identified by technical name in the Self-Reactive Materials Table in § 173.224(b) or a self-reactive material which may be shipped as a sample under the provisions of § 173.224, the self-reactive material is approved in writing by the Associate Administrator. The person requesting approval shall submit to the Associate Administrator the tentative shipping description and generic type and—

(*1*) All relevant data concerning physical state, temperature controls, and tests results; or

(*2*) An approval issued for the self-reactive material by the competent authority of a foreign government.

(iv) *Tests.* The generic type for a self-reactive material must be determined using the testing protocol from Figure 20.1 (a) and (b) (Flow Chart Scheme for Self-Reactive Substances and Organic Peroxides) from the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

(3) Readily combustible solids are materials that—

(i) Are solids which may cause a fire through friction, such as matches;

(ii) Show a burning rate faster than 2.2 mm (0.087 inches) per second when tested in accordance with the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter); or

(iii) Any metal powders that can be ignited and react over the whole length of a sample in 10 minutes or less, when tested in accordance with the UN Manual of Tests and Criteria.

(4) Polymerizing materials are materials which, without stabilization, are liable to undergo an exothermic reaction resulting in the formation of larger molecules or resulting in the formation of polymers under conditions normally encountered in transport. Such materials are considered to be polymerizing substances of Division 4.1 when:

(i) Their self-accelerating polymerization temperature (SAPT) is 75 °C (167 °F) or less under the conditions (with or without chemical stabilization) as offered for transport in the packaging, IBC or portable tank in which the material or mixture is to be

transported. An appropriate IBC or portable tank for a polymerizing material must be determined using the heating under confinement testing protocol from boxes 7, 8, 9, and 13 of Figure 20.1 (a) and (b) (Flow Chart Scheme for Self-Reactive Substances and Organic Peroxides) from the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) by successfully passing the UN Test Series E at the ''None'' or ''Low'' level, or by an equivalent test method with the approval of the Associate Administrator;

(ii) They exhibit a heat of reaction of more than 300 J/g; and

(iii) Do not meet the definition of hazard classes 1–8 (including combustible liquids).

(iv) The provisions concerning polymerizing substances in paragraph (a)(4) will be effective until January 2, 2019.

(b) *Division 4.2 (Spontaneously Combustible Material).* For the purposes of this subchapter, *spontaneously combustible material* (Division 4.2) means—

(1) *A pyrophoric material.* A pyrophoric material is a liquid or solid that, even in small quantities and without an external ignition source, can ignite within five (5) minutes after coming in contact with air when tested according to UN Manual of Tests and Criteria.

(2) *Self-heating material.* A self-heating material is a material that through a process where the gradual reaction of that substance with oxygen (in air) generates heat. If the rate of heat production exceeds the rate of heat loss, then the temperature of the substance will rise which, after an induction time, may lead to self-ignition and combustion. A material of this type which exhibits spontaneous ignition or if the temperature of the sample exceeds 200 °C (392 °F) during the 24-hour test period when tested in accordance with UN Manual of Tests and Criteria (IBR; *see* § 171.7 of this subchapter), is classed as a Division 4.2 material.

(c) *Division 4.3 (Dangerous when wet material).* For the purposes of this chapter, *dangerous when wet material* (Division 4.3) means a material that, by contact with water, is liable to become spontaneously flammable or to give off flammable or toxic gas at a rate greater than 1 L per kilogram of the material, per hour, when tested in accordance with UN Manual of Tests and Criteria.

■ 29. Section 173.165 is revised to read as follows:

§ 173.165 Polyester resin kits.

(a) *General requirements.* Polyester resin kits consisting of a base material component (Class 3, Packing Group II or III) or (Division 4.1, Packing Group II or III) and an activator component (Type D, E, or F organic peroxide that does not require temperature control)—

(1) The organic peroxide component must be packed in inner packagings not over 125 mL (4.22 fluid ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids.

(2) Except for transportation by aircraft, the flammable liquid component must be packaged in suitable inner packagings.

(i) For transportation by aircraft, a Class 3 Packing Group II base material is limited to a quantity of 5 L (1.3 gallons) in metal or plastic inner packagings and 1 L (0.3 gallons) in glass inner packagings. A Class 3 Packing Group III base material is limited to a quantity of 10 L (2.6 gallons) in metal or plastic inner packagings and 2.5 L (0.66 gallons) in glass inner packagings.

(ii) For transportation by aircraft, a Division 4.1 Packing Group II base material is limited to a quantity of 5 kg (11 pounds) in metal or plastic inner packagings and 1 kg (2.2 pounds) in glass inner packagings. A Division 4.1 Packing Group III base material is limited to a quantity of 10 kg (22 lbs) in metal or plastic inner packagings and 2.5 kg (5.5 pounds) in glass inner packagings.

(3) If the flammable liquid or solid component and the organic peroxide component will not interact dangerously in the event of leakage, they may be packed in the same outer packaging.

(4) The Packing Group assigned will be II or III, according to the criteria for Class 3, or Division 4.1, as appropriate, applied to the base material. Additionally, polyester resin kits must be packaged in specification combination packagings, based on the performance level required of the base material (II or III) contained within the kit, as prescribed in § 173.202, 173.203, 173.212, or 173.213, as appropriate.

(5) For transportation by aircraft, the following additional requirements apply:

(i) Closures on inner packagings containing liquids must be secured by secondary means;

(ii) Inner packagings containing liquids must be capable of meeting the pressure differential requirements prescribed in § 173.27(c); and

(iii) The total quantity of activator and base material may not exceed 5 kg (11 lbs) per package for a Packing Group II base material. The total quantity of activator and base material may not exceed 10 kg (22 lbs) per package for a Packing Group III base material. The total quantity of polyester resin kits per package is calculated on a one-to-one basis (*i.e.,* 1 L equals 1 kg).

(b) *Small and excepted quantities.* Polyester resin kits are eligible for the Small Quantity exceptions in § 173.4 and the Excepted Quantity exceptions in § 173.4a, as applicable.

(c) *Limited quantities.* Limited quantity packages of polyester resin kits are excepted from labeling requirements, unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph (c). For transportation by aircraft, only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel, and is eligible for the exceptions provided in § 173.156. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the general packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight.

(1) Except for transportation by aircraft, the organic peroxide component must be packed in inner packagings not over 125 mL (4.22 fluid ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids. For transportation by aircraft, the organic peroxide component must be packed in inner packagings not over 30 mL (1 fluid ounce) net capacity each for liquids or 100 g (3.5 ounces) net capacity each for solids.

(2) Except for transportation by aircraft, the flammable liquid component must be packed in inner packagings not over 5 L (1.3 gallons) net capacity each for a Packing Group II and Packing Group III liquid. For transportation by aircraft, the flammable liquid component must be packed in inner packagings not over 1 L (0.3 gallons) net capacity each for a Packing Group II material. For transportation by aircraft, the flammable liquid component must be packed in metal or plastic inner packagings not over 5.0 L (1.3 gallons) net capacity each or glass inner packagings not over 2.5 L (0.66 gallons) net capacity each for a Packing Group III material.

(3) Except for transportation by aircraft, the flammable solid component must be packed in inner packagings not over 5 kg (11 pounds) net capacity each for a Packing Group II and Packing Group III solid. For transportation by aircraft, the flammable solid component must be packed in inner packagings not over 1 kg (2.2 pounds) net capacity each for a Packing Group II material. For transportation by aircraft, the flammable solid component must be packed in metal or plastic inner packagings not over 5.0 kg (11 pounds) net capacity each or glass inner packagings not over 2.5 kg (5.5 pounds) net capacity each for a Packing Group III material.

(4) If the flammable liquid or solid component and the organic peroxide component will not interact dangerously in the event of leakage, they may be packed in the same outer packaging.

(5) For transportation by aircraft, the following additional requirements apply:

(i) Closures on inner packagings containing liquids must be secured by secondary means as prescribed in § 173.27(d);

(ii) Inner packagings containing liquids must be capable of meeting the pressure differential requirements prescribed in § 173.27(c); and

(iii) The total quantity of activator and base material may not exceed 1 kg (2.2 pounds) per package for a Packing Group II base material. The total quantity of activator and base material may not exceed 5 kg (11 pounds) per package for a Packing Group III base material. The total quantity of polyester resin kits per package is calculated on a one-to-one basis (*i.e.,* 1 L equals 1 kg);

(iv) Fragile inner packagings must be packaged to prevent failure under conditions normally incident to transport. Packages of consumer commodities must be capable of withstanding a 1.2 m drop on solid concrete in the position most likely to cause damage; and

(v) *Stack test capability.* Packages of consumer commodities must be capable of withstanding, without failure or leakage of any inner packaging and without any significant reduction in effectiveness, a force applied to the top surface for a duration of 24 hours equivalent to the total weight of identical packages if stacked to a height of 3.0 m (including the test sample).

(d) *Consumer commodities.* Until December 31, 2020, a limited quantity package of polyester resin kits that are also consumer commodities as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of 49 CFR subchapter C (revised as of October 1, 2010).

■ 30. In § 173.185, the introductory text and paragraphs (c)(2) and (3), (c)(4)(ii), (e), and (f)(4) are revised to read as follows:

§ 173.185 Lithium cells and batteries.

As used in this section, *lithium cell(s)* or *battery(ies)* includes both lithium metal and lithium ion chemistries. *Equipment* means the device or apparatus for which the lithium cells or batteries will provide electrical power for its operation. *Consignment* means one or more packages of hazardous materials accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address.

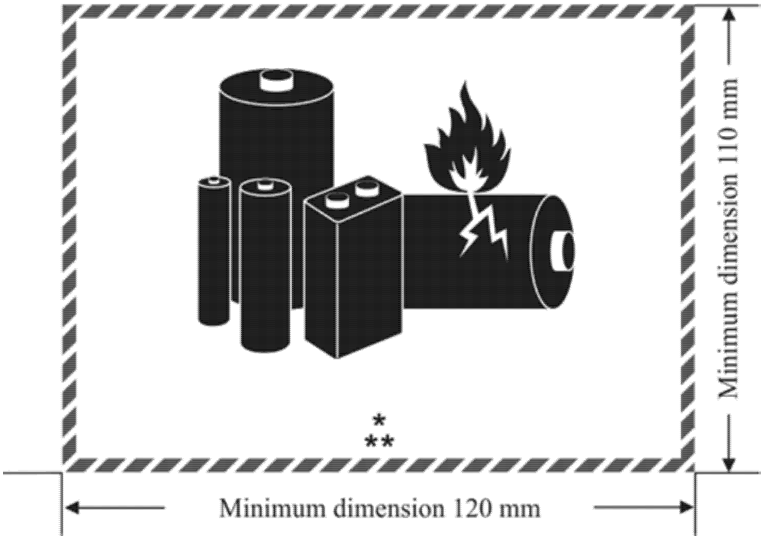
* * * * *

(c) * * *

(2) *Packaging.* Each package must be rigid unless the cell or battery is contained in equipment and is afforded equivalent protection by the equipment in which it is contained. Except when lithium cells or batteries are contained in equipment, each package of lithium cells or batteries, or the completed package when packed with equipment must be capable of withstanding a 1.2 meter drop test, in any orientation, without damage to the cells or batteries contained in the package, without shifting of the contents that would allow battery-to-battery (or cell-to-cell) contact, and without release of the contents of the package.

(3) *Hazard communication.* Each package must display the lithium battery mark except when a package contains button cell batteries installed in equipment (including circuit boards), or no more than four lithium cells or two lithium batteries contained in equipment, where there are not more than two packages in the consignment.

(i) The mark must indicate the UN number, 'UN3090' for lithium metal cells or batteries or 'UN 3480' for lithium ion cells or batteries. Where the lithium cells or batteries are contained in, or packed with, equipment, the UN number 'UN3091' or 'UN 3481' as appropriate must be indicated. Where a package contains lithium cells or batteries assigned to different UN numbers, all applicable UN numbers must be indicated on one or more marks. The package must be of such size that there is adequate space to affix the mark on one side without the mark being folded.



(A) The mark must be in the form of a rectangle with hatched edging. The mark must be not less than 120 mm (4.7 inches) wide by 110 mm (4.3 inches) high and the minimum width of the hatching must be 5 mm (0.2 inches) except markings of 105 mm (4.1 inches) wide by 74 mm (2.9 inches) high may be used on a package containing lithium batteries when the package is too small for the larger mark;

(B) The symbols and letters must be black on white or suitable contrasting background and the hatching must be red;

(C) The ''*'' must be replaced by the appropriate UN number(s) and the ''**'' must be replaced by a telephone number for additional information; and

(D) Where dimensions are not specified, all features shall be in approximate proportion to those shown.

(ii) For transportation by highway, rail or vessel, the provisions in 49 CFR 173.185(c)(3) (revised as of October 1, 2016) for marking packages, including the exceptions from marking, may continue to be used until December 31, 2018. For transportation by aircraft, the provisions for the lithium battery handling marking in 49 CFR 173.185(c)(3)(ii) (revised as of October 1, 2016) may continue to be used until December 31, 2018.

* * * * *

(4) * * *

(ii) When packages required to bear the lithium battery mark in paragraph (c)(3)(i) are placed in an overpack, the lithium battery mark must either be clearly visible through the overpack, or the handling mark must also be affixed on the outside of the overpack, and the overpack must be marked with the word ''OVERPACK.''

* * * * *

(e) *Low production runs and prototypes.* Low production runs (*i.e.,* annual production runs consisting of not more than 100 lithium cells or batteries), or prototype lithium cells or batteries, including equipment transported for purposes of testing, are excepted from the testing and record keeping requirements of paragraph (a) of this section, provided:

(1) Except as provided in paragraph (e)(4) of this section, each cell or battery is individually packed in a non-metallic inner packaging, inside an outer packaging, and is surrounded by cushioning material that is non-combustible and non-conductive or contained in equipment. Equipment must be constructed or packaged in a manner as to prevent accidental operation during transport;

(2) Appropriate measures shall be taken to minimize the effects of vibration and shocks and prevent movement of the cells or batteries within the package that may lead to damage and a dangerous condition during transport. Cushioning material that is non-combustible and non-conductive may be used to meet this requirement;

(3) The lithium cells or batteries are packed in inner packagings or contained in equipment. The inner packaging or equipment is placed in one of the following outer packagings that meet the requirements of part 178, subparts L and M, of this subchapter at the Packing Group I level. Cells and batteries, including equipment of different sizes, shapes or masses must be placed into an outer packaging of a tested design type listed in this section provided the total gross mass of the package does not exceed the gross mass for which the design type has been tested. A cell or battery with a net mass of more than 30 kg is limited to one cell or battery per outer packaging;

(i) Metal (4A, 4B, 4N), wooden (4C1, 4C2, 4D, 4F), or solid plastic (4H2) box;

(ii) Metal (1A2, 1B2, 1N2), plywood (1D), or plastic (1H2) drum.

(4) Lithium batteries, including lithium batteries contained in equipment, that weigh 12 kg (26.5 pounds) or more and have a strong, impact-resistant outer casing or assemblies of such batteries, may be packed in strong outer packagings, in protective enclosures (for example, in fully enclosed or wooden slatted crates), or on pallets or other handling devices, instead of packages meeting the UN performance packaging requirements in paragraphs (b)(3)(ii) and (iii) of this section. The battery or battery assembly must be secured to prevent inadvertent movement, and the terminals may not support the weight of other superimposed elements;

(5) Irrespective of the limit specified in column (9B) of the § 172.101 Hazardous Materials Table, the battery or battery assembly prepared for transport in accordance with this paragraph may have a mass exceeding 35 kg gross weight when transported by cargo aircraft;

(6) Batteries or battery assemblies packaged in accordance with this paragraph are not permitted for transportation by passenger-carrying aircraft, and may be transported by cargo aircraft only if approved by the Associate Administrator prior to transportation; and

(7) Shipping papers must include the following notation ''Transport in accordance with § 173.185(e).''

(f) * * *

(4) The outer package must be marked with an indication that the package contains a ''Damaged/defective lithium ion battery'' and/or ''Damaged/defective lithium metal battery'' as appropriate. The marking required by this paragraph (f)(4) must be in characters at least 12 mm (0.47 inches) high.

* * * * *

■ 31. In § 173.217, revise paragraph (c)(3) to read as follows:

§ 173.217 Carbon dioxide, solid (dry ice).

* * * * *

(c) * * *

(3) The quantity limits per package shown in columns (9A) and (9B) of the Hazardous Materials Table in § 172.101 of this subchapter are not applicable to dry ice being used as a refrigerant for other than hazardous materials loaded in a unit load device. In such a case, the unit load device must be identified to the operator and allow the venting of the carbon dioxide gas to prevent a dangerous build-up of pressure.

* * * * *

■ 32. Section 173.220 is revised to read as follows:

§ 173.220 Internal combustion engines, vehicles, machinery containing internal combustion engines, battery-powered equipment or machinery, fuel cell-powered equipment or machinery.

(a) *Applicability.* An internal combustion engine, self-propelled vehicle, machinery containing an internal combustion engine that is not consigned under the ''Dangerous goods in machinery *or* apparatus'' UN 3363 entry, a battery-powered vehicle or equipment, or a fuel cell-powered vehicle or equipment, or any combination thereof, is subject to the requirements of this subchapter when transported as cargo on a transport vehicle, vessel, or aircraft if—

(1) The vehicle, engine, or machinery contains a liquid or gaseous fuel. Vehicles, engines, or machinery may be considered as not containing fuel when the engine components and any fuel lines have been completely drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard and the engine when held in any orientation will not release any liquid fuel;

(2) The fuel tank contains a liquid or gaseous fuel. A fuel tank may be considered as not containing fuel when the fuel tank and the fuel lines have been completely drained, sufficiently cleaned of residue, and purged of vapors to remove any potential hazard;

(3) It is equipped with a wet battery (including a non-spillable battery), a sodium battery or a lithium battery; or

(4) Except as provided in paragraph (f)(1) of this section, it contains other hazardous materials subject to the requirements of this subchapter.

(b) *Requirements.* Unless otherwise excepted in paragraph (b)(4) of this section, vehicles, engines, and equipment are subject to the following requirements:

(1) *Flammable liquid fuel and fuels that are marine pollutants.* (i) A fuel tank containing a flammable liquid fuel must be drained and securely closed, except that up to 500 mL (17 ounces) of residual fuel may remain in the tank, engine components, or fuel lines provided they are securely closed to prevent leakage of fuel during transportation. Self-propelled vehicles containing diesel fuel are excepted from the requirement to drain the fuel tanks, provided that sufficient ullage space has been left inside the tank to allow fuel expansion without leakage, and the tank caps are securely closed.

(ii) Engines and machinery containing liquid fuels meeting the definition of a marine pollutant (see § 171.8 of this subchapter) and not meeting the classification criteria of any other Class or Division transported by vessel are subject to the requirements of § 176.906 of this subchapter.

(2) *Flammable liquefied or compressed gas fuel.* (i) For transportation by motor vehicle, rail car or vessel, fuel tanks and fuel systems containing flammable liquefied or compressed gas fuel must be securely closed. For transportation by vessel, the requirements of §§ 176.78(k), 176.905, and 176.906 of this subchapter apply.

(ii) For transportation by aircraft:

(A) Flammable gas-powered vehicles, machines, equipment or cylinders containing the flammable gas must be completely emptied of flammable gas. Lines from vessels to gas regulators, and gas regulators themselves, must also be drained of all traces of flammable gas. To ensure that these conditions are met, gas shut-off valves must be left open and connections of lines to gas regulators must be left disconnected upon delivery of the vehicle to the operator. Shut-off valves must be closed and lines reconnected at gas regulators before loading the vehicle aboard the aircraft; or alternatively;

(B) Flammable gas powered vehicles, machines or equipment, which have cylinders (fuel tanks) that are equipped with electrically operated valves, may be transported under the following conditions:

(*1*) The valves must be in the closed position and in the case of electrically operated valves, power to those valves must be disconnected;

(*2*) After closing the valves, the vehicle, equipment or machinery must be operated until it stops from lack of fuel before being loaded aboard the aircraft;

(*3*) In no part of the closed system shall the pressure exceed 5% of the maximum allowable working pressure of the system or 290 psig (2000 kPa), whichever is less; and

(*4*) There must not be any residual liquefied gas in the system, including the fuel tank.

(3) *Truck bodies or trailers on flat cars—flammable liquid or gas powered.* Truck bodies or trailers with automatic heating or refrigerating equipment of the flammable liquid type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail and highway movement, provided the equipment and fuel supply conform to the requirements of § 177.834(l) of this subchapter.

(4) *Modal exceptions.* Quantities of flammable liquid fuel greater than 500 mL (17 ounces) may remain in the fuel tank in self-propelled vehicles engines, and machinery only under the following conditions:

(i) For transportation by motor vehicle or rail car, the fuel tanks must be securely closed.

(ii) For transportation by vessel, the shipment must conform to § 176.905 of this subchapter for self-propelled vehicles and § 176.906 of this subchapter for engines and machinery.

(iii) For transportation by aircraft, when carried in aircraft designed or modified for vehicle ferry operations when all the following conditions must be met:

(A) Authorization for this type operation has been given by the appropriate authority in the government of the country in which the aircraft is registered;

(B) Each vehicle is secured in an upright position;

(C) Each fuel tank is filled in a manner and only to a degree that will preclude spillage of fuel during loading, unloading, and transportation; and

(D) Each area or compartment in which a self-propelled vehicle is being transported is suitably ventilated to prevent the accumulation of fuel vapors.

(c) *Battery-powered or installed.* Batteries must be securely installed, and wet batteries must be fastened in an upright position. Batteries must be protected against a dangerous evolution of heat, short circuits, and damage to terminals in conformance with § 173.159(a) and leakage; or must be removed and packaged separately under § 173.159. Battery-powered vehicles, machinery or equipment including battery-powered wheelchairs and mobility aids are not subject to any other requirements of this subchapter except § 173.21 when transported by rail, highway or vessel. Where a vehicle could possibly be handled in other than an upright position, the vehicle must be secured in a strong, rigid outer packaging. The vehicle must be secured by means capable of restraining the vehicle in the outer packaging to prevent any movement during transport which would change the orientation or cause the vehicle to be damaged.

(d) *Lithium batteries.* Except as provided in § 172.102, special provision A101, of this subchapter, vehicles, engines, and machinery powered by lithium metal batteries, that are transported with these batteries installed, are forbidden aboard passenger-carrying aircraft. Lithium batteries contained in vehicles, engines, or mechanical equipment must be securely fastened in the battery holder of the vehicle, engine, or mechanical equipment, and be protected in such a manner as to prevent damage and short circuits (*e.g.,* by the use of non-conductive caps that cover the terminals entirely). Except for vehicles, engines, or machinery transported by highway, rail, or vessel with prototype or low production lithium batteries securely installed, each lithium battery must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), as specified in § 173.185, unless approved by the Associate Administrator. Where a vehicle could possibly be handled in other than an upright position, the vehicle must be secured in a strong, rigid outer packaging. The vehicle must be secured by means capable of restraining the vehicle in the outer packaging to prevent any movement during transport which would change the orientation or cause the vehicle to be damaged.

(e) *Fuel cells.* A fuel cell must be secured and protected in a manner to prevent damage to the fuel cell. Equipment (other than vehicles, engines or mechanical equipment) such as consumer electronic devices containing fuel cells (fuel cell cartridges) must be described as ''Fuel cell cartridges contained in equipment'' and transported in accordance with § 173.230. Where a vehicle could possibly be handled in other than an upright position, the vehicle must be secured in a strong, rigid outer packaging. The vehicle must be secured by means capable of restraining the vehicle in the outer packaging to

prevent any movement during transport which would change the orientation or cause the vehicle to be damaged.

(f) *Other hazardous materials.* (1) Items containing hazardous materials, such as fire extinguishers, compressed gas accumulators, safety devices, and other hazardous materials that are integral components of the motor vehicle, engine, or mechanical equipment, and that are necessary for the operation of the vehicle, engine, or mechanical equipment, or for the safety of its operator or passengers, must be securely installed in the motor vehicle, engine, or mechanical equipment. Such items are not otherwise subject to the requirements of this subchapter. Equipment (other than vehicles, engines, or mechanical equipment), such as consumer electronic devices containing lithium batteries, must be described as ''Lithium metal batteries contained in equipment'' or ''Lithium ion batteries contained in equipment,'' as appropriate, and transported in accordance with § 173.185, and applicable special provisions. Equipment (other than vehicles, engines, or mechanical equipment), such as consumer electronic devices containing fuel cells (fuel cell cartridges), must be described as ''Fuel cell cartridges contained in equipment'' and transported in accordance with § 173.230.

(2) Other hazardous materials must be packaged and transported in accordance with the requirements of this subchapter.

(g) *Additional requirements for internal combustion engines and vehicles with certain electronic equipment when transported by aircraft or vessel.* When an internal combustion engine that is not installed in a vehicle or equipment is offered for transportation by aircraft or vessel, all fuel, coolant or hydraulic systems remaining in the engine must be drained as far as practicable, and all disconnected fluid pipes that previously contained fluid must be sealed with leak-proof caps that are positively retained. When offered for transportation by aircraft, vehicles equipped with theft-protection devices, installed radio communications equipment or navigational systems must have such devices, equipment or systems disabled.

(h) *Exceptions.* Except as provided in paragraph (f)(2) of this section, shipments made under the provisions of this section—

(1) Are not subject to any other requirements of this subchapter for transportation by motor vehicle or rail car;

(2) Are not subject to the requirements of subparts D, E, and F (marking, labeling and placarding, respectively) of part 172 of this subchapter or § 172.604 of this subchapter (emergency response telephone number) for transportation by aircraft. For transportation by aircraft, the provisions of § 173.159(b)(2) as applicable, the provisions of § 173.230(f), as applicable, other applicable requirements of this subchapter, including shipping papers, emergency response information, notification of pilot-in-command, general packaging requirements, and the requirements specified in § 173.27 must be met; and

(3) For exceptions for transportation by vessel; see § 176.905 of this subchapter for vehicles, and § 176.906 of this subchapter for engines and machinery.

■ 33. In § 173.221, paragraph (d) is added to read as follows:

§ 173.221 Polymeric beads, expandable and Plastic molding compound.

* * * * *

(d) *Exceptions.* When it can be demonstrated that no flammable vapor, resulting in a flammable atmosphere, is evolved according to test U1 (Test method for substances liable to evolve flammable vapors) of Part III, subsection 38.4.4 of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), polymeric beads, expandable need not be classed as Class 9 (UN2211). This test should only be performed when de-classification of a substance is considered.

■ 34. In § 173.225, in paragraph (c)(8), the ''Organic Peroxide Table'' is revised and in paragraph (e), the ''Organic Peroxide IBC Table'' is revised to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(c) * * *

(8) * * *

ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Acetyl acetone peroxide	UN3105	≤42	≥48			≥8	OP7			2
Acetyl acetone peroxide [as a paste]	UN3106	≤32					OP7			21
Acetyl cyclohexanesulfonyl peroxide	UN3112	≤82				≥12	OP4	−10	0	
Acetyl cyclohexanesulfonyl peroxide	UN3115	≤32		≥68			OP7	−10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥6			≥6	OP8			
tert-Amyl peroxyacetate	UN3105	≤62	≥38				OP7			
tert-Amyl peroxybenzoate	UN3103	≤100					OP5			
tert-Amyl peroxy-2-ethylhexanoate	UN3115	≤100					OP7	20	25	
tert-Amyl peroxy-2-ethylhexyl carbonate	UN3105	≤100					OP7			
tert-Amyl peroxy isopropyl carbonate	UN3103	≤77	≥23				OP5			
tert-Amyl peroxyneodecanoate	UN3115	≤77		≥23			OP7	0	10	
tert-Amyl peroxyneodecanoate	UN3119	≤47	≥53				OP8	0	10	
tert-Amyl peroxypivalate	UN3113	≤77		≥23			OP5	10	15	
tert-Amyl peroxypivalate	UN3119	≤32	≥68				OP8	10	15	
tert-Amyl peroxy-3,5,5-trimethylhexanoate.	UN3105	≤100					OP7			
tert-Butyl cumyl peroxide	UN3109	>42–100					OP8			9
tert-Butyl cumyl peroxide	UN3108	≤52			≥48		OP8			9
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3103	>52–100					OP5			
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3108	≤52			≥48		OP8			
tert-Butyl hydroperoxide	UN3103	>79–90				≥10	OP5			13
tert-Butyl hydroperoxide	UN3105	≤80	≥20				OP7			4, 13
tert-Butyl hydroperoxide	UN3107	≤79				>14	OP8			13, 16
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8			13

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Butyl hydroperoxide [and] Di-tert-butylperoxide.	UN3103	<82 + >9	.....	.....	.....	≥7	OP5	.....	.....	13
tert-Butyl monoperoxymaleate	UN3102	>52–100	.....	.....	.....	.....	OP5	.....	.....	.....
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48	.....	.....	.....	OP6	.....	.....	.....
tert-Butyl monoperoxymaleate	UN3108	≤52	.....	.....	≥48	.....	OP8	.....	.....	.....
tert-Butyl monoperoxymaleate [as a paste].	UN3108	≤52	.....	.....	.....	.....	OP8	.....	.....	.....
tert-Butyl peroxyacetate	UN3101	>52–77	≥23	.....	.....	.....	OP5	.....	.....	.....
tert-Butyl peroxyacetate	UN3103	>32–52	≥48	.....	.....	.....	OP6	.....	.....	.....
tert-Butyl peroxyacetate	UN3109	≤32	.....	≥68	.....	.....	OP8	.....	.....	.....
tert-Butyl peroxybenzoate	UN3103	>77–100	.....	.....	.....	.....	OP5	.....	.....	.....
tert-Butyl peroxybenzoate	UN3105	>52–77	≥23	.....	.....	.....	OP7	.....	.....	1
tert-Butyl peroxybenzoate	UN3106	≤52	.....	.....	≥48	.....	OP7	.....	.....	.....
tert-Butyl peroxybenzoate	UN3109	≤32	≥68	.....	.....	.....	OP8	.....	.....	.....
tert-Butyl peroxybutyl fumarate	UN3105	≤52	≥48	.....	.....	.....	OP7	.....	.....	.....
tert-Butyl peroxycrotonate	UN3105	≤77	≥23	.....	.....	.....	OP7	.....	.....	.....
tert-Butyl peroxydiethylacetate	UN3113	≤100	.....	.....	.....	.....	OP5	20	25	.....
tert-Butyl peroxy-2-ethylhexanoate	UN3113	>52–100	.....	.....	.....	.....	OP6	20	25	.....
tert-Butyl peroxy-2-ethylhexanoate	UN3117	>32–52	.....	≥48	.....	.....	OP8	30	35	.....
tert-Butyl peroxy-2-ethylhexanoate	UN3118	≤52	.....	.....	≥48	.....	OP8	20	25	.....
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32	.....	≥68	.....	.....	OP8	40	45	.....
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3106	≤12 + ≤14	≥14	.....	≥60	.....	OP7	.....	.....	.....
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3115	≤31 + ≤36	.....	≥33	.....	.....	OP7	35	40	.....
tert-Butyl peroxy-2-ethylhexylcarbonate	UN3105	≤100	.....	.....	.....	.....	OP7	.....	.....	.....
tert-Butyl peroxyisobutyrate	UN3111	>52–77	.....	≥23	.....	.....	OP5	15	20	.....
tert-Butyl peroxyisobutyrate	UN3115	≤52	.....	≥48	.....	.....	OP7	15	20	.....
tert-Butylperoxy isopropylcarbonate	UN3103	≤77	≥23	.....	.....	.....	OP5	.....	.....	.....
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN3105	≤77	≥23	.....	.....	.....	OP7	.....	.....	.....
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN3108	≤42	.....	.....	≥58	.....	OP8	.....	.....	.....
tert-Butyl peroxy-2-methylbenzoate	UN3103	≤100	.....	.....	.....	.....	OP5	.....	.....	.....
tert-Butyl peroxyneodecanoate	UN3115	>77–100	.....	.....	.....	.....	OP7	−5	5	.....
tert-Butyl peroxyneodecanoate	UN3115	≤77	.....	≥23	.....	.....	OP7	0	10	.....
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52	.....	.....	.....	.....	OP8	0	10	.....
tert-Butyl peroxyneodecanoate [as a stable dispersion in water (frozen)].	UN3118	≤42	.....	.....	.....	.....	OP8	0	10	.....
tert-Butyl peroxyneodecanoate	UN3119	≤32	≥68	.....	.....	.....	OP8	0	10	.....
tert-Butyl peroxyneoheptanoate	UN3115	≤77	≥23	.....	.....	.....	OP7	0	10	.....
tert-Butyl peroxyneoheptanoate [as a stable dispersion in water].	UN3117	≤42	.....	.....	.....	.....	OP8	0	10	.....
tert-Butyl peroxypivalate	UN3113	>67–77	≥23	.....	.....	.....	OP5	0	10	.....
tert-Butyl peroxypivalate	UN3115	>27–67	.....	≥33	.....	.....	OP7	0	10	.....
tert-Butyl peroxypivalate	UN3119	≤27	.....	≥73	.....	.....	OP8	30	35	.....
tert-Butylperoxy stearylcarbonate	UN3106	≤100	.....	.....	.....	.....	OP7	.....	.....	.....
tert-Butyl peroxy-3,5,5-trimethylhexanoate.	UN3105	>37–100	.....	.....	.....	.....	OP7	.....	.....	.....
tert-Butyl peroxy-3,5,5-trimethlyhexanoate.	UN3106	≤42	.....	.....	≥58	.....	OP7	.....	.....	.....
tert-Butyl peroxy-3,5,5-trimethylhexanoate.	UN3109	≤37	.....	≥63	.....	.....	OP8	.....	.....	.....
3-Chloroperoxybenzoic acid	UN3102	>57–86	.....	.....	≥14	.....	OP1	.....	.....	.....
3-Chloroperoxybenzoic acid	UN3106	≤57	.....	.....	≥3	≥40	OP7	.....	.....	.....
3-Chloroperoxybenzoic acid	UN3106	≤77	.....	.....	≥6	≥17	OP7	.....	.....	.....
Cumyl hydroperoxide	UN3107	>90–98	≤10	.....	.....	.....	OP8	.....	.....	13
Cumyl hydroperoxide	UN3109	≤90	≥10	.....	.....	.....	OP8	.....	.....	13, 15
Cumyl peroxyneodecanoate	UN3115	≤87	≥13	.....	.....	.....	OP7	−10	0	.....
Cumyl peroxyneodecanoate	UN3115	≤77	.....	≥23	.....	.....	OP7	−10	0	.....
Cumyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52	.....	.....	.....	.....	OP8	−10	0	.....
Cumyl peroxyneoheptanoate	UN3115	≤77	≥23	.....	.....	.....	OP7	−10	0	.....
Cumyl peroxypivalate	UN3115	≤77	.....	≥23	.....	.....	OP7	−5	5	.....
Cyclohexanone peroxide(s)	UN3104	≤91	.....	.....	.....	≥9	OP6	.....	.....	13
Cyclohexanone peroxide(s)	UN3105	≤72	≥28	.....	.....	.....	OP7	.....	.....	5
Cyclohexanone peroxide(s) [as a paste]	UN3106	≤72	.....	.....	.....	.....	OP7	.....	.....	5, 21
Cyclohexanone peroxide(s)	Exempt	≤32	.....	>68	.....	.....	Exempt	.....	.....	29
Diacetone alcohol peroxides	UN3115	≤57	.....	≥26	.....	≥8	OP7	40	45	5
Diacetyl peroxide	UN3115	≤27	.....	≥73	.....	.....	OP7	20	25	8,13
Di-tert-amyl peroxide	UN3107	≤100	.....	.....	.....	.....	OP8	.....	.....	.....
([3R- (3R, 5aS, 6S, 8aS, 9R, 10R, 12S, 12aR**)]-Decahydro-10-methoxy-3, 6, 9-trimethyl-3, 12-epoxy-12H-pyrano [4, 3- j]-1, 2-benzodioxepin).	UN3106	≤100	.....	.....	.....	.....	OP7	.....	.....	.....
2,2-Di-(tert-amylperoxy)-butane	UN3105	≤57	≥43	.....	.....	.....	OP7	.....	.....	.....

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
1,1-Di-(tert-amylperoxy)cyclohexane	UN3103	≤82	≥18				OP6			
Dibenzoyl peroxide	UN3102	>52–100			≤48		OP2			3
Dibenzoyl peroxide	UN3102	>77–94				≥6	OP4			3
Dibenzoyl peroxide	UN3104	≤77				≥23	OP6			
Dibenzoyl peroxide	UN3106	≤62			≥28	≥10	OP7			
Dibenzoyl peroxide [as a paste]	UN3106	>52–62					OP7			21
Dibenzoyl peroxide	UN3106	>35–52			≥48		OP7			
Dibenzoyl peroxide	UN3107	>36–42	≥18			≤40	OP8			
Dibenzoyl peroxide [as a paste]	UN3108	≤56.5				≥15	OP8			
Dibenzoyl peroxide [as a paste]	UN3108	≤52					OP8			21
Dibenzoyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8			
Dibenzoyl peroxide	Exempt	≤35			≥65		Exempt			29
Di-(4-tert-butylcyclohexyl)peroxydicarbonate.	UN3114	≤100					OP6	30	35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	30	35	
Di-tert-butyl peroxide	UN3107	>52–100					OP8			
Di-tert-butyl peroxide	UN3109	≤52		≥48			OP8			24
Di-tert-butyl peroxyazelate	UN3105	≤52	≥48				OP7			
2,2-Di-(tert-butylperoxy)butane	UN3103	≤52	≥48				OP6			
1,6-Di-(tert-butylperoxycarbonyloxy)hexane.	UN3103	≤72	≥28				OP5			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3101	>80–100					OP5			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3103	>52–80	≥20				OP5			
1,1-Di-(tert-butylperoxy)-cyclohexane	UN3103	≤72		≥28			OP5			30
1,1-Di-(tert-butylperoxy)cyclohexane	UN3105	>42–52	≥48				OP7			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3106	≤42	≥13		≥45		OP7			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3107	≤27	≥25				OP8			22
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤42	≥58				OP8			
1,1-Di-(tert-Butylperoxy) cyclohexane	UN3109	≤37	≥63				OP8			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤25	≥25	≥50			OP8			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤13	≥13	≥74			OP8			
1,1-Di-(tert-butylperoxy)cyclohexane + tert-Butyl peroxy-2-ethylhexanoate.	UN3105	≤43+≤16	≥41				OP7			
Di-n-butyl peroxydicarbonate	UN3115	>27–52		≥48			OP7	−15	−5	
Di-n-butyl peroxydicarbonate	UN3117	≤27		≥73			OP8	−10	0	
Di-n-butyl peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3118	≤42					OP8	−15	−5	
Di-sec-butyl peroxydicarbonate	UN3113	>52–100					OP4	−20	−10	6
Di-sec-butyl peroxydicarbonate	UN3115	≤52		≥48			OP7	−15	−5	
Di-(tert-butylperoxyisopropyl) benzene(s).	UN3106	>42–100			≤57		OP7			1, 9
Di-(tert-butylperoxyisopropyl) benzene(s).	Exempt	≤42			≥58		Exempt			
Di-(tert-butylperoxy)phthalate	UN3105	>42–52	≥48				OP7			
Di-(tert-butylperoxy)phthalate [as a paste].	UN3106	≤52					OP7			21
Di-(tert-butylperoxy)phthalate	UN3107	≤42	≥58				OP8			
2,2-Di-(tert-butylperoxy)propane	UN3105	≤52	≥48				OP7			
2,2-Di-(tert-butylperoxy)propane	UN3106	≤42	≥13		≥45		OP7			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3101	>90–100					OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	>57–90	≥10				OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	≤77		≥23			OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	≤90		≥10			OP5			30
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3110	≤57			≥43		OP8			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3107	≤57	≥43				OP8			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3107	≤32	≥26	≥42			OP8			
Dicetyl peroxydicarbonate	UN3120	≤100					OP8	30	35	
Dicetyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	30	35	
Di-4-chlorobenzoyl peroxide	UN3102	≤77				≥23	OP5			
Di-4-chlorobenzoyl peroxide	Exempt	≤32			≥68		Exempt			29
Di-2,4-dichlorobenzoyl peroxide [as a paste].	UN3118	≤52					OP8	20	25	
Di-4-chlorobenzoyl peroxide [as a paste]	UN3106	≤52					OP7			21
Dicumyl peroxide	UN3110	>52–100			≤48		OP8			9
Dicumyl peroxide	Exempt	≤52			≥48		Exempt			29
Dicyclohexyl peroxydicarbonate	UN3112	>91–100					OP3	10	15	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Dicyclohexyl peroxydicarbonate	UN3114	≤91				≥9	OP5	10	15	
Dicyclohexyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	15	20	
Didecanoyl peroxide	UN3114	≤100					OP6	30	35	
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane.	UN3106	≤42			≥58		OP7			
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane.	UN3107	≤22		≥78			OP8			
Di-2,4-dichlorobenzoyl peroxide	UN3102	≤77				≥23	OP5			
Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil].	UN3106	≤52					OP7			
Di-(2-ethoxyethyl) peroxydicarbonate	UN3115	≤52		≥48			OP7	−10	0	
Di-(2-ethylhexyl) peroxydicarbonate	UN3113	>77–100					OP5	−20	−10	
Di-(2-ethylhexyl) peroxydicarbonate	UN3115	≤77		≥23			OP7	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	UN3119	≤62					OP8	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	UN3119	≤52					OP8	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3120	≤52					OP8	−15	−5	
2,2-Dihydroperoxypropane	UN3102	≤27			≥73		OP5			
Di-(1-hydroxycyclohexyl)peroxide	UN3106	≤100					OP7			
Diisobutyryl peroxide	UN3111	>32–52		≥48			OP5	−20	−10	
Diisobutyryl peroxide	UN3115	≤32		≥68			OP7	−20	−10	
Diisopropylbenzene dihydroperoxide	UN3106	≤82	≥5			≥5	OP7			17
Diisopropyl peroxydicarbonate	UN3112	>52–100					OP2	−15	−5	
Diisopropyl peroxydicarbonate	UN3115	≤52		≥48			OP7	−20	−10	
Diisopropyl peroxydicarbonate	UN3115	≤32	≥68				OP7	−15	−5	
Dilauroyl peroxide	UN3106	≤100					OP7			
Dilauroyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8			
Di-(3-methoxybutyl) peroxydicarbonate	UN3115	≤52		≥48			OP7	−5	5	
Di-(2-methylbenzoyl)peroxide	UN3112	≤87				≥13	OP5	30	35	
Di-(4-methylbenzoyl)peroxide [as a paste with silicone oil].	UN3106	≤52					OP7			
Di-(3-methylbenzoyl) peroxide + Benzoyl (3-methylbenzoyl) peroxide + Dibenzoyl peroxide.	UN3115	≤20 + ≤18 + ≤4		≥58			OP7	35	40	
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane.	UN3102	>82–100					OP5			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane.	UN3106	≤82			≥18		OP7			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane.	UN3104	≤82				≥18	OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3103	>90–100					OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3105	>52–90	≥10				OP7			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3108	≤77			≥23		OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3109	≤52	≥48				OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane [as a paste].	UN3108	≤47					OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3101	>86–100					OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3103	>52–86	≥14				OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3106	≤52			≥48		OP7			
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane.	UN3113	≤100					OP5	20	25	
2,5-Dimethyl-2,5-dihydroperoxyhexane	UN3104	≤82				≥18	OP6			
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane.	UN3105	≤77	≥23				OP7			
1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate.	UN3117	≤52	≥48				OP8	0	10	
Dimyristyl peroxydicarbonate	UN3116	≤100					OP7	20	25	
Dimyristyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	20	25	
Di-(2-neodecanoylperoxyisopropyl)benzene.	UN3115	≤52	≥48				OP7	−10	0	
Di-(2-neodecanoyl-peroxyisopropyl) benzene, as stable dispersion in water.	UN3119	≤42					OP8	−15	−5	
Di-n-nonanoyl peroxide	UN3116	≤100					OP7	0	10	
Di-n-octanoyl peroxide	UN3114	≤100					OP5	10	15	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-(2-phenoxyethyl)peroxydicarbonate	UN3102	>85–100					OP5			
Di-(2-phenoxyethyl)peroxydicarbonate	UN3106	≤85				≥15	OP7			
Dipropionyl peroxide	UN3117	≤27		≥73			OP8	15	20	
Di-n-propyl peroxydicarbonate	UN3113	≤100					OP3	−25	−15	
Di-n-propyl peroxydicarbonate	UN3113	≤77		≥23			OP5	−20	−10	
Disuccinic acid peroxide	UN3102	>72–100					OP4			18
Disuccinic acid peroxide	UN3116	≤72				≥28	OP7	10	15	
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3115	>52–82	≥18				OP7	0	10	
Di-(3,5,5-trimethylhexanoyl)peroxide [as a stable dispersion in water].	UN3119	≤52					OP8	10	15	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62				OP8	20	25	
Ethyl 3,3-di-(tert-amylperoxy)butyrate	UN3105	≤67	≥33				OP7			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3103	>77–100					OP5			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3105	≤77	≥23				OP7			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3106	≤52			≥48		OP7			
1-(2-ethylhexanoylperoxy)-1,3-Dimethylbutyl peroxypivalate.	UN3115	≤52	≥45	≥10			OP7	−20	−10	
tert-Hexyl peroxyneodecanoate	UN3115	≤71	≥29				OP7	0	10	
tert-Hexyl peroxypivalate	UN3115	≤72		≥28			OP7	10	15	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate.	UN3115	≤77	≥23				OP7	−5	5	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−5	5	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate.	UN3117	≤52	≥48				OP8	−5	5	
Isopropyl sec-butyl peroxydicarbonat + Di-sec-butyl peroxydicarbonate + Di-isopropyl peroxydicarbonate.	UN3111	≤52 + ≤28 + ≤22					OP5	−20	−10	
Isopropyl sec-butyl peroxydicarbonate + Di-sec-butyl peroxydicarbonate + Di-isopropyl peroxydicarbonate.	UN3115	≤32 + ≤15 − 18 + ≤12 − 15	≥38				OP7	−20	−10	
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8			13
p-Menthyl hydroperoxide	UN3105	>72–100					OP7			13
p-Menthyl hydroperoxide	UN3109	≤72	≥28				OP8			
Methylcyclohexanone peroxide(s)	UN3115	≤67		≥33			OP7	35	40	
Methyl ethyl ketone peroxide(s)	UN3101	≤52	≥48				OP5			5, 13
Methyl ethyl ketone peroxide(s)	UN3105	≤45	≥55				OP7			5
Methyl ethyl ketone peroxide(s)	UN3107	≤40	≥60				OP8			7
Methyl isobutyl ketone peroxide(s)	UN3105	≤62	≥19				OP7			5, 23
Methyl isopropyl ketone peroxide(s)	UN3109	(See remark 31)	≥70				OP8			31
Organic peroxide, liquid, sample	UN3103						OP2			12
Organic peroxide, liquid, sample, temperature controlled.	UN3113						OP2			12
Organic peroxide, solid, sample	UN3104						OP2			12
Organic peroxide, solid, sample, temperature controlled.	UN3114						OP2			12
3,3,5,7,7-Pentamethyl-1,2,4-Trioxepane	UN3107	≤100					OP8			
Peroxyacetic acid, type D, stabilized	UN3105	≤43					OP7			13, 20
Peroxyacetic acid, type E, stabilized	UN3107	≤43					OP8			13, 20
Peroxyacetic acid, type F, stabilized	UN3109	≤43					OP8			13, 20, 28
Peroxyacetic acid or peracetic acid [with not more than 7% hydrogen peroxide].	UN3107	≤36				≥15	OP8			13, 20, 28
Peroxyacetic acid or peracetic acid [with not more than 20% hydrogen peroxide].	Exempt	≤6				≥60	Exempt			28
Peroxyacetic acid or peracetic acid [with not more than 26% hydrogen peroxide].	UN3109	≤17					OP8			13, 20, 28
Peroxylauric acid	UN3118	≤100					OP8	35	40	
Pinanyl hydroperoxide	UN3105	>56–100					OP7			13
Pinanyl hydroperoxide	UN3109	≤56	≥44				OP8			
Polyether poly-tert-butylperoxycarbonate	UN3107	≤52		≥48			OP8			
Tetrahydronaphthyl hydroperoxide	UN3106	≤100					OP7			
1,1,3,3-Tetramethylbutyl hydroperoxide	UN3105	≤100					OP7			
1,1,3,3-Tetramethylbutyl peroxy-2-ethylhexanoate.	UN3115	≤100					OP7	15	20	
1,1,3,3-Tetramethylbutyl peroxyneodecanoate.	UN3115	≤72		≥28			OP7	−5	5	
1,1,3,3-Tetramethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−5	5	
1,1,3,3-tetramethylbutyl peroxypivalate	UN3115	≤77	≥23				OP7	0	10	
3, 6, 9-Triethyl-3, 6, 9-trimethyl-1, 4, 7-triperoxonane.	UN3110	≤17	≥18		≥65		OP8			

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
3,6,9-Triethyl-3,6,9-trimethyl-1,4,7-triperoxonane.	UN3105	≤42	≥58	.....	.....	.....	OP7	.....	.....	26
Di-(3, 5, 5-trimethylhexanoyl) peroxide ..	UN3119	>38–52	≥48	.....	.....	.....	OP8	10	15	.....

Notes:
1. For domestic shipments, OP8 is authorized.
2. Available oxygen must be <4.7%.
3. For concentrations <80% OP5 is allowed. For concentrations of at least 80% but <85%, OP4 is allowed. For concentrations of at least 85%, maximum package size is OP2.
4. The diluent may be replaced by di-tert-butyl peroxide.
5. Available oxygen must be ≤9% with or without water.
6. For domestic shipments, OP5 is authorized.
7. Available oxygen must be ≤8.2% with or without water.
8. Only non-metallic packagings are authorized.
9. For domestic shipments this material may be transported under the provisions of paragraph (h)(3)(xii) of this section.
10. [Reserved]
11. [Reserved]
12. Samples may only be offered for transportation under the provisions of paragraph (b)(2) of this section.
13. ''Corrosive'' subsidiary risk label is required.
14. [Reserved]
15. No ''Corrosive'' subsidiary risk label is required for concentrations below 80%.
16. With <6% di-tert-butyl peroxide.
17. With ≤8% 1-isopropylhydroperoxy-4-isopropylhydroxybenzene.
18. Addition of water to this organic peroxide will decrease its thermal stability.
19. [Reserved]
20. Mixtures with hydrogen peroxide, water and acid(s).
21. With diluent type A, with or without water.
22. With ≥36% diluent type A by mass, and in addition ethylbenzene.
23. With ≥19% diluent type A by mass, and in addition methyl isobutyl ketone.
24. Diluent type B with boiling point >100 C.
25. No ''Corrosive'' subsidiary risk label is required for concentrations below 56%.
26. Available oxygen must be ≤7.6%.
27. Formulations derived from distillation of peroxyacetic acid originating from peroxyacetic acid in a concentration of not more than 41% with water, total active oxygen less than or equal to 9.5% (peroxyacetic acid plus hydrogen peroxide).
28. For the purposes of this section, the names ''Peroxyacetic acid'' and ''Peracetic acid'' are synonymous.
29. Not subject to the requirements of this subchapter for Division 5.2.
30. Diluent type B with boiling point >130 °C (266 °F).
31. Available oxygen ≤6.7%.

* * * * * (e) * * *

ORGANIC PEROXIDE IBC TABLE

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
3109	ORGANIC PEROXIDE, TYPE F, LIQUID	.....	.....	.....	.....
	tert-Butyl cumyl peroxide	31HA1	1000	.....	.....
	tert-Butyl hydroperoxide, not more than 72% with water	31A	1250	.....	.....
	tert-Butyl peroxyacetate, not more than 32% in diluent type A.	31A 31HA1	1250 1000	.....	.....
	tert-Butyl peroxybenzoate, not more than 32% in diluent type A.	31A	1250	.....	.....
	tert-Butyl peroxy-3,5,5-trimethylhexanoate, not more than 37% in diluent type A.	31A 31HA1	1250 1000	.....	.....
	Cumyl hydroperoxide, not more than 90% in diluent type A.	31HA1	1250	.....	.....
	Dibenzoyl peroxide, not more than 42% as a stable dispersion.	31H1	1000	.....	.....
	Di-tert-butyl peroxide, not more than 52% in diluent type B	31A 31HA1	1250 1000	.....	.....
	1,1-Di-(tert-Butylperoxy) cyclohexane, not more than 37% in diluent type A.	31A	1250	.....	.....
	1,1-Di-(tert-butylperoxy) cyclohexane, not more than 42% in diluent type A.	31H1	1000	.....	.....
	Dicumyl peroxide, less than or equal to 100%	31A 31HA1	1250 1000	.....	.....
	Dilauroyl peroxide, not more than 42%, stable dispersion, in water.	31HA1	1000	.....	.....
	Isopropyl cumyl hydroperoxide, not more than 72% in diluent type A.	31HA1	1250	.....	.....
	p-Menthyl hydroperoxide, not more than 72% in diluent type A.	31HA1	1250	.....	.....

ORGANIC PEROXIDE IBC TABLE—Continued

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
	Peroxyacetic acid, stabilized, not more than 17%	31A	1500		
		31H1	1500		
		31H2	1500		
		31HA1	1500		
	Peroxyacetic acid, with not more than 26% hydrogen peroxide.	31A	1500		
		31HA1	1500		
	Peroxyacetic acid, type F, stabilized	31A	1500		
		31HA1	1500		
3110	ORGANIC PEROXIDE TYPE F, SOLID				
	Dicumyl peroxide, less than or equal to 100%	31A	2000		
		31H1			
		31HA1			
3119	ORGANIC PEROXIDE, TYPE F, LIQUID, TEMPERATURE CONTROLLED.				
	tert-Amyl peroxypivalate, not more than 32% in diluent type A.	31A	1250	+ 10 °C	+ 15 °C
	tert-Butyl peroxy-2-ethylhexanoate, not more than 32% in diluent type B.	31HA1	1000	+ 30 °C	+ 35 °C
		31A	1250	+ 30 °C	+ 35 °C
	tert-Butyl peroxyneodecanoate, not more than 32% in diluent type A.	31A	1250	0 °C	+ 10 °C
	tert-Butyl peroxyneodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	−5 °C	+ 5 °C
	tert-Butyl peroxypivalate, not more than 27% in diluent type B.	31HA1	1000	+ 10 °C	+ 15 °C
		31A	1250	+ 10 °C	+ 15 °C
	Di-(4-tert-butylcyclohexyl) peroxydicarbonate, not more than 42%, stable dispersion, in water.	31HA1	1000	+ 30 °C	+ 35 °C
	Dicetyl peroxydicarbonate, not more than 42%, stable dispersion, in water.	31HA1	1000	+ 30 °C	+ 35 °C
	Dicyclohexylperoxydicarbonate, not more than 42% as a stable dispersion, in water.	31A	1250	+ 10 °C	+ 15 °C
	Di-(2-ethylhexyl) peroxydicarbonate, not more than 62%, stable dispersion, in water.	31A	1250	−20 °C	−10 °C
		31HA1	1000	−20 °C	−10 °C
	Diisobutyryl peroxide, not more than 28% as a stable dispersion in water.	31HA1	1000	−20 °C	−10 °C
		31A	1250	−20 °C	−10 °C
	Diisobutyryl peroxide, not more than 42% as a stable dispersion in water.	31HA1	1000	−25 °C	−15 °C
		31A	1250	−25 °C	−15 °C
	Dimyristyl peroxydicarbonate, not more than 42%, stable dispersion, in water.	31HA1	1000	+ 15 °C	+ 20 °C
	Di-(2-neodecanoylperoxyisopropyl) benzene, not more than 42%, stable dispersion, in water.	31A	1250	−15 °C	−5 °C
	Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52% in diluent type A.	31HA1	1000	+ 10 °C	+ 15 °C
		31A	1250	+ 10 °C	+ 15 °C
	Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52%, stable dispersion, in water.	31A	1250	+ 10 °C	+ 15 °C
	3-Hydroxy-1,1-dimethylbutyl peroxy-neodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	−15 °C	−5 °C
	1,1,3,3-Tetramethylbutyl peroxy-2-ethylhexanoate, not more than 67%, in diluent type A.	31HA1	1000	+15 °C	+20 °C
	1,1,3,3-Tetramethylbutyl peroxyneodecanoate, not more than 52%, stable dispersion, in water.	31A	1250	−5 °C	+ 5 °C
		31HA1	1000	−5 °C	+ 5 °C

* * * * *

■ 35. In § 173.301, paragraphs (a)(1) and (2) are revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

(a) * * *

(1) Compressed gases must be in UN pressure receptacles built in accordance with the UN standards or in metal cylinders and containers built in accordance with the DOT and ICC specifications and part 178 of this subchapter in effect at the time of manufacture or CRC, BTC, CTC or TC specification, and requalified and marked as prescribed in subpart C in part 180 of this subchapter, if applicable. The DOT, ICC, CRC, BTC, CTC and TC specifications authorized for use are as follows:

PACKAGINGS [1]

2P	4AA480
2Q	4B
ICC–3 [2]	4B240ET
3A	4BA
3AA	4BW
3AL	4D
3AX	4DA
3A480X	4DS
3AAX	4E
3B	4L
3BN	8
3E	8AL
3HT	39
3T	

[1] Authorized CRC, BTC, CTC or TC specification cylinders that correspond with a DOT specification cylinder are listed in § 171.12(a)(4)(iii) of this subchapter.

[2] Use of existing cylinders is authorized. New construction is not authorized.

(2) A cylinder must be filled in accordance with this part, except that a ''TC'' cylinder must be filled in accordance with the Transport Canada TDG Regulations (IBR; see § 171.7 of this subchapter). Before each filling of a cylinder, the person filling the cylinder must visually inspect the outside of the cylinder. A cylinder that has a crack or leak, is bulged, has a defective valve or a leaking or defective pressure relief device, or bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, may not be filled and offered for transportation. A cylinder may be repaired and requalified only as prescribed in subpart C of part 180 of this subchapter.

* * * * *

■ 36. In § 173.301b, paragraphs (a)(2), (c)(1), and (g) are revised to read as follows:

§ 173.301b Additional general requirements for shipment of UN pressure receptacles.

(a) * * *

(2) The gases or gas mixtures must be compatible with the UN pressure receptacle and valve materials as prescribed for metallic materials in ISO 11114–1:2012(E) (IBR, see § 171.7 of this subchapter) and for non-metallic materials in ISO 11114–2:2013(E) (IBR, see § 171.7 of this subchapter).

* * * * *

(c) * * *

(1) When the use of a valve is prescribed, the valve must conform to the requirements in ISO 10297:2014(E) (IBR, *see* § 171.7 of this subchapter). Until December 31, 2020, the manufacture of a valve conforming to the requirements in ISO 10297:2006(E) is authorized. Until December 31, 2008, the manufacture of a valve conforming to the requirements in ISO 10297:1999(E) (IBR, *see* § 171.7 of this subchapter) is authorized.

* * * * *

(g) *Composite cylinders in underwater use.* A composite cylinder certified to ISO–11119–2 or ISO–11119–3 may not be used for underwater applications unless the cylinder is manufactured in accordance with the requirements for underwater use and is marked ''UW'' as prescribed in § 178.71(q)(18) of this subchapter.

■ 37. In § 173.303, paragraph (f)(1) is revised to read as follows:

§ 173.303 Charging of cylinders with compressed gas in a solution (acetylene).

* * * * *

(f) * * *

(1) UN cylinders and bundles of cylinders are authorized for the transport of acetylene gas as specified in this section.

(i) Each UN acetylene cylinder must conform to ISO 3807:2013€: (IBR, see § 171.7 of this subchapter), have a homogeneous monolithic porous mass filler and be charged with acetone or a suitable solvent as specified in the standard. UN acetylene cylinders must have a minimum test pressure of 52 bar and may be filled up to the pressure limits specified in ISO 3807:2013(E). The use of UN tubes and MEGCs is not authorized.

(ii) Until December 31, 2020, cylinders conforming to the requirements in ISO 3807–2(E) (IBR, *see* § 171.7 of this subchapter), having a homogeneous monolithic porous mass filler and charged with acetone or a suitable solvent as specified in the standard are authorized. UN acetylene cylinders must have a minimum test pressure of 52 bar and may be filled up to the pressure limits specified in ISO 3807–2(E).

* * * * *

■ 38. In 173.304b, paragraph (b)(5) is added to read as follows:

§ 173.304b Additional requirements for shipment of liquefied compressed gases in UN pressure receptacles.

* * * * *

(b) * * *

(5) For liquefied gases charged with compressed gases, both components—the liquid phase and the compressed—have to be taken into consideration in the calculation of the internal pressure in the pressure receptacle. The maximum mass of contents per liter of water capacity shall not exceed 95 percent of the density of the liquid phase at 50 °C (122 °F); in addition, the liquid phase shall not completely fill the pressure receptacle at any temperature up to 60 °C (140 °F). When filled, the internal pressure at 65 °C (149 °F) shall not exceed the test pressure of the pressure receptacles. The vapor pressures and volumetric expansions of all substances in the pressure receptacles shall be considered. The maximum filling limits may be determined using the procedure in (3)(e) of P200 of the UN Recommendations.

* * * * *

■ 39. Section 173.310 is revised to read as follows:

§ 173.310 Exceptions for radiation detectors.

Radiation detectors, radiation sensors, electron tube devices, or ionization chambers, herein referred to as ''radiation detectors,'' that contain only Division 2.2 gases in non-refillable cylinders, are excepted from the specification packaging in this subchapter and, except when transported by air, from labeling and placarding requirements of this subchapter when designed, packaged, and transported as follows:

(a) Radiation detectors must be single-trip, hermetically sealed, welded metal inside containers that will not fragment upon impact.

(b) Radiation detectors must not have a design pressure exceeding 5.00 MPa (725 psig) and a capacity exceeding 405 fluid ounces (731 cubic inches). They must be designed and fabricated with a burst pressure of not less than three times the design pressure if the radiation detector is equipped with a pressure relief device, and not less than four times the design pressure if the detector is not equipped with a pressure relief device.

(c) Radiation detectors must be shipped in a strong outer packaging capable of withstanding a drop test of at least 1.2 meters (4 feet) without breakage of the radiation detector or rupture of the outer packaging. If the radiation detector is shipped as part of other equipment, the equipment must be packaged in strong outer packaging or the equipment itself must provide an equivalent level of protection.

(d) Emergency response information accompanying each shipment and available from each emergency response telephone number for radiation detectors must identify those receptacles that are not fitted with a pressure relief device and provide appropriate guidance for exposure to fire.

(e) Except as provided paragraph (f) of this section, transport in accordance with this section must be noted on the shipping paper.

(f) Radiation detectors, including detectors in radiation detection systems, are not subject to any other requirements of this subchapter, including shipping papers, if the detectors meet the requirements in paragraphs (a) through (d) of this section and the capacity of detector receptacles does not exceed 50 ml (1.7 oz.).

■ 40. In § 173.335, paragraph (a) is revised to read as follows:

§ 173.335 Chemical under pressure n.o.s.

(a) *General requirements.* A cylinder filled with a chemical under pressure must be offered for transportation in accordance with the requirements of this section and § 172.301 of this subchapter. In addition, a DOT specification cylinder must meet the requirements in §§ 173.301a, 173.302, 173.302a, and 173.305, as applicable.

UN pressure receptacles must meet the requirements in §§ 173.301b, 173.302b, and 173.304b, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

■ 41. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81 and 1.97.

■ 42. In § 175.10, revise paragraph (a)(7) to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(7) A small medical or clinical mercury thermometer for personal use, when carried in a protective case in checked baggage.

* * * * *

■ 43. Section 175.25 is revised to read as follows:

§ 175.25 Passenger notification system.

(a) *General.* Each person who engages in for hire air transportation of passengers must effectively inform passengers about hazardous materials that passengers are forbidden to transport on aircraft and must accomplish this through the development, implementation, and maintenance of a passenger notification system.

(b) *Passenger notification system requirements.* The passenger notification system required by paragraph (a) of this section must ensure that:

(1) A passenger is presented with information required under paragraph (a) of this section at the point of ticket purchase or, if this is not practical, in another way prior to boarding pass issuance;

(2) A passenger is presented with information required under paragraph (a) of this section at the point of boarding pass issuance (*i.e.* check-in), or when no boarding pass is issued, prior to boarding the aircraft;

(3) A passenger, where the ticket purchase and/or boarding pass issuance can be completed by a passenger without the involvement of another person, acknowledges that they have been presented with the information required under paragraph (a) of this section; and

(4) A passenger is presented with information required under paragraph (a) of this section at each of the places at an airport where tickets are issued, boarding passes are issued, passenger baggage is dropped off, aircraft boarding areas are maintained, and at any other location where boarding passes are issued and/or checked baggage is accepted. This information must include visual examples of forbidden hazardous materials.

(c) *Aircraft operator manual requirements.* For certificate holders under 14 CFR parts 121 and 135, procedures and information necessary to allow personnel to implement and maintain the passenger notification system required in paragraphs (a) and (b) of this section must be described in an operations manual and/or other appropriate manuals in accordance with 14 CFR part 121 or 135.

■ 44. In § 175.33, revise paragraph (a)(3) to read as follows:

§ 175.33 Shipping paper and notification of pilot-in-command.

(a) * * *

(3) The net quantity or gross weight, as applicable, for each package except those containing Class 7 (radioactive) materials. For a shipment consisting of multiple packages containing hazardous materials bearing the same proper shipping name and identification number, only the total quantity and an indication of the quantity of the largest and smallest package at each loading location need to be provided. For consumer commodities, the information provided may be either the gross mass of each package or the average gross mass of the packages as shown on the shipping paper;

* * * * *

■ 45. In § 175.75:

■ a. Paragraphs (c) and (e)(1) are revised; and

■ b. In paragraph (f), in the QUANTITY AND LOADING TABLE, in Note 1, paragraph f. is added.

The revisions and addition read as follows:

§ 175.75 Quantity limitations and cargo location.

* * * * *

(c) For each package containing a hazardous material acceptable for carriage aboard passenger-carrying aircraft, no more than 25 kg (55 pounds) net weight of hazardous material may be loaded in an inaccessible manner. In addition to the 25 kg limitation, an additional 75 kg (165 pounds) net weight of Division 2.2 (non-flammable compressed gas) may be loaded in an inaccessible manner. The requirements of this paragraph (c) do not apply to Class 9, articles of Identification Numbers UN0012, UN0014, or UN0055 also meeting the requirements of § 173.63(b) of this subchapter, articles of Identification Numbers UN3528 or UN3529, and Limited or Excepted Quantity material.

* * * * *

(e) * * *

(1) Class 3, PG III (unless the substance is also labeled CORROSIVE), Class 6.1 (unless the substance is also labeled for any hazard class or division except FLAMMABLE LIQUID), Division 6.2, Class 7 (unless the hazardous material meets the definition of another hazard class), Class 9, articles of Identification Numbers UN0012, UN0014, or UN0055 also meeting the requirements of § 173.63(b) of this subchapter, articles of Identification Numbers UN3528 or UN3529, and those marked as a Limited Quantity or Excepted Quantity material.

* * * * *

(f) * * *

Note 1: * * *

f. Articles of Identification Numbers UN3528 or UN3529.

* * * * *

■ 46. Section 175.900 is revised to read as follows:

§ 175.900 Handling requirements for carbon dioxide, solid (dry ice).

Carbon dioxide, solid (dry ice) when shipped by itself or when used as a refrigerant for other commodities, may be carried only if the operator has made suitable arrangements based on the aircraft type, the aircraft ventilation rates, the method of packing and stowing, whether animals will be carried on the same flight and other factors. The operator must ensure that the ground staff is informed that the dry ice is being loaded or is on board the aircraft. For arrangements between the shipper and operator, see § 173.217 of this subchapter. Where dry ice is contained in a unit load device (ULD) prepared by a single shipper in accordance with § 173.217 of this subchapter and the operator after the acceptance adds additional dry ice, the operator must ensure that the information provided to the pilot-in-command and the marking on the ULD when used as a packaging reflects that revised quantity of dry ice.

PART 176—CARRIAGE BY VESSEL

■ 47. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 48. In § 176.83, paragraph (a)(4)(ii) is revised to read as follows:

§ 176.83 Segregation.

(a) * * *

(4) * * *

(ii) Between hazardous materials of different classes which comprise a group of substances that do not react dangerously with each other. The following materials are grouped by compatibility:

(A) Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary);* Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide;* Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide;* Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid;* Organic peroxide type D, liquid; Organic peroxide type E, liquid; Organic peroxide type F, liquid;

(B) Dichlorosilane, Silicon tetrachloride, and Trichlorosilane; and

(C) Organometallic substance, solid, pyrophoric; Organometallic substance, liquid, pyrophoric; Organometallic substance, solid, pyrophoric, water-reactive; Organometallic substance, liquid, pyrophoric, water-reactive; Organometallic substance, solid, water-reactive; Organometallic substance, solid, water-reactive, flammable; Organometallic substance, solid, water-reactive, self-heating; Organometallic substance, liquid, water-reactive; Organometallic substance, liquid, water-reactive, flammable; and Organometallic substance, solid, self-heating.

* * * * *

■ 49. In § 176.84(b), table provisions 149 and 150 are added in numerical order to read as follows:

§ 176.84 Other requirements for stowage, cargo handling, and segregation for cargo vessels and passenger vessels.

(b) * * *

Code	Provisions
* * * * * * *	
149	For engines or machinery containing fuels with flash point equal or greater than 23 °C (73.4 °F) , stowage Category A.
150	For uranium metal pyrophoric and thorium metal pyrophoric stowage, category D applies.
* * * * * * *	

* * * * *

■ 50. Section 176.905 is revised to read as follows:

§ 176.905 Stowage of vehicles.

(a) A vehicle powered by an internal combustion engine, a fuel cell, batteries or a combination thereof is subject to the following requirements when carried as cargo on a vessel:

(1) Before being loaded on a vessel, each vehicle must be inspected for signs of leakage from batteries, engines, fuel cells, compressed gas cylinders or accumulators, or fuel tank(s) when applicable, and any identifiable faults in the electrical system that could result in short circuit or other unintended electrical source of ignition. A vehicle showing any signs of leakage or electrical fault may not be transported.

(2) For flammable liquid powered vehicles, the fuel tank(s) containing the flammable liquid, may not be more than one fourth full and the flammable liquid must not exceed 250 L (66 gal) unless otherwise approved by the Associate Administrator.

(3) For flammable gas powered vehicles, the fuel shut-off valve of the fuel tank(s) must be securely closed.

(4) For vehicles with batteries installed, the batteries shall be protected from damage, short circuit, and accidental activation during transport. Except for vehicles with prototype or low production lithium batteries (*see* § 173.185(d) of this subchapter) securely installed, each lithium battery must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria (IBR, *see* § 171.7 of this subchapter), as specified in § 173.185(a) of this subchapter, unless approved by the Associate Administrator. Where a lithium battery installed in a vehicle is damaged or defective, the battery must be removed and transported according to § 173.185(f) of this subchapter, unless otherwise approved by the Associate Administrator.

(5) Whenever possible, each vehicle must be stowed to allow for its inspection during transportation.

(6) Vehicles may be refueled when necessary in the hold of a vessel in accordance with § 176.78.

(b) All equipment used for handling vehicles must be designed so that the fuel tank and the fuel system of the vehicle are protected from stress that might cause rupture or other damage incident to handling.

(c) Two hand-held, portable, dry chemical fire extinguishers of at least 4.5 kg (10 pounds) capacity each must be separately located in an accessible location in each hold or compartment in which any vehicle is stowed.

(d) ''NO SMOKING'' signs must be conspicuously posted at each access opening to the hold or compartment.

(e) Each portable electrical light, including a flashlight, used in the stowage area must be an approved, explosion-proof type. All electrical connections for any light must be made to outlets outside the space in which any vehicle is stowed.

(f) Each hold or compartment must be ventilated and fitted with an overhead water sprinkler system or fixed fire extinguisher system.

(g) Each hold or compartment must be equipped with a smoke or fire detection system capable of alerting personnel on the bridge.

(h) All electrical equipment in the hold or compartment other than fixed explosion-proof lighting must be disconnected from its power source at a location outside the hold or compartment during the handling and transportation of any vehicle. Where the disconnecting means is a switch or circuit breaker, it must be locked in the open position until all vehicles have been removed.

(i) *Exceptions.* A vehicle is not subject to the requirements of this subchapter if any of the following are met:

(1) The vehicle is stowed in a hold or compartment designated by the administration of the country in which the vessel is registered as specially designed and approved for vehicles and there are no signs of leakage from the battery, engine, fuel cell, compressed gas cylinder or accumulator, or fuel tank, as appropriate. For vehicles with batteries connected and fuel tanks containing gasoline transported by U.S. vessels, see 46 CFR 70.10–1 and 90.10–38;

(i) For vehicles powered solely by lithium batteries and hybrid electric vehicles powered by both an internal combustion engine and lithium metal or

ion batteries offered in accordance with this paragraph, the lithium batteries, except for prototype or those produced in low production, must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), as specified in § 173.185(a) of this subchapter. Where a lithium battery installed in a vehicle is damaged or defective, the battery must be removed.

(ii) [Reserved]

(2) The vehicle is powered by a flammable liquid that has a flashpoint of 38 °C (100 °F) or above, the fuel tank contains 450 L (119 gallons) of fuel or less, there are no leaks in any portion of the fuel system, and installed batteries are protected from short circuit;

(3) The vehicle is powered by a flammable liquid fuel that has a flashpoint less than 38 °C (100 °F), the fuel tank is empty, and installed batteries are protected from short circuit. Vehicles are considered to be empty of flammable liquid fuel when the fuel tank has been drained and the vehicles cannot be operated due to a lack of fuel. Engine components such as fuel lines, fuel filters and injectors do not need to be cleaned, drained or purged to be considered empty. The fuel tank does not need to be cleaned or purged;

(4) The vehicle is powered by a flammable gas (liquefied or compressed), the fuel tanks are empty and the positive pressure in the tank does not exceed 2 bar (29 psig), the fuel shut-off or isolation valve is closed and secured, and installed batteries are protected from short circuit;

(5) The vehicle is solely powered by a wet or dry electric storage battery or a sodium battery, and the battery is protected from short circuit; or

(6) The vehicle is powered by a fuel cell engine, the engine is protected from inadvertent operation by closing fuel supply lines or by other means, and the fuel supply reservoir has been drained and sealed.

(j) Except as provided in § 173.220(f) of this subchapter, the provisions of this subchapter do not apply to items of equipment such as fire extinguishers, compressed gas accumulators, airbag inflators and the like which are installed in the vehicle if they are necessary for the operation of the vehicle, or for the safety of its operator or passengers.

■ 51. Section 176.906 is added to read as follows:

§ 176.906 Stowage of engines and machinery.

(a) Any engine or machinery powered by internal combustion systems, with or without batteries installed, is subject to the following requirements when carried as cargo on a vessel:

(1) Before being loaded on a vessel, each engine or machinery must be inspected for fuel leaks and identifiable faults in the electrical system that could result in short circuit or other unintended electrical source of ignition. Engines or machinery showing any signs of leakage or electrical fault may not be transported.

(2) The fuel tanks of an engine or machinery powered by liquid fuel may not be more than one-fourth full.

(3) Whenever possible, each engine or machinery must be stowed to allow for its inspection during transportation.

(b) All equipment used for handling engines or machinery must be designed so that the fuel tank and the fuel system of the engines or machinery are protected from stress that might cause rupture or other damage incident to handling.

(c) Two hand-held, portable, dry chemical fire extinguishers of at least 4.5 kg (10 pounds) capacity each must be separately located in an accessible location in each hold or compartment in which engine or machinery is stowed.

(d) ''NO SMOKING'' signs must be conspicuously posted at each access opening to the hold or compartment.

(e) Each portable electrical light, including a flashlight, used in the stowage area must be an approved, explosion-proof type. All electrical connections for any light must be made to outlets outside the space in which any engine or machinery is stowed.

(f) Each hold or compartment must be ventilated and fitted with an overhead water sprinkler system or fixed fire extinguisher system.

(g) Each hold or compartment must be equipped with a smoke or fire detection system capable of alerting personnel on the bridge.

(h) All electrical equipment in the hold or compartment other than fixed explosion-proof lighting must be disconnected from its power source at a location outside the hold or compartment during the handling and transportation of any engine or machinery. Where the disconnecting means is a switch or circuit breaker, it must be locked in the open position until all engines or machinery has been removed.

(i) *Exceptions.* (1) An engine or machinery is not subject to the requirements of this subchapter if the engine or machinery is empty of liquid or gaseous fuel(s), does not contain other dangerous goods, and installed batteries are protected from short circuit. An engine and machinery is considered to be empty of fuel when:

(i) For liquid fuels, the liquid fuel tank has been drained and the mechanical equipment cannot be operated due to a lack of fuel. Engine and machinery components such as fuel lines, fuel filters and injectors do not need to be cleaned, drained or purged to be considered empty of liquid fuels. In addition, the liquid fuel tank does not need to be cleaned or purged;

(ii) For gaseous fuels, the gaseous fuel tanks are empty of liquid (for liquefied gases), the positive pressure in the tanks does not exceed 2 bar (29 psig) and the fuel shut-off or isolation valve is closed and secured; or

(iii) The engine or machinery is powered by a fuel cell engine and the engine is protected from inadvertent operation by closing fuel supply lines or by other means, and the fuel supply reservoir has been drained and sealed.

(2) An engine or machinery is not subject to the requirements of this subchapter except for § 173.185 of this subchapter and the vessel stowage provisions of column (10) of table § 172.101 of this subchapter, if the following are met:

(i) Any valves or openings (*e.g.* venting devices) for liquid fuels must be closed during transport;

(ii) The engines or machinery must be oriented to prevent inadvertent leakage of dangerous goods and secured by means capable of restraining the engines or machinery to prevent any movement during transport which would change the orientation or cause them to be damaged;

(iii) For UN 3528 and UN 3530:

(A) Where the engine or machinery contains more than 60 L (16 Gal) of liquid fuel and has a capacity of not more than 450 L (119 Gal), it shall be labeled in accordance with subpart E of part 172 of this subchapter;

(B) Where the engine or machinery contains more than 60 L of liquid fuel and has a capacity of more than 450 L (119 Gal) but not more than 3,000 L (793 Gal), it shall be labeled on two opposing sides in accordance with § 172.406(e) of this subchapter;

(C) Where the engine or machinery contains more than 60 L (16 Gal) of liquid fuel and has a capacity of more than 3,000 L (793 Gal), it shall be placarded on two opposing sides in accordance with subpart F of part 172 of this subchapter; and

(D) For UN 3530 the marking requirements of § 172.322 of this subchapter also apply.

(iv) For UN 3529:

(A) Where the fuel tank of the engine or mechanical equipment has a water

capacity of not more than 450 L (119 Gal), the labeling requirements of subpart E of part 172 of this subchapter shall apply;

(B) Where the fuel tank of the mechanical equipment has a water capacity of more than 450 L (119 Gal) but not more than 1,000 L (264 Gal), it shall be labeled on two opposing sides in accordance with § 172.406(e) of this subchapter;

(C) Where the fuel tank of the mechanical equipment has a water capacity of more than 1,000 L (264 Gal), it shall be placarded on two opposing sides in accordance with subpart F of part 172 of this subchapter.

(v) Except for engines or machinery offered in accordance with paragraph (i)(1) of this section, a shipping paper prepared in accordance with part 172 of this subchapter is required and shall contain the following additional statement ''Transport in accordance with § 176.906.'' For transportation in accordance with the IMDG Code (IBR, see § 171.7 of this subchapter) the following alternative statement is authorized ''Transport in accordance with IMDG Code special provision 363.''

(j) Except as provided in § 173.220(f) of this subchapter, the provisions of this subchapter do not apply to items of equipment such as fire extinguishers, compressed gas accumulators, airbag inflators and the like which are installed in the engine or machinery if they are necessary for the operation of the engine or machinery, or for the safety of its operator or passengers.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 52. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 53. In § 178.71:

■ a. Revise paragraph (d)(2);

■ b. Add paragraph (g)(4);

■ c. Revise paragraphs (h), (k)(2), (l), and (o)(2);

■ d. Add paragraphs (q)(20) and (21); and

■ e. Revise paragraph (r).

The revisions and additions read as follows:

§ 178.71 Specifications for UN pressure receptacles.

* * * * *

(d) * * *

(2) Service equipment must be configured or designed to prevent damage that could result in the release of the pressure receptacle contents during normal conditions of handling and transport. Manifold piping leading to shut-off valves must be sufficiently flexible to protect the valves and the piping from shearing or releasing the pressure receptacle contents. The filling and discharge valves and any protective caps must be secured against unintended opening. The valves must conform to ISO 10297:2014(E) or ISO 13340:2001(E) (IBR, *see* § 171.7 of this subchapter) for non-refillable pressure receptacles, and be protected as specified in § 173.301b(f) of this subchapter. Until December 31, 2020, the manufacture of a valve conforming to the requirements in ISO 10297:2006(E) (IBR, *see* § 171.7 of this subchapter) is authorized. Until December 31, 2008, the manufacture of a valve conforming to the requirements in ISO 10297:1999(E) (IBR, *see* § 171.7 of this subchapter) is authorized.

* * * * *

(g) * * *

(4) ISO 9809–4:2014(E) (IBR, see § 171.7 of this subchapter).

(h) *Design and construction requirements for UN refillable seamless aluminum alloy cylinders.* In addition to the general requirements of this section, UN refillable seamless aluminum cylinders must conform to ISO 7866:2012(E) as modified by ISO 7866:2012/Cor.1:2014(E) (IBR, see § 171.7 of this subchapter). Until December 31, 2020, the manufacture of a cylinder conforming to the requirements in ISO 7866(E) (IBR, see § 171.7 of this subchapter) is authorized. The use of Aluminum alloy 6351–T6 or equivalent is prohibited.

* * * * *

(k) * * *

(2) The porous mass in an acetylene cylinder must conform to ISO 3807:2013(E) (IBR, see § 171.7 of this subchapter). Until December 31, 2020, the manufacture of a cylinder conforming to the requirements in ISO 3807–2(E) (IBR, see § 171.7 of this subchapter) is authorized.

(l) *Design and construction requirements for UN composite cylinders and tubes.* (1) In addition to the general requirements of this section, UN composite cylinders and tubes must be designed for a design life of not less than 15 years. Composite cylinders and tubes with a design life longer than 15 years must not be filled after 15 years from the date of manufacture, unless the design has successfully passed a service life test program. The service life test program must be part of the initial design type approval and must specify inspections and tests to demonstrate that cylinders manufactured accordingly remain safe to the end of their design life. The service life test program and the results must be approved by the competent authority of the country of approval that is responsible for the initial approval of the cylinder design. The service life of a composite cylinder or tube must not be extended beyond its initial approved design life. Additionally, composite cylinders and tubes must conform to the following ISO standards, as applicable:

(i) ISO 11119–1:2012(E) (IBR, see § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–1(E), (IBR, see § 171.7 of this subchapter) are authorized.

(ii) ISO 11119–2:2012(E) (ISO 11119–2:2012/Amd.1:2014(E)) (IBR, see § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–2(E) (IBR, see § 171.7 of this subchapter) are authorized.

(iii) ISO 11119–3:2013(E) (IBR, see § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–3(E) (IBR, see § 171.7 of this subchapter) are authorized.

(2) ISO 11119–2 and ISO 11119–3 gas cylinders of composite construction manufactured in accordance with the requirements for underwater use must bear the ''UW'' mark.

* * * * *

(o) * * *

(2) ISO 11114–2:2013(E) (IBR, see § 171.7 of this subchapter).

* * * * *

(q) * * *

(20) For composite cylinders and tubes having a limited design life, the letters ''FINAL'' followed by the design life shown as the year (four digits) followed by the month (two digits) separated by a slash (*i.e.* ''/'').

(21) For composite cylinders and tubes having a limited design life greater than 15 years and for composite cylinders and tubes having non-limited design life, the letters ''SERVICE'' followed by the date 15 years from the date of manufacture (initial inspection) shown as the year (four digits) followed by the month (two digits) separated by a slash (*i.e.* ''/'').

(r) *Marking sequence.* The marking required by paragraph (q) of this section must be placed in three groups as shown in the example below:

(1) The top grouping contains manufacturing marks and must appear consecutively in the sequence given in paragraphs (q)(13) through (19) of this section.

(2) The middle grouping contains operational marks described in paragraphs (q)(6) through (11) of this section.

(3) The bottom grouping contains certification marks and must appear consecutively in the sequence given in paragraphs (q)(1) through (5) of this section.

EXAMPLE TO § 178.71

(12) (13) (14) (15) (16) (17) (18) (19) (20) (21)

25E USA 765432 H UW FINAL 2XXX/XX FINAL 2XXX/XX SERVICE 2XXX/XX

---

(10) (6) (7) (8) (11) (9)

PW200 PH300BAR RCPXXXBAR 62.1 KG 50L 5.8MM

---

(1) (2) (3) (4) (5)

ISO 9809-1 USA/MXXXX IB 2005/12

* * * * *

■ 54. In § 178.75, paragraph (d)(3)(iv) is redesignated as (d)(3)(v) and paragraph (d)(3)(iv) is added to read as follows:

§ 178.75 Specifications for MEGCs.

* * * * *

(d) * * *

(3) * * *

(iv) ISO 9809–4:2014(E) Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa (IBR, see § 171.7 of this subchapter).

* * * * *

■ 55. In § 178.1015, paragraph (f) is revised to read as follows:

§ 178.1015 General Flexible Bulk Container standards.

* * * * *

(f) A venting device must be fitted to Flexible Bulk Containers intended to transport hazardous materials that may develop dangerous accumulation of gases within the Flexible Bulk Container. Any venting device must be designed so that external foreign substances or the ingress of water are prevented from entering the Flexible Bulk Container through the venting device under conditions normally incident to transportation.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 57. In § 180.205, paragraph (c) is revised to read as follows:

§ 180.205 General requirements for requalification of specification cylinders.

* * * * *

(c) *Periodic requalification of cylinders.* Each cylinder bearing a DOT, CRC, BTC, or CTC specification marking must be requalified and marked as specified in the Requalification Table in this subpart or requalified and marked by a facility registered by Transport Canada in accordance with the Transport Canada TDG Regulations (IBR, *see* § 171.7 of this subchapter). Each cylinder bearing both a TC specification marking and also marked with a corresponding DOT specification marking must be requalified and marked as specified in the Requalification Table in this subpart or requalified and marked by a facility registered by Transport Canada in accordance with the Transport Canada TDG Regulations (IBR, *see* § 171.7 of this subchapter). Each cylinder bearing a DOT special permit number must be requalified and marked in conformance with this section and the terms of the applicable special permit. Each cylinder bearing only a TC mark must be requalified and marked as specified in the Transport Canada TDG Regulations (IBR, *see* § 171.7 of this subchapter), except that registration with Transport Canada is not required and cylinders must be marked with the requalifiers DOT issued requalifier identification number. No cylinder may be filled with a hazardous material and offered for transportation in commerce unless that cylinder has been successfully requalified and marked in accordance with this subpart. A cylinder may be requalified at any time during or before the month and year that the requalification is due. However, a cylinder filled before the requalification becomes due may remain in service until it is emptied. A cylinder with a specified service life may not be refilled and offered for transportation after its authorized service life has expired.

(1) Each cylinder that is requalified in accordance with the requirements specified in this section must be marked

in accordance with § 180.213 or the requirements of the Transport Canada TDG Regulations, or in the case of a TC cylinder requalified in the United States by a DOT RIN holder, in accordance with the requirements of the Transport Canada TDG Regulations except that registration with Transport Canada is not required and cylinders must be marked with the requalifiers DOT issued requalifier identification number.

(2) Each cylinder that fails requalification must be:

(i) Rejected and may be repaired or rebuilt in accordance with § 180.211 or § 180.212, as appropriate; or

(ii) Condemned in accordance with paragraph (i) of this section.

(3) For DOT specification cylinders, the marked service pressure may be changed upon approval of the Associate Administrator and in accordance with written procedures specified in the approval.

(4) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AAX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2, from the first requalification due on or after December 31, 2003, the burst pressure of a CG–1, CG–4, or CG–5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disc is placed inside a holder. This requirement does not apply if a CG–2, CG–3 or CG–9 thermally activated relief device or a CG–7 reclosing pressure valve is used on the cylinder.

* * * * *

■ 58. In § 180.207, paragraph (d)(3) is revised to read as follows:

§ 180.207 Requirements for requalification of UN pressure receptacles.

* * * * *

(d) * * *

(3) Dissolved acetylene UN cylinders: Each dissolved acetylene cylinder must be requalified in accordance with ISO 10462:2013(E) (IBR, *see* § 171.7 of this subchapter). Until December 31, 2018 requalification may be done in accordance with ISO 10462(E) (IBR, *see* § 171.7 of this subchapter). The porous mass and the shell must be requalified no sooner than 3 years, 6 months, from the date of manufacture. Thereafter, subsequent requalifications of the porous mass and shell must be performed at least once every ten years.

* * * * *

■ 59. In § 180.211, paragraph (a) is revised and paragraph (g) is added to read as follows:

§ 180.211 Repair, rebuilding and reheat treatment of DOT–4 series specification cylinders.

(a) *General requirements for repair and rebuilding.* Any repair or rebuilding of a DOT–4 series cylinder must be performed by a person holding an approval as specified in § 107.805 of this chapter or by a registered facility in Canada in accordance with the Transport Canada TDG Regulations (IBR, see § 171.7 of this subchapter). A person performing a rebuild function is considered a manufacturer subject to the requirements of § 178.2(a)(2) and subpart C of part 178 of this subchapter. The person performing a repair, rebuild, or reheat treatment must record the test results as specified in § 180.215. Each cylinder that is successfully repaired or rebuilt must be marked in accordance with § 180.213.

* * * * *

(g) *Repair, rebuilding and reheat treatment in Canada.* Repair, rebuilding, or reheat treatment of a DOT–4 series specification cylinder performed by a registered facility in Canada in accordance with the Transport Canada TDG Regulations (IBR, *see* § 171.7 of this subchapter) is authorized.

■ 60. In § 180.212, paragraph (a)(1)(ii) is revised to read as follows:

§ 180.212 Repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles.

(a) * * *

(1) * * *

(ii) Except as provided in paragraph (b) of this section, the repair and the inspection is performed under the provisions of an approval issued under subpart H of part 107 of this chapter or by a facility registered by Transport Canada in accordance with the Transport Canada TDG Regulations (IBR; see § 171.7 of this subchapter) and conform to the applicable cylinder specification or ISO standard contained in part 178 of this subchapter.

* * * * *

■ 61. In § 180.413, paragraph (a)(1)(iii) is added and paragraph (b) introductory text is revised to read as follows:

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

(a) * * *

(1) * * *

(iii) A repair, as defined in § 180.403, of a DOT specification cargo tank used for the transportation of hazardous materials in the United States may be performed by a facility in Canada in accordance with the Transport Canada TDG Regulations (IBR, see § 171.7 of this subchapter) provided:

(A) The facility holds a valid Certificate of Authorization from a provincial pressure vessel jurisdiction for repair;

(B) The facility is registered in accordance with the Transport Canada TDG Regulations to repair the corresponding TC specification; and

(C) All repairs are performed using the quality control procedures used to obtain the Certificate of Authorization.

(b) *Repair.* The suitability of each repair affecting the structural integrity or lading retention capability of the cargo tank must be determined by the testing required either in the applicable manufacturing specification or in § 180.407(g)(1)(iv). Except for a repair performed by a facility in Canada in accordance with paragraph (a)(1)(iii) of this section, each repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. The following provisions apply to specific cargo tank repairs:

* * * * *

■ 62. In § 180.605, paragraph (g)(1) is revised to read as follows:

§ 180.605 Requirements for periodic testing, inspection and repair of portable tanks.

* * * * *

(g) * * *

(1) The shell is inspected for pitting, corrosion, or abrasions, dents, distortions, defects in welds or any other conditions, including leakage, that might render the portable tank unsafe for transportation. The wall thickness must be verified by appropriate measurement if this inspection indicates a reduction of wall thickness;

* * * * *

Issued in Washington, DC, on March 3, 2017 under authority delegated in 49 CFR 1.97.

Howard W. McMillan,

Acting Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2017–04565 Filed 3–29–17; 8:45 am]

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Part III

Federal Financial Institutions Examination Council

Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act; Notice

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. FFIEC–2017–0001]

Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: Pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the Federal Financial Institutions Examination Council (FFIEC) is publishing a report entitled ''Joint Report to Congress, March 2017, Economic Growth and Regulatory Paperwork Reduction Act'' prepared by four of its constituent agencies: The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Association (NCUA).

FOR FURTHER INFORMATION CONTACT: *Board:* Claudia Von Pervieux, Counsel (202) 452–2552; Brian Phillips, Attorney (202) 452–3321; for persons who are deaf or hard of hearing, TTY (202) 263–4869, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

OCC: Heidi Thomas, Special Counsel (202) 649–5490; Rima Kundnani, Attorney (202) 649–5490; for persons who are deaf or hard of hearing, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

FDIC: Rae-Ann Miller, Associate Director, Division of Risk Management Supervision (202) 898–3898; Ruth R. Amberg, Assistant General Counsel (202) 898–3736; for persons who are deaf or hard of hearing, TTY 1–800–925–4618, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

NCUA: Ross Kendall, Special Counsel to the General Counsel, (703) 518–6562, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: EGRPRA requires the FFIEC, Board, OCC, and FDIC (the Agencies) to conduct a decennial review of their regulations, using notice and comment procedures, to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. 12 U.S.C. 3311(a)–(c). EGRPRA also requires the FFIEC or the appropriate agency to publish in the **Federal Register** a summary of comments that identifies the significant issues raised and comments on these issues, and to eliminate unnecessary regulations to the extent that such action is appropriate. 12 U.S.C. 3311(d). Furthermore, the FFIEC must submit a report to Congress that includes a summary of the significant issues raised by public comments and the relative merits of these issues, and an analysis of whether the appropriate agency is able to address the regulatory burdens associated with these issues by regulation or whether the burdens must be addressed by legislative action. 12 U.S.C. 3311(e).

The FFIEC and the Agencies have completed their second EGRPRA review and comment process, and the FFIEC submitted the required report to Congress on March 21, 2017. The text of this report, entitled ''Joint Report to Congress, March 2017, Economic Growth and Regulatory Paperwork Reduction Act,'' is set forth below and as published herein fulfills the EGRPRA **Federal Register** publication requirement.

The NCUA is not required to participate in the EGRPRA review process. However, the NCUA elected to conduct its own parallel review of its regulations pursuant to the goals of EGRPRA. NCUA's separate report is included as Part II of the Joint Report to Congress.

Federal Financial Institutions Examination Council

Joint Report to Congress

Economic Growth and Regulatory Paperwork Reduction Act

March 2017

Board of Governors of the Federal Reserve System

Office of the Comptroller of the Currency

Federal Deposit Insurance Corporation

National Credit Union Association

Preface

by Daniel K. Tarullo, Governor, Board of Governors of the Federal Reserve System

As chairman of the Federal Financial Institutions Examination Council (FFIEC), I am pleased to submit this report of the second Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) review to Congress. Under EGRPRA, the FFIEC and its member agencies [1] are directed to conduct a joint review of our regulations every 10 years and consider whether any of those regulations are outdated, unnecessary, or unduly burdensome.

This cycle's EGRPRA review commenced in the summer of 2014, with the FFIEC agencies publishing the first of four **Federal Register** notices through which we solicited formal, written comments on our regulations. In addition, we hosted six outreach sessions across the country, including one in Kansas City, Missouri, that focused on rural banks, in which representatives from banks, community and consumer groups, and other interested parties participated. Principals of all the agencies participated in these sessions. As I noted at one of these meetings, the federal banking agencies' underlying aim with these efforts was to make this EGRPRA review as productive as possible and not a formalistic bureaucratic exercise.

In response to over 230 written comments and 120 oral comments received through this review, the FFIEC agencies have developed the attached report, which summarizes comments received, the major issues raised therein, and the agencies' responses to each of those issues. Most importantly, the report sets forth the initiatives the agencies have or will be undertaking to reduce regulatory burden while still promoting the safety and soundness of insured depository institutions and promoting consumer protection. Of note, the regulations governing capital, regulatory reporting, real estate appraisals, and examination frequency are the principal areas identified for modifications to achieve meaningful burden reduction. In some of these areas, the FFIEC agencies have either already made the changes or are in the process of doing so. In the other areas, the agencies expect to propose changes to our regulations in the near term to provide this relief.

I appreciate the participation and collaboration of the staffs of the federal banking agencies in bringing about this comprehensive report. The FFIEC agencies look forward to continuing to work with our regulated institutions, Congress, and the public more generally to fully realize the recommendations made herein.

I. Joint Agency Report

A. Introduction

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) [2] requires that, not less than once every 10 years, the Federal Financial Institutions Examination Council (FFIEC) and the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively the Board, OCC, and FDIC are referred to as the federal banking agencies or agencies) [3] conduct a review of their regulations to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions (IDIs). In conducting this review, the statute requires the FFIEC or the agencies to categorize their regulations by type and, at regular intervals, provide notice and solicit public comment on categories of regulations, requesting commenters to identify areas of regulations that are outdated, unnecessary, or unduly burdensome.[4]

EGRPRA also requires the FFIEC or the agencies to publish in the **Federal Register** a summary of the comments received that identifies the significant issues raised by commenters and that provides agency comment on these issues. It also directs the agencies to eliminate unnecessary regulations to the extent that such action is appropriate. Finally, the statute requires the FFIEC to submit to Congress a report that summarizes any significant issues raised in the public comments and the relative merits of such issues. The report must include an analysis of whether the agencies are able to address the regulatory burdens associated with such issues by regulation or whether these burdens must be addressed by legislative action.

The agencies completed the first review required by EGRPRA in 2007.[5] This report contains the results of the agencies' second EGRPRA review. Specifically, this report describes the EGRPRA review process; summarizes the public comments received; identifies and notes the merits of the significant issues raised by the comments; and describes the agencies' response to these comments. This report also includes the agencies' recommendations for legislative changes. The State Liaison Committee

[1] The National Credit Union Administration, although an FFIEC member, is not a ''federal banking agency'' within the meaning of EGRPRA and so is not required to participate in the review process. Nevertheless, NCUA elected to participate in the EGRPRA review and conducted its own parallel review of its regulations. NCUA's separate report is included as Part II of this report. The CFPB, although an FFIEC member, is not a ''federal banking agency'' within the meaning of EGRPRA and so is not required to participate in the review process. The CFPB is required (in a process separate from the EGRPRA process) to review its significant rules and publish a report of its review no later than five years after they take effect. See 12 U.S.C. 5512(d).

[2] EGRPRA, Pub. L. 104–208 (1996) (codified at 12 U.S.C. 3311).

[3] The FFIEC is an interagency body comprised of the OCC, Board, FDIC, National Credit Union Administration (NCUA), Consumer Financial Protection Bureau (CFPB), and State Liaison Committee. Of these, only the federal banking agencies are statutorily required to undertake the EGRPRA review. The CFPB is required to review its significant rules and publish a report of its review no later than five years after the rules take effect. See 12 U.S.C. 5512(d). This process is separate from the EGRPRA process. The NCUA has voluntarily conducted its own review of its regulations concurrently with the timing of the agencies' review. The results of its review are included in part II of this report. The FFIEC does not issue regulations that impose burden on financial institutions and therefore its regulations are not included in this EGRPRA review.

[4] Other federal agencies also impose regulatory requirements on IDIs. However, these regulations are not subject to the EGRPRA process. Examples include rules issued by the CFPB under the federal consumer financial laws, and anti–money laundering regulations issued by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). During the EGRPRA review process, when the agencies received a comment about a regulation issued by the CFPB, FinCEN, or another federal regulator, the agencies provided the comment to the other agency.

[5] 72 FR 62036 (November 1, 2007).

provided the agencies with its suggestions on the EGRPRA review, which are included in the report in appendix 1. The agencies worked with the State Liaison Committee during the review and will continue to coordinate with the committee on the suggestions presented.

As noted previously, the NCUA is not required to participate in the EGRPRA review but elected to review its regulations pursuant to the goals of EGRPRA during the first EGRPRA review 10 years ago. The NCUA again has elected to review its regulations concurrently with the agencies, and participated in the agencies' EGRPRA planning and comment solicitation process. Because of the unique circumstances of federally insured credit unions and their members, however, the NCUA established its own regulatory categories and published its own notices and requests for comments on its rules separately from the agencies. The NCUA's notices were consistent and compatible with those published by the agencies, and the NCUA published its notices during the same time period as the agencies. Similar to the requirements of EGRPRA, the NCUA invited public comment on any aspect of its regulations that are outdated, unnecessary, or unduly burdensome. As in the prior EGRPRA review, the NCUA's report is contained in part II of this report to Congress.

B. Highlights of Interagency and Agency Actions to Reduce Burden

During the EGRPRA review, the agencies have made meaningful efforts to address the issues raised by EGRPRA commenters to reduce regulatory burden, especially on community banks, while at the same time ensuring that the financial system remains safe and sound. The agencies' responses to these issues are described in detail in section D of this report. Highlights include the following:

• ***Simplifying the capital rules.*** With the goal of meaningfully reducing regulatory burden on community banking organizations while at the same time maintaining safety and soundness and the quality and quantity of regulatory capital in the banking system, the agencies are developing a proposal to simplify the generally applicable framework. Such amendments likely would include (1) replacing the framework's complex treatment of high volatility commercial real estate (HVCRE) exposures with a more straightforward treatment for most acquisition, development, or construction (ADC) loans; (2) simplifying the current regulatory capital treatment for mortgage servicing assets (MSAs), timing difference deferred tax assets (DTAs), and holdings of regulatory capital instruments issued by financial institutions; and (3) simplifying the current limitations on minority interests in regulatory capital. The agencies would seek industry comment on these amendments through the normal notice and comment process.

• ***Reduced regulatory reporting requirements with the introduction of a community bank Call Report.*** The agencies proposed for comment in August 2016, and in December 2016 finalized, a new, streamlined FFIEC 051 Call Report for institutions with domestic offices only and less than $1 billion in total assets. The FFIEC 051 was created from the existing FFIEC 041 report for all institutions with domestic offices only by removing certain existing schedules and data items that have been replaced by a limited number of data items collected in a new supplemental schedule, eliminating certain other existing data items, and reducing the reporting frequency of certain data items. This new Call Report, which will take effect March 31, 2017, will reduce the length of the Call Report from 85 pages to 61 pages and will remove approximately 40 percent of the data items currently included in the FFIEC 041.

• ***Simplified the Call Report.*** In July 2016, the agencies finalized certain Call Report revisions, which included a number of burden-reducing and other reporting changes. Following Office of Management and Budget (OMB) approval, some of the Call Report revisions took effect September 30, 2016, and others will take effect March 31, 2017. The agencies' August 2016 proposal that was finalized in December 2016 includes further burden-reducing changes to the two existing versions of the Call Report. Further Call Report streamlining is anticipated in future proposals. In particular, any future simplification of capital rules may significantly reduce the difficulty of completing the Call Report's capital schedule, which was viewed as particularly burdensome by commenters.

• ***Raising appraisal threshold for commercial real estate loans.*** The agencies are developing a proposal to increase the threshold for requiring an appraisal on commercial real estate loans from $250,000 to $400,000, in order to reduce regulatory burden in a manner consistent with safety and soundness.

• ***Addressing appraiser shortages in rural areas.*** Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) allows the Appraisal Subcommittee of the FFIEC (ASC) after making certain findings and with the approval of the FFIEC, to grant temporary waivers of any requirement relating to certification or licensing of a person to perform appraisals under Title XI. Furthermore, state appraiser certifying or licensing agencies may recognize, on a temporary basis, the certification or license of an appraiser issued by another state. The agencies intend to issue a statement to regulated entities informing them of the availability of both temporary waivers and temporary practice permits, which are applicable to both commercial and residential appraisals, and may address temporary appraiser shortages. Additionally, the agencies will work with the ASC to streamline the process for the evaluation of temporary waiver requests.

• ***Clarified use of evaluations versus appraisals.*** To clarify current supervisory expectations regarding evaluations, particularly in response to commenters in rural areas, in March 2016 the agencies issued an interagency advisory on when evaluations can be performed in lieu of appraisals, including when transactions fall below the dollar thresholds set forth in the appraisal regulations.

• ***Reduced the full scope, on-site examination (safety-and-soundness examination) frequency for certain qualifying institutions.*** The agencies indicated support for revisions to the statute regarding examination frequency. Congress subsequently enacted the Fixing America's Surface Transportation Act (FAST Act) that, among other things, gave the agencies discretion to raise the asset threshold for certain IDIs qualifying for an 18-month examination cycle with an ''outstanding'' or ''good'' composite condition from less than $500 million in total assets to less than $1 billion in total assets. Shortly thereafter, the agencies exercised this discretion and issued a joint interim final rule to raise the asset threshold that, in general, makes qualifying IDIs with less than $1 billion in total assets eligible for an 18-month (rather than a 12-month) examination cycle. As a result, approximately 611 more institutions would potentially qualify for an extended 18-month examination cycle, increasing the number of potentially qualifying institutions to approximately 83 percent of IDIs.

• ***Reduced frequency of Bank Secrecy Act (BSA) reviews for certain qualifying institutions.*** In general, agency review of BSA compliance programs are typically

conducted during safety and soundness examinations. Therefore, institutions with assets between $500 million and $1 billion that are now eligible for safety-and-soundness examinations every 18 months will also generally be subject to less frequent BSA reviews.

• ***Referred Bank Secrecy Act (BSA) and anti-money laundering (AML) comments.*** As was noted in the first EGRPRA report to Congress in 2007, the agencies do not have exclusive authority over the threshold filing requirements for Suspicious Activity Reports (SARs) and have no authority over the threshold filing requirements for Currency Transaction Reports (CTRs). The Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, is the delegated administrator of the BSA that issues regulations and interpretive guidance, and as such, any changes to the SAR or CTR requirements would require a change in FinCEN's regulations. The agencies provided FinCEN with the comments received during the EGRPRA review and FinCEN provided a response, which is attached to the report in appendix 5. In addition, the agencies have established common training policies for examiners, maintain an interagency examination manual, and issued an interagency statement setting forth the policy for enforcing specific AML requirements for greater consistency in enforcement decisions on BSA matters through publication of the FFIEC BSA/AML Examination Manual.

• ***Clarifying guidance regarding flood insurance.*** The agencies are updating and revising their Interagency Questions and Answers Regarding Flood Insurance (Interagency Flood Q&As) to provide additional guidance on a number of issues raised by EGRPRA commenters, including the escrow of flood insurance premiums, force-placed insurance, and detached structures.

• ***Increasing the major assets interlock threshold.*** The agencies anticipate issuing a proposal for comment to amend their rules implementing the Depository Institution Management Interlocks Act (DIMIA) to increase the asset thresholds in the major assets prohibition, currently set at $2.5 billion and $1.5 billion, based on inflation or market changes.

• ***Increasing further guidance on Regulation O.*** The agencies are working to provide a chart or similar guide on the statutorily required rules and limits on extensions of credit made by an IDI to an executive officer, director, or principal shareholder of that IDI, its holding company, or its subsidiary.

The agencies are aware that regulatory burden does not emanate only from statutes and regulations, but often comes from processes and procedures related to examinations and supervisory oversight. As detailed in this report, the agencies have taken a number of actions to improve the efficiency and minimize unnecessary burdens of these activities. The agencies plan to continue these efforts by jointly reviewing the examination process, examination report format, and examination report preparation process to identify further opportunities to minimize burden to bank management where possible, principally by rethinking traditional processes and making better use of technology. In addition, the agencies plan to review interagency guidance, such as policy statements, to update and streamline guidance.

In addition to interagency actions, the agencies have engaged in individual efforts to reduce burden and update regulations and processes, including, among other things, the following actions:

Board

• ***Amended the Small Bank Holding Company (BHC)/Savings and Loan Holding Company (SLHC) Policy Statement.*** In April 2015, the Board approved a final rule that raised the asset threshold of the Small BHC Policy Statement from less than $500 million in total consolidated assets to less than $1 billion in total consolidated assets and expanded the application of the policy statement to SLHCs. As of issuance of the final rule, 89 percent of all BHCs and 81 percent of all savings and loan holding companies were covered by the policy statement and were excluded from certain consolidated capital requirements.

• ***Modernized initiatives related to safety-and-soundness supervisory process.*** The Board has taken several actions to reduce burden and to advance a more efficient and effective supervisory program. For instance:

—The Board expanded its offsite loan review program for banking organizations with less than $50 billion in total assets across the Federal Reserve System.

—The Board issued a supervisory letter reinforcing its practice of relying on the assessments of the primary regulator of a depository institution when supervising bank holding companies and savings and loan holding companies with total consolidated assets of less than $50 billion.

—The Board updated and issued supervisory guidance for assessing risk management at institutions with less than $50 billion in total consolidated assets, which provides clarification on, and distinguishes supervisory expectations for, the roles and responsibilities of the board of directors and senior management for an institution's risk management.

—The Board revised its rule regarding company-run stress testing for bank holding companies with total consolidated assets of between $10 and $50 billion to provide greater flexibility with respect to required assumptions that must be included in company-run stress tests. This revision allows these covered companies to incorporate their own capital action assumptions into their Dodd-Frank Act required company-run stress tests.

—The Board, the FDIC, and the state banking agencies (coordinated through the Conference of State Bank Supervisors) collaborated to develop an information technology (IT) risk-focused examination program (referred to as InTREx). This examination program provides supervisory staff with risk-focused and efficient examination procedures for conducting IT reviews and assessing IT and cybersecurity risks at supervised institutions. Further, under the InTREx program, comprehensive IT examinations are conducted at institutions that present the highest IT risks and more targeted IT examinations are conducted at institutions with lower IT risks.

• ***Reviewed supervisory policy.*** The Board periodically reviews its existing supervisory guidance to evaluate its relevance and effectiveness. The Board completed a policy review of the supervision programs for community and regional banking organizations to make sure that these programs and related supervisory guidance appropriately align with current banking practices and risks. As a result of this review, the Board eliminated 78 guidance letters that are no longer relevant.

• ***Revised consumer compliance examination practices.*** The Board revised its consumer compliance examination frequency policy in January 2014 to lengthen the time frame between on-site consumer compliance and Community Reinvestment Act (CRA) examinations for many community banks with less than $1 billion in total consolidated assets. The Board adopted a new consumer compliance examination framework for community banks at the same time. The

new framework more explicitly bases examination intensity on the individual community bank's risk profile, weighed against the effectiveness of the bank's compliance controls.

• ***Launched an electronic applications filing system.*** The Board launched its electronic applications filing system (E-Apps) in 2010 to allow state member banks, bank and savings and loan holding companies, and their representatives, to file applications and notices online eliminating the time and expenses of printing, copying, and mailing documents.

• ***Invited communications and outreach with the industry.*** The Board continues to make special efforts to explain when its requirements are applicable to community banks. For instance, the Board provides a statement at the top of each Supervision and Regulation letter and each Consumer Affairs letter that clearly indicates which banking entity types are subject to the guidance. The Board also has initiated numerous industry outreach opportunities to provide resources on key supervisory policies, including the development of two programs—''Outlook Live'' and ''Ask the Fed''—as well as the publication of three newsletters—*Community Banking Connections, Consumer Compliance Outlook*, and *FedLinks*. Additionally, the Federal Reserve co-sponsors an annual community banking research and policy conference, ''Community Banking in the 21st Century,'' along with the Conference of State Bank Supervisors, to inform our understanding of the role of community banks in the U.S. economy and the effects that regulatory initiatives may have on these banks.

OCC

• ***Issued two final rules to implement EGRPRA comments and make other regulatory burden reducing changes.*** The OCC has issued two final rules amending OCC regulations based on suggestions made by EGRPRA commenters with respect to licensing transactions, electronic activities, the electronic submission of securities-related filings; and collective investment funds. These final rules also make a number of other changes that reduce regulatory burden and update regulatory requirements specifically with respect to business combinations; changes to permanent capital; bank directors; fidelity bonds; securities recordkeeping and confirmation; securities offering disclosures; and reporting, accounting, and management policies. The OCC plans to propose additional regulatory amendments in one or more future rulemakings, or to revise licensing guidance, to address other EGRPRA comments related to financial subsidiaries, fiduciary activities, and employment contracts between a federal savings association (FSA) and its officers or other employees.

• ***Reduced regulatory burden and updated regulatory requirements by integrating OCC national bank and FSA rules.*** The OCC is continuing to integrate its rules for national banks and FSAs into a single set of rules, where possible. The key objectives of this integration process are to reduce regulatory duplication, promote fairness in supervision, eliminate unnecessary burden consistent with safety and soundness, and create efficiencies for both national banks and FSAs.

• ***Reduced burden in the OCC examination and supervisory process.*** The OCC has modified its examination process in response to comments received from bankers at EGRPRA and other outreach meetings, specifically by tailoring its Examination Request Letter to the institution being examined to remove redundant or unnecessary information requests, improving the planning of on-site and off-site examination work and incorporating examination process efficiencies in individual bank supervisory strategies, and leveraging technology to make the examination process more efficient and less burdensome.

• ***Updating supervisory guidance.*** The OCC is in the process of reviewing and updating its supervisory and examiner guidance to align it to current practices and risks and to eliminate unnecessary or outdated guidance. Since 2014, the OCC has eliminated approximately 125 outdated or duplicative OCC guidance documents and updated and/or revised approximately 22 OCC guidance documents.

• ***Issued guidance on reducing burden through collaboration.*** The OCC has encouraged the collaboration and pooling of resources among community banks as one way to reduce regulatory burden, and provided guidance on this approach in January 2015 in a paper entitled *An Opportunity for Community Banks: Working Together Collaboratively*. Collaborative efforts could include alliances to bid on larger loan projects; pooling resources to finance community development activities; and collaborating on accounting, clerical support, data processing, employee benefit planning, and health insurance. The OCC is committed to encouraging such collaboration to the extent consistent with applicable law and safety and soundness.

• ***Established Office of Innovation to assist community banks in Fintech environment.*** The OCC developed its financial innovation initiative, launched in 2015, to provide federally chartered institutions, in particular community banks, with a regulatory framework that is receptive to responsible innovation and supervision that supports it. As part of this initiative, the OCC established an Office of Innovation where community banks can have an open and candid dialogue apart from the supervision process on innovation and emerging developments in the industry. When fully operational in 2017, the Office of Innovation will provide value to community banks through outreach and technical assistance to help community banks work through innovation-related issues and understand regulatory concerns.

• ***Issued risk reevaluation guidance.*** On October 5, 2016, the OCC issued guidance that describes corporate governance best practices for banks' consideration when conducting their periodic evaluations of risk and making account retention or termination decisions relating to foreign correspondent accounts. This guidance is intended to promote efficiency as it communicates best practices observed by the OCC to aid all OCC-supervised banks in developing practices suitable for conducting risk reevaluations of their foreign correspondent accounts.

• ***Clarified the supervision and examination of mutual FSAs.*** The OCC issued OCC Bulletin 2014–35, ''Mutual Federal Savings Associations: Characteristics and Supervisory Considerations,'' in July 2014 to clarify risk assessments and corporate governance expectations for both OCC examiners and mutual FSAs. Specifically, the guidance describes the unique characteristics of mutual FSAs and the considerations the OCC factors into its risk-based supervision process.

• ***Issued regulatory capital guidance.*** The OCC has published a number of guidance documents to assist banks in their capital planning efforts, such as OCC Bulletin 2012–16, ''Capital Planning: Guidance for Evaluating Capital Planning and Adequacy,'' and the *New Capital Rule Quick Reference Guide for Community Banks.* This latter document is a high-level summary of the aspects of the new rule that are generally relevant for smaller, non-complex banks that are not subject to the market risk rule or the advanced approaches capital rule.

• ***Issued guidance on community banking.*** The OCC published *A Common Sense Approach to Community Banking*, which shares fundamental banking best practices that the OCC has found to prove useful to boards of directors and management in successfully guiding their community banks through economic cycles and environmental changes.

• ***Issued guidance for national bank and FSA directors.*** The OCC published The Director's Book: Role of Directors for National Banks and Federal Savings Associations, which, in general, outlines the responsibilities and role of national bank and FSA directors and management, explains basic concepts and standards for safe and sound operation of national banks and FSAs, and delineates laws and regulations that apply to national banks and FSAs.

• ***Clarified applicability of OCC issuances to community banks.*** The OCC has added a ''Note for Community Banks'' box to all OCC bulletins that explains if and how the new guidance or rulemaking applies to them.

• ***Increased electronic filing of applications, notices, and reports.*** The OCC currently permits the electronic filing of many of its required forms and reports though *BankNet,* the OCC's secure website for communicating with and receiving information from national banks and FSAs. As indicated above, the OCC's EGRPRA final rule permits national banks and FSAs to file various securities-related filings electronically through *BankNet.* Furthermore, the OCC has developed a web-based system for submitting and processing licensing and public welfare investment filings called the Central Application Tracking System (CATS). Beginning in January 2017, the OCC began a phased rollout of CATS to enable authorized national bank and FSA employees to draft, submit, and track filings, and to allow OCC analysts to receive, process, and manage those filings.

• ***Continued support for community national banks and FSAs.*** The OCC continues to provide support for community banks though its online *BankNet* portal. Among other things, *BankNet* contains a ''Director Resource Center,'' which collects information on OCC supervision most pertinent to national bank and FSA directors, and includes a ''Directors Toolkit'' for further assistance in carrying out the responsibilities of a national bank or FSA director. Furthermore, *BankNet* contains a question and answer forum designed to facilitate communication between OCC-regulated institutions and the OCC that provides direct access to OCC Washington, DC, staff and senior management for answers to general bank regulatory and supervisory questions.

FDIC

• ***Reduced supervisory burden on de novo institutions, clarified guidance, and conducted outreach regarding deposit insurance applications.***

—Rescinded FIL–50–2009, ''Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Institutions,'' reducing from seven years to three years the period of enhanced supervisory monitoring of newly insured depository institutions.

—Issued guidance in the form of questions and answers on issues related to deposit insurance applications, clarifying the purpose and benefits of pre-filing meetings, processing timelines, initial capitalization requirements, and business plan requirements.

—Conducted three outreach meetings with more than 100 industry participants, providing guidance about the deposit insurance application process.

—Designated subject matter experts in each of the FDIC's six regional offices, providing applicants with dedicated points of contact for deposit insurance applications.

—Issued for public comment a handbook for organizers of *de novo* institutions, describing the process of applying for federal deposit insurance and providing instruction about the application materials required.

• ***Reduced the frequency of consumer compliance and CRA examinations for small and de novo banks.***

—In November 2013, the FDIC revised its frequency schedule for small banks (those with assets of $250 million or less) that are rated favorably for compliance and have at least a Satisfactory rating under the CRA. Previously, small banks that received a Satisfactory or Outstanding rating for CRA were subject to a CRA examination no more than once every 48 to 60 months, respectively. Under the new schedule, small banks with favorable compliance ratings and Satisfactory CRA ratings are examined every 60 to 72 months for joint compliance and CRA examinations and every 30 to 36 months for compliance only examinations. This revised schedule has reduced the frequency of onsite examinations for community banks with satisfactory ratings.

—In April 2016, the examination frequency for the compliance and CRA examinations of *de novo* institutions and charter conversions was changed. As a result of the FDIC's supervisory focus on consumer harm and forward-looking supervision, the *de novo* period, which had required annual on-site presence for a period of five years was reduced to three years.

• ***Reduced burden in application, examination, and supervisory processes.***

—Implemented an electronic pre-examination planning tool for both risk management and compliance examinations that allows request lists to be tailored to ensure that only those items that are necessary for the examination process are requested from each institution. Tailoring pre-examination request lists minimizes burden for institutions, and receiving pertinent information in advance of the examination allows examiners to review certain materials off site, reducing on-site examination hours.

—Implemented a secure, transactions-based website, known as FDIC*connect*, to provide alternatives for paper-based processes and allow for the submission of various applications, notices, and filings required by regulation. There are 5,977 institutions registered to use FDIC*connect*, which ensures timely and secure access for bankers and supervisory staff, including state supervisors. Twenty-seven business transactions have been made available through FDIC*connect*.

—In 2016, and in response to EGRPRA commenters, established a process to allow for electronic submission of audit reports required by part 363 of the FDIC Rules and Regulations via FDIC*connect*, eliminating the need for institutions to mail hard copies.

—Eliminated requirements for institutions to file applications under part 362 of the FDIC Rules and Regulations to conduct activities permissible for national banks through certain bank subsidiaries organized as limited liability companies. The FDIC estimates the vast majority of the over 2,000 part 362 applications processed over the 10 years before the streamlined procedures were adopted involved limited liability companies, the changes result in a significant reduction in filing requirements.

—Enhanced information technology (IT) examination procedures to require less pre-examination information

from bankers, incorporate cybersecurity principles, and align the examination work program with the Uniform Rating System for Information Technology (URSIT). The revised IT Officer's Questionnaire that is completed by bankers in advance of the examination has 65 percent fewer questions than previous versions, reducing the amount of time needed to prepare for an examination. The new work program has been made publicly available to bankers, and component URSIT ratings will be shared in reports of examination to improve transparency of the examination process and findings.

—Piloted an automated process with certain Technology Service Providers to obtain standardized downloads of imaged bank loan files to facilitate offsite loan review, thereby reducing the amount of examiner time in financial institutions.

• ***Rescinded outdated and redundant rules and guidance.***

—Rescinded 16 rules that were transferred from the Office of Thrift Supervision (OTS) and issued a proposal to rescind another OTS rule, eliminating duplicative rulemakings and updating related FDIC rules as appropriate. Updated FDIC rulemakings by clarifying and aligning the definition of ''control'' to that used by the other federal banking agencies and increasing the threshold for required reporting of certain securities transactions. An additional 14 OTS rules are under review for potential rescission.

—Reviewed internal examiner guidance documents and identified nearly half to be no longer needed. The FDIC is in the process of eliminating the outdated guidance as well as updating remaining examiner guidance.

• ***Provided support to community banks under the multi-year Community Banking Initiative.***

—Established the FDIC Advisory Committee on Community Banking to provide the FDIC with advice and guidance on a broad range of important policy issues impacting community banks throughout the country, as well as the local communities they serve, with a focus on rural areas.

—Established a Directors' Resource Center on the FDIC's website, which among other things, contains more than 25 technical assistance videos designed for bank directors and management on important and complex topics.

—Revised banker guidance on deposit insurance coverage and conducted related outreach sessions for bankers.

—Pursued an agenda of research and outreach focused on community banking issues, including the FDIC Community Bank Study, a data-driven analysis of the opportunities and challenges facing community banks over a 25-year period, as well as research regarding the factors that have driven industry consolidation over the past 30 years, minority depository institutions, branching trends, closely held banks, efficiencies and economies of scale, earnings performance, and rural depopulation.

—Introduced a Community Bank Performance section of the FDIC *Quarterly Banking Profile* to provide a detailed statistical picture of the community banking sector that can be accessed by analysts, other regulators, and bankers themselves.

—Developed and distributed to all FDIC-supervised institutions a *Community Bank Resource Kit*, containing a copy of the FDIC's *Pocket Guide for Directors*, reprints of various *Supervisory Insights* articles relating to corporate governance, interest rate risk, and cybersecurity; two cybersecurity brochures that banks may reprint and share with their customers to enhance cybersecurity savvy; a copy of the FDIC's *Cyber Challenge* exercise; and several pamphlets that provide information about the FDIC resources available to bank management and board members.

• ***Improved communication with bank boards of directors and management***

—Reissued and updated guidance entitled ''*Reminder on FDIC Examination Findings*'' to re-emphasize the importance of open communications regarding supervisory findings and to provide an additional informal review process at the Division Director level for banker concerns that are not eligible for another review process.

—Improved transparency regarding developing guidance and supervisory recommendations by issuing two statements by the FDIC Board of Directors that set forth basic principles to guide FDIC staff in (1) developing and reviewing supervisory guidance and (2) communicating supervisory recommendations to financial institutions under its supervision.

—Proposed revised guidelines for supervisory appeals to provide more transparency and access to the appeals process.

• ***Clarified capital rules and provided related technical assistance.***

—Issued FIL 40–2014 to FDIC-supervised institutions, clarifying how the FDIC would treat certain requests from S-corporation institutions to pay dividends to their shareholders to cover taxes on their pass-through share of bank earnings when those dividends are otherwise not permitted under the new capital rules. The FDIC told banks that unless there were significant safety-and-soundness issues, the FDIC would generally approve those requests for well-rated banks.

—Conducted outreach and technical assistance designed specifically for community banks that included publishing a community bank guide for the implementation of the Basel III capital rules; releasing an informational video on the revised capital rules; and conducting face-to-face informational sessions with community bankers in each of the FDIC's six supervisory regions to discuss the revised capital rules.

• ***Enhanced awareness of emerging cybersecurity threats.***

—Conducted cybersecurity awareness outreach sessions in each of the FDIC's six regional offices and hosted a webinar to share answers to the most commonly asked questions.

—Developed cybersecurity awareness technical assistance videos to assist bank directors with understanding cybersecurity risks and related risk-management programs, and to elevate cybersecurity discussions from the server room to the board room.

—Developed and distributed to FDIC-supervised financial institutions *Cyber Challenge*, a program designed to help financial institution management and staffs discuss events that may present operational risks and consider ways to mitigate them.

C. Overview of the Agencies' Second EGRPRA Review Process

Consistent with EGRPRA, the agencies grouped their regulations into the following 12 regulatory categories: (1) Applications and Reporting; (2) Banking Operations; (3) Capital; (4) CRA; (5) Consumer Protection; [6] (6)

[6] As previously noted, the agencies sought comment only on those consumer protection regulations for which the agencies retain rulemaking authority for IDIs and regulated holding companies following passage of section 1061 of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111–203 (2010) (codified at 12 U.S.C. 5581(b)).

Directors, Officers and Employees; (7) International Operations; (8) Money Laundering; (9) Powers and Activities; (10) Rules of Procedure; (11) Safety and Soundness; and (12) Securities.[7] To determine these categories, the agencies divided the regulations by type and sought to have no category be too large or broad.

To carry out the EGRPRA review, the agencies published four **Federal Register** notices, each addressing three categories of rules and each providing a 90-day comment period. On June 4, 2014, the agencies published the first notice, seeking comment on rules in the categories of Applications and Reporting, Powers and Activities, and International Operations.[8] On February 13, 2015, the agencies published the second notice, seeking comment on rules in the categories of Banking Operations, Capital, and the CRA.[9] On June 5, 2015, the agencies published the third notice, seeking comment on rules in the categories of Consumer Protection, Directors, Officers and Employees, and Money Laundering.[10] The agencies note that they announced in this third notice their decision to expand the scope of the EGRPRA review to include recently issued rules, such as those issued pursuant to the Dodd-Frank Act and the recently promulgated domestic capital and liquidity rules. The agencies identified these rules, referred to as ''Newly Listed Rules,'' on a chart included in the third notice.

On December 23, 2015, the agencies published the fourth and final **Federal Register** notice, seeking comment on rules in the categories of Rules of Procedure, Safety and Soundness, and Securities. This final notice also requested comment on the Newly Listed Rules as well as on any other rule issued in final form on or before December 31, 2015, not previously included in one of the 12 categories [11] (see appendix 3 for the complete text of the agencies' four notices requesting public comment on the agencies' rules, as sent to the **Federal Register**).

Throughout the EGRPRA review process, the agencies invited comment on any of the agencies' rules included in this EGRPRA review during any open comment period.

In addition to seeking public comment through the **Federal Register** notices, the agencies held six public outreach meetings across the country to provide an opportunity for bankers, consumer and community groups, and other interested persons to present their views directly to agency senior management and staff on any of the regulations subject to EGRPRA review. The agencies held outreach meetings in Los Angeles, California, on December 2, 2014; Dallas, Texas, on February 4, 2015; Boston, Massachusetts, on May 4, 2015; Kansas City, Missouri, on August 4, 2015 (focusing on rural banking issues); Chicago, Illinois, on October 19, 2015; and Washington, DC, on December 2, 2015.[12] Each outreach meeting consisted of panels of bankers and consumer and community groups who presented their views on the agencies' regulations. These meetings were open to the public and provided all attendees, including those in the audience, with the opportunity to present their views on any of the regulations under review. Furthermore, these meetings were livestreamed via a public webcast in order to increase education and outreach. At the Kansas City, Chicago, and Washington, DC, meetings, online viewers were able to submit real-time, electronic comments to the agencies. Reflective of the importance of the EGRPRA process to the agencies, principals or senior management from each agency attended each of the outreach meetings (see appendix 4 for the text of the agencies' notices announcing the EGRPRA outreach meetings, as sent to the **Federal Register**).

To provide the public with information about the EGRPRA process, the agencies established a dedicated website, *http://egrpra.ffiec.gov*. Among other things, this website contains links to all of the **Federal Register** notices, transcripts and videos of each of the outreach meetings, and links to all of the public comments received. The public also could submit comments on the agencies' regulations directly through this website.

The agencies received over 230 comment letters from IDIs, trade associations, consumer and community groups, and other interested parties directly in response to the **Federal Register** notices. The agencies also received numerous oral and written comments from panelists and the public at the outreach meetings. The agencies have summarized and reviewed these comments, and these comments form the basis of this report.

D. Significant Issues Raised in the EGRPRA Review and the Agencies' Responses

The topics that received the most comments relate to (1) capital, (2) Call Reports, (3) appraisals, (4) frequency of safety-and-soundness bank examinations, (5) the CRA, and (6) BSA/AML. This section of the report discusses these topics and the agencies' response to the most significant issues raised by the commenters. As discussed below, the agencies have taken steps to address many of the issues raised by commenters. The agencies continue to review these and other issues, and intend to take additional steps as appropriate.

1. Capital

Background

In 2013, the agencies published comprehensive revisions to their regulatory capital framework (revised capital rules) designed to address weaknesses that became apparent during the financial crisis of 2007–08.[13] The agencies made a number of changes to the final standards in response to feedback to the proposed rule about the potential impact on community banks. These changes included grandfathering certain non-qualifying capital instruments in the tier 1 capital of bank holding companies with less than $15 billion in consolidated assets, allowing community banks the option to exclude most elements of accumulated other comprehensive income from their capital calculations, which allows community banks to simplify their capital calculations by reducing volatility, and not adopting a proposal that would have made the treatment of residential mortgage loans more complex. In addition, the revised capital rules do not subject community banking organizations to the countercyclical capital buffer, the supplementary leverage ratio, capital requirements for credit valuation adjustments, and

[7] Consistent with EGRPRA's focus on reducing burden on IDIs, the agencies did not include their internal, organizational, or operational regulations in this review.

[8] 79 FR 32172 (June 4, 2014) at *https://www.gpo.gov/fdsys/pkg/FR-2014-06-04/pdf/2014-12741.pdf*.

[9] 80 FR 7980 (February 13, 2015) at *https://www.gpo.gov/fdsys/pkg/FR-2015-02-13/pdf/2015-02998.pdf*.

[10] 80 FR 32046 (June 5, 2015) at *https://www.gpo.gov/fdsys/pkg/FR-2015-06-05/pdf/2015-13749.pdf*.

[11] 80 FR 79724 (December 23, 2015) at *https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-32312.pdf*.

[12] See, Notices Announcing EGRPRA Outreach Meetings: 79 FR 70474 (November 26 2014) *https://www.gpo.gov/fdsys/pkg/FR-2014-11-26/pdf/2014-27969.pdf*; 80 FR 2061 (January 15, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-01-15/pdf/2015-00516.pdf*; 80 FR 20173 (April 15, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-04-15/pdf/2015-08619.pdf*; 80 FR 39390 (July 9, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-07-09/pdf/2015-16760.pdf*; 80 FR 60075 (October 5, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-10-05/pdf/2015-25258.pdf*; and 80 FR 74718 (November 30, 2015) *https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-30247.pdf*

[13] See 12 CFR part 3, 12 CFR 217 (Regulation Q), and 12 CFR 324.

certain disclosure requirements. Further, the agencies determined not to apply to community banks the enhanced prudential standards related to capital plans, stress testing, liquidity and risk management requirements, and the global systemically important bank (GSIB), enhanced supplementary leverage ratio standards and the GSIB surcharge.

EGRPRA Comments

Over 30 commenters, including banking organizations, banking trade associations, and consumer groups, addressed the agencies' regulatory capital requirements. The majority of these commenters focused on the revised capital rules. Several banking organization and trade association commenters suggested that the agencies exempt certain banking organizations from having to comply with all or certain parts of the revised capital rules. Commenters suggested drawing distinctions between community banks with less than $10 billion in total assets, non-systemically important banks with less than $50 billion in total assets, or other banking organizations that can demonstrate high levels of capital. As discussed in more detail below, banking industry commenters also addressed several specific areas of the revised capital rules where they suggested that the agencies should make revisions or provide additional guidance to alleviate regulatory burden. One consumer group commenter objected to the inclusion in the EGRPRA process of rules promulgated in response to the financial crisis that have been in effect for five years or less. This commenter stated that reviewing such rules too soon carries the risk that one-time costs associated with their implementation could be mistaken for their permanent effects.

Impact of prompt corrective action (PCA) requirements on community banks

Two trade association commenters asserted that the PCA requirements impact community banks differently than large banking organizations. These commenters stated that the PCA restrictions discourage investment in struggling community banks more so than large banking organizations because large banking organizations are more likely to receive government support. The commenters asserted that the agencies should make the PCA rules more flexible and that any government support received by large banking organizations should be discounted when evaluating compliance with regulatory capital requirements.

Capital ratios

Comments from a banking trade association and two banking organizations stated that the agencies should simplify and streamline their regulatory capital requirements and should exempt banking organizations that can demonstrate high levels of capital according to certain specified measures from the more complex capital calculations in the revised capital rules. The banking trade association stated that large banking organizations are now subject to numerous duplicative capital ratios (eight total), several of which produce disparate and inconsistent results. To comply with the various requirements in the revised capital rules, the commenter stated that large banking organizations must create redundant and costly compliance systems.

Threshold for application of the most rigorous regulatory capital standards (including the advanced approaches risk-based capital rules)

Four large banking organization commenters stated that the threshold for application of the advanced approaches risk-based capital rules ($250 billion in total consolidated assets or $10 billion in foreign exposure) is outdated and, in light of the costs necessary to implement advanced approaches systems, arbitrarily captures many banking organizations with traditional business models that do not share the same risk profile as the largest and most complex organizations identified as GSIBs by the Board. Three of these commenters suggest limiting the scope of the advanced approaches risk-based capital rules to banking organizations identified as GSIBs. One commenter asserted that the agencies should eliminate the advanced approaches risk-based capital rules altogether because the capital floor established by the Dodd-Frank Act (codified at 12 U.S.C. 5371) has rendered them unnecessary.

Burden of revised capital rules on community banks

Seven commenters from individual community banks and a community bank trade association asserted that the revised capital rules added undue burden on community banks by increasing compliance costs without corresponding benefits to safety and soundness. Several of these commenters suggested completely exempting community banking organizations from having to comply with the revised rules. Others suggested relaxing different aspects of the revised capital rules as they apply to community banks.

Two banking organization commenters suggested allowing community banks to include certain amounts of their allowance for loan and lease losses (ALLL) in tier 1 capital, rather than tier 2 capital, as is currently allowed.

Two banking organization commenters asserted that the revisions to the treatment of mortgage servicing assets (MSAs) were unduly restrictive for community banks. Rather than the requirement for deductions from regulatory capital for concentrations of MSAs above 10 percent of a banking organization's common equity tier 1 capital, these commenters stated that community banks should be permitted to hold MSAs up to 100 percent of common equity tier 1 capital before any deductions apply.

Three banking organization commenters stated that the capital conservation buffer—which restricts dividend and bonus payments for banking organizations that fail to maintain a specified amount of capital in excess of their regulatory minimums—should be removed or modified to permit community banks to pay dividends equal to at least 35 percent of their reported net income for a reporting period, or in the case of banks organized as S-corporations, to pay dividends large enough to cover the tax liabilities assessed to their shareholders.

Definition of high volatility commercial real estate

Four community bank commenters stated that the definition of HVCRE is neither clear nor consistent with established safe and sound lending practices. These commenters stated that the 150 percent risk weight applied to HVCRE lending is too high, and that the criteria for determining whether an acquisition, development, or construction (ADC) loan may qualify for an exemption from the HVCRE risk weight are confusing and do not track relevant or appropriate risk drivers. In particular, commenters expressed concern over the requirements that exempted ADC projects include a 15 percent borrower equity contribution, and that any equity in an exempted project, whether contributed initially or internally generated, remain within the project (*i.e.*, internally generated income may not be paid out in the form of dividends or otherwise) for the life of the project.

Treatment of ALLL

Two banking organization commenters stated that the agencies should remove the current limit on the amount of ALLL that a banking organization may include in its tier 2 capital, which is currently capped at an amount equal to 1.25 percent of the banking organization's standardized total risk-weighted asset amount.

Asset concentrations

One community bank commenter stated that the revised capital rules are only one tool to address risk and that banking organizations should focus more on concentrations of assets and stress tests. In particular, this commenter stated that the revised capital rules should incorporate stress tests and provide more granular risk weights for agriculture, oil and gas, and commercial real estate lending.

Short-term trade financing

One community bank commenter stated that the standardized approach risk weights in the revised capital rules, which reference country risk classifications published by the Organization for Economic Co-Operation and Development (OECD) to establish risk weights for exposures to other banking organizations, inappropriately increased the capital requirements applied to certain trade finance-related claims on other banks. Rather than reference OECD risk classifications, which focus on longer-term financing, the commenter stated that the agencies' capital rules should provide a flat 10 percent capital charge for short-term trade financing provided by banking organizations with less than $10 billion in total assets.

Need for more agency guidance

One community bank commenter asked the agencies to provide more plain-language guidance on capital and other rules. This commenter stated that small banks, in particular, need more guidance on best practices and how to determine how much capital is enough capital.

Agencies' Response

The agencies regularly monitor and analyze developments in the banking industry to ensure that the revised capital rules appropriately reflect risks faced by banking organizations. Through this ongoing process, the agencies consider many issues and determine whether a change to the revised capital rules is appropriate. The agencies note that safety and soundness of community banks depends, in part, on their having and maintaining sufficient regulatory capital. More than 500 banking organizations, most of which were community banks, failed in the aftermath of the financial crisis because they did not have sufficient capital relative to the risks they took.

The agencies understand, however, community banks' concerns that the regulatory capital rules are too complex given community banks' size, risk profile, condition, and complexity. The agencies therefore are developing a proposal to simplify the regulatory capital rules in a manner that maintains safety and soundness and the quality and quantity of regulatory capital in the banking system. To this end, such amendments likely would include (1) replacing the framework's complex treatment of HVCRE exposures with a more straightforward treatment for most ADC loans; (2) simplifying the current regulatory capital treatment for MSAs, timing difference DTAs, and holdings of regulatory capital instruments issued by financial institutions; and (3) simplifying the current limitations on minority interests in regulatory capital. The agencies would seek industry comment on these amendments through the normal notice and comment process.

The agencies do not support making changes to the PCA requirements at this time. These requirements promote timely corrective action to contain the potential costs of the federal deposit insurance program. In response to commenter concerns that there is a disparate impact of PCA requirements between the largest banking organizations and community banks, the agencies note that larger banks are subject to heightened capital and liquidity standards [14] and more frequent examinations. The agencies note that most formal and informal enforcement actions are not entered into pursuant to the PCA authorities but pursuant to the agencies' general safety-and-soundness authorities.

Currently, the agencies are not planning to make revisions to the treatment of ALLL in regulatory capital calculations. However, the agencies are closely monitoring the implementation of the Financial Accounting Standards Board's (FASB) recently published Current Expected Credit Loss, or ''CECL'' standard, which revises the measurement of the ALLL but, is not required to be adopted before 2020. The agencies have encouraged banking organizations to take steps to assess the potential impact of this new accounting standard on capital. Banking organizations that have issues or concerns about implementing the new CECL standard should discuss their questions with their primary federal supervisor. The agencies provided feedback to the FASB during its development of the CECL standard, conducted informational teleconferences for bankers, issued a series of CECL standard FAQs, and plan to work together to address questions from community banks regarding the implementation of that standard. As the agencies consider future changes to their respective revised capital rules, they will consider the impact of the CECL standard on ALLL and related capital calculations.

Concurrent with the publication of the revised capital rules in 2013, the agencies published a community bank guide to help community banks understand the sections of the revised capital rules most relevant to their operations.[15] The OCC also notes that it has published a number of guidance documents to assist banks in their capital planning efforts.[16] Additionally, the OCC intends to publish substantial revisions to its capital handbook so that the recent OCC guidance publications and the recent revisions to the OCC's capital regulations will be set forth and described in one place. The FDIC also issued a number of guidance documents on the revised capital rules to assist community banks in their implementation of the capital rules. The FDIC published an ''Expanded Community Bank Guide to the New Capital Rule'' and also filmed video presentations discussing the capital regulations.[17] In addition, the Board has issued capital planning guidance for large and noncomplex banking organizations, large and complex banking organizations, and for banking organizations supervised under the Large Institution Supervision

[14] In 2014, the agencies finalized a rule that created a standardized quantitative minimum liquidity requirement for large and internationally active banking organizations, requiring such organizations to maintain an amount of high-quality liquid assets that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period. See 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC). In 2016, the agencies proposed a rule requiring the same large and internationally active banking organizations to maintain a minimum level of stable funding relative to the liquidity of its assets, derivative exposures, and commitments, over a one-year period. See 81 FR 35124 (June 1, 2016).

[15] ''New Capital Rule; Community Bank Guide,'' *www.occ.gov/news-issuances/news-releases/2013/2013-110b.pdf*; *www.fdic.gov/regulations/capital/capital/Community_Bank_Guide.pdf*.

[16] See, for example, OCC Bulletin 2012–16, (June 7, 2012) ''Capital Planning: Guidance for Evaluating Capital Planning and Adequacy.''

[17] See FDIC webpage on ''Regulatory Capital'' *www.fdic.gov/regulations/capital/capital/index.html*. This webpage provides all FDIC resources available to assist banks in their implementation of the capital rules.

Coordinating Committee (LISCC) framework.[18] The Board's guidance provides core capital planning expectations for these banking organizations, building upon the capital planning requirements in the Board's capital plan rule and stress test rule.

2. Call Reports

Background

Section 7(a) of the FDI Act requires each IDI to submit four ''reports of condition'' each year to the appropriate federal banking agency. Part 304 of the FDIC's regulations requires IDIs to file quarterly Consolidated Reports of Condition and Income, forms FFIEC 031 and 041 (also known as the Call Report), in accordance with the instructions for these reports.

EGRPRA Comments

The agencies received comments on Call Reports from over 30 commenters. Most commenters represented banking institutions, a few commenters represented industry organizations, and one commenter represented a community organization. Many commenters described the overall regulatory burden financial institutions encounter when preparing Call Reports. A number of commenters suggested reducing Call Report burden by instituting a ''short form'' or an otherwise tiered Call Report, either for all banks or for community banks. Other commenters remarked on the difficulties in preparing two particular Call Report schedules (Schedule RC-R, Regulatory Capital, and Schedule RC-C, Loans and Lease Financing Receivables), while others commented on specific Call Report line items or other aspects of the Call Report.

Several commenters argued that Call Report data are too burdensome and advocated for a review of the report and its simplification and harmonization to eliminate duplicative or unnecessary items. One commenter urged the agencies not to add to the information collected in the Call Report unless it serves an important supervisory purpose that could not otherwise be met at a lower cost. Another commenter urged the agencies to allow institutions additional time every quarter to report information that is not used for safety and soundness, which is otherwise due 30 days after the end of the quarter. Several other commenters noted the disparity in the content of the Call Report for FDIC-insured institutions and the regulatory reports required for credit unions and other financial institutions.

As noted above, a number of commenters suggested the development of a short-form Call Report for all institutions or at least for community banks. Several of the commenters suggested that banks file this short-form report, which would consist of only a balance sheet, income statement, and statement of changes in equity capital, for the first and third quarters with a full regular Call Report for the second and fourth quarters. Another commenter suggested that banks file only one full Call Report per year. Other commenters suggested that highly rated and well-capitalized institutions file the short-form and the full report in alternating quarters. One commenter suggested that banks file only those portions of the Call Report relating to high-risk activities on a quarterly basis, and file the other portions of the report annually.

A number of commenters raised concerns about the length and complexity of Schedule RC-R, Regulatory Capital, and requested that the agencies simplify the schedule because it is excessively burdensome. Commenters raised concerns about the length of the instructions for this schedule and that many of the line items are not applicable to most banks. Several commenters suggested that Schedule RC-C, Loans and Lease Financing Receivables, is very burdensome because institutions need to extract certain information manually from other systems. Other commenters remarked that the process to identify and report loans that are troubled debt restructurings is labor intensive and time consuming, and that data on loans to small businesses and small farms are time consuming to prepare and not useful.

Two commenters requested that the agencies remove the requirement that three bank directors sign the Call Report, given the difficulty in obtaining electronic signatures of directors in different locations. These commenters suggested instead that the agencies permit a consolidated sign-off by one officer of a BHC on the FRY-8, *The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates*. The commenters addressed the need to provide global formatting and consistent definitions across agency application forms and regulatory reports.

One commenter supported strengthening the information collected in the Call Report because of heightened concerns over the safety and soundness of certain fees and products offered by IDIs.

Agencies' Response

The agencies agree that the Call Report is burdensome for some IDIs and are taking steps to reduce the Call Report requirements. At its December 2014 meeting, the FFIEC directed its Task Force on Reports (TFOR) to undertake a community bank Call Report burden-reduction initiative, which includes the following five actions:

- Issuing a proposal in 2015 to request comment on a number of burden-reducing changes identified during the agencies' 2012 statutory review of the Call Report as well as any other readily identifiable burden-reducing changes;[19]
- Accelerating the start of the next statutorily mandated review of all Call Report data items,[20] which would not otherwise begin until 2017, and requiring agency users of Call Report data to provide a robust justification of the need for the data items they use and deem essential;
- Considering the feasibility and merits of creating a less burdensome version of the Call Report for institutions that meet certain criteria, which may include an asset-size threshold or activity limitations;
- Gaining a better understanding, through industry dialogue, of the aspects of institutions' Call Report preparation process that are significant sources of reporting burden, including where manual intervention by an institution's staff is necessary to report particular information; and
- Providing targeted training to bankers via teleconferences and webinars to explain upcoming reporting changes and provide guidance on challenging areas of the Call Report.[21]

On September 18, 2015, the agencies, under the auspices of the FFIEC, requested comment on various proposed revisions to the Call Report requirements. The proposed reporting changes included certain burden-

[18] See SR letter 15–18, Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms at *www.federalreserve.gov/bankinforeg/srletters/sr1518.htm*; and SR letter 15–19, Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms at *www.federalreserve.gov/bankinforeg/srletters/sr1519.htm*.

[19] 80 FR 56539 (September 18, 2015).

[20] 12 U.S.C. 1817(a)(11). This statute requires the agencies to review every five years the information required to be filed in the Call Report and reduce or eliminate any items the agencies determine are no longer necessary or appropriate.

[21] Two FFIEC teleconferences conducted on February 25, 2015, and December 8, 2015, included presentations to bankers on the revised Call Report Schedule RC-R regulatory capital reporting requirements that took effect on March 31, 2015, followed by question-and-answer sessions.

reducing changes, several new and revised Call Report data items, and a number of instructional clarifications. The comment period for the proposal ended on November 17, 2015. After considering the comments received on the proposal, the FFIEC and the agencies are implementing, with some modifications, most of the proposed reporting changes. On July 13, 2016, the agencies published the final version of these Call Report revisions in the **Federal Register**, and submitted the revised Call Report requirements for approval to the OMB.[22] Following OMB approval, some of the Call Report revisions took effect September 30, 2016, and others will take effect March 31, 2017.

As the foundation for the agencies' statutorily mandated review of the existing Call Report data items, users of Call Report data items at the FFIEC member entities are participating in a series of nine surveys conducted over a 19-month period that began in July 2015. The surveys asked users to explain fully the need for and use of each Call Report data item they deem essential to their job functions. Based on the survey results, the TFOR is identifying data items to be considered for elimination, less frequent collection, or new or upwardly revised reporting thresholds.

In addition, the TFOR conducted and participated in outreach efforts between mid-2015 and early 2016 to obtain feedback from community bankers about sources of Call Report burden and options for Call Report streamlining. These targeted outreach efforts were in addition to the outreach meetings conducted as part of the EGRPRA review. Furthermore, representatives from the FFIEC member entities visited nine community banking institutions during the third quarter of 2015. In the first quarter of 2016, two banking trade groups each organized a number of conference call meetings with small groups of community bankers in which representatives from the FFIEC member entities participated. During the visits to banks and the conference call meetings, the community bankers explained how they prepare their Call Reports, identified which schedules or data items take a significant amount of time and/or manual processes to complete, and described the reasons for this. The bankers also offered suggestions for streamlining the Call Report.

The FFIEC member entities collectively reviewed the feedback from the banker outreach efforts completed in 2015 and 2016, the EGRPRA comments, and the results of the first three surveys of their Call Report users as they considered whether to proceed with the development of a Call Report streamlining proposal for community institutions.[23] In addressing these concerns, the FFIEC and the agencies are aiming to balance institutions' requests for a less burdensome regulatory reporting process with FFIEC member entities' need for sufficient data to monitor the condition and performance, and ensure the safety and soundness, of institutions; and to carry out agency-specific missions.

With these goals in mind, the agencies, under the auspices of the FFIEC, published an initial **Federal Register** notice on August 15, 2016, requesting comment on a proposed separate, streamlined, and noticeably shorter Call Report to be completed by eligible small institutions, which has been designated as the FFIEC 051 Call Report.[24] The proposal also includes certain burden-reducing revisions to the two existing versions of the Call Report: the FFIEC 041 for institutions with domestic offices only and the FFIEC 031 for institutions with domestic and foreign offices.

This proposal defines ''eligible small institutions'' as institutions with total assets of less than $1 billion and domestic offices only.[25] Such institutions currently file the FFIEC 041 Call Report. Eligible small institutions would have the option to file the FFIEC 041 Call Report rather than the FFIEC 051. A small institution otherwise eligible to file the FFIEC 051 Call Report may be required to file the FFIEC 041 based on supervisory needs. The agencies anticipate making such determinations only in a limited number of cases.

The existing FFIEC 041 Call Report served as the starting point for developing the proposed FFIEC 051 Call Report for eligible small institutions. The agencies' streamlining proposal would reduce the length of the Call Report for such institutions from 85 to 61 pages and would remove approximately 950, or approximately 40 percent, of the nearly 2,400 data items currently included in the FFIEC 041 Call Report. Specifically, the agencies made the following changes to the FFIEC 041 to create the proposed FFIEC 051:

- The addition of a Supplemental Schedule to collect a limited number of indicator questions and indicator data items on certain complex and specialized activities as a basis for removing all or part of six schedules (and other related items) currently included in the FFIEC 041;
- The elimination of data items identified as no longer necessary for collection from institutions with less than $1 billion in total assets and domestic offices only during the completed portions of the statutorily mandated review or during a separate interagency review that focused on data items infrequently reported by institutions of this size;
- A reduction in the frequency of data collection for certain data items identified as needed less often than quarterly from institutions with less than $1 billion in total assets and domestic offices only; and
- The removal of all data items for which a $1 billion asset-size reporting threshold currently exists.

In addition, a separate shorter Call Report instruction book would be prepared for the FFIEC 051.

The agencies proposed that these reporting changes take effect March 31, 2017. The comment period for the proposal ended on October 14, 2016. The agencies collectively received approximately 100 unique comment letters plus approximately 1,000 form letters advocating for a short-form Call Report. The TFOR evaluated the comments and considered additional burden-reducing changes it could recommend making to the proposed FFIEC 051 Call Report. The most substantive recommended modification was to reduce the reporting frequency of Schedule RC-C, Part II, on loans to small businesses and small farms from quarterly to semiannually for all institutions filing the FFIEC 051 Call Report. On December 1, 2016, the FFIEC approved moving forward with the proposed FFIEC 051 Call Report for eligible small institutions and the other proposed burden-reducing changes to the existing FFIEC 031 and FFIEC 041 Call Reports effective March 31, 2017, including the modifications recommended in response to comments. On January 9, 2017, the agencies, under the auspices of the FFIEC, published a final **Federal Register** notice finalizing the reporting requirements for the new and streamlined FFIEC 051 Call Report

[22] 81 FR 45357 (July 13, 2016).

[23] The statutorily mandated review of the existing Call Report data items is an ongoing process. Any burden-reducing reporting changes resulting from the fourth through ninth surveys will be included in future Call Report proposals.

[24] 81 FR 54190 (August 15, 2016).

[25] As part of the burden-reduction initiative, the agencies are committed to exploring alternatives to the $1 billion asset-size threshold that could extend the eligibility to file the FFIEC 051 to additional institutions.

for eligible small institutions, subject to OMB approval.[26]

The agencies anticipate that further Call Report streamlining will be included in future proposals based on the results of the portions of the statutorily mandated Call Report review that had not been completed when the August 2016 proposal was issued. In particular, any future simplification of capital rules may significantly reduce the difficulty of completing the Call Report's capital schedule, which was viewed as particularly burdensome by commenters. As described more fully above, the agencies are developing a proposal to simplify the regulatory capital rules in order to address industry concerns about excessive complexity.

3. Appraisals

Background

Title XI of FIRREA (Title XI) requires the federal banking agencies, along with the NCUA, to adopt regulations regarding the performance of appraisals used in connection with federally related transactions to protect federal financial and public policy interests in such transactions.[27] Under the regulations that implement provisions of Title XI,[28] (Title XI appraisal regulations) an appraisal conducted by a state-licensed or state-certified appraiser is required for any federally related transaction. A federally related transaction is any real estate-related financial transaction entered into that (1) the agencies engage in, contract for, or regulate; and (2) requires the services of an appraiser. The Title XI appraisal regulations specify a number of types of real estate-related financial transactions that do not require the services of an appraiser and are therefore exempt from the appraisal requirement.

Transactions exempt from the appraisal requirement include those at or below specified monetary thresholds. Title XI authorizes the setting of such thresholds under the condition that the agencies determine in writing that the threshold level does not represent a threat to the safety and soundness of financial institutions.[29] The statute also requires that the agencies receive concurrence from the Consumer Financial Protection Bureau (CFPB) that the threshold level ''provides reasonable protection for consumers who purchase 1–4 unit single-family residences.'' [30] Under the current thresholds, residential and commercial real estate loans that are $250,000 or less and certain business loans secured by real estate [31] that are $1 million or less do not require appraisals.

Among other exemptions, the appraisal regulations also exempt transactions from the appraisal requirement if:

- The transaction is wholly or partially insured or guaranteed by a U.S. government agency or U.S. government sponsored agency; or
- The transaction either:
  (1) Qualifies for sale to a U.S. government agency or U.S. government sponsored agency; or
  (2) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) appraisal standards applicable to that category of real estate.[32]

The other federal government agencies that are involved in the residential mortgage market (such as the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, and the Rural Housing Service of the U.S. Department of Agriculture), and the government sponsored enterprises (GSEs), which are regulated by the Federal Housing Finance Agency (FHFA), have the authority to set separate appraisal requirements for loans they originate, insure, acquire, or guarantee, and generally require an appraisal by a certified or licensed appraiser for residential mortgages regardless of the value of the loan. Based on 2014 Home Mortgage Disclosure Act (HMDA) data, at least 90 percent of residential mortgage loan originations are not subject to the Title XI appraisal regulations, but the majority of those are subject to the appraisal requirements of other government agencies or the GSEs.[33]

For real estate-related financial transactions at or below the applicable thresholds, and for certain other exempt transactions, the Title XI appraisal regulations require financial institutions to obtain an appropriate ''evaluation'' of the real property collateral that is consistent with safe and sound banking practices. An evaluation, which may be less structured than an appraisal, should contain sufficient information and analysis to support the decision to engage in the transaction. The agencies have provided guidance on the parameters for conducting evaluations in a safe and sound manner.[34]

Agency Dodd-Frank Initiatives

As part of their implementation of the Dodd-Frank Act, the agencies have published several appraisal-related rules. In 2010, the Board issued an interim final rule that requires independent property valuations for consumer credit transactions secured by a consumer's principal dwelling and payment of customary and reasonable fees to appraisers.[35] In February 2013, the federal banking agencies, along with the NCUA, CFPB, and FHFA, jointly published a final rule requiring, among other things, that creditors obtain a written appraisal for certain higher-priced mortgage loans (HPMLs) and provide loan applicants with a copy of the appraisal(s).[36] These same agencies subsequently issued a joint rule with additional exemptions from the HPML appraisal requirements, including for loans of $25,000 or less, adjusted annually for inflation.[37] In June 2015, the federal banking agencies, along with NCUA, CFPB, and FHFA jointly published a final rule that (1) establishes minimum requirements for registration and supervision of appraisal management companies (AMCs) by states electing to participate in the Title XI regulatory framework for AMCs (participating states); (2) requires AMCs controlled by IDIs (federally regulated AMCs) to meet the minimum requirements applicable to AMCs registered and supervised by participating states (other than state registration and supervision); and (3) requires that participating states report certain information on registered AMCs

[26] 82 FR 2444 (January 9, 2017).

[27] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183 (codified at 12 U.S.C. 3331 et seq.).

[28] 12 CFR 34, subpart C (OCC); 12 CFR 208.50 (Regulation H) and 12 CFR 225, subpart G (Regulation Y) (Board); 12 CFR 323 (FDIC); and 12 CFR 722 (NCUA).

[29] 12 U.S.C. 3341(b).

[30] Id.

[31] Specifically, the $1 million threshold applies to business loans secured by real estate where repayment is not dependent primarily on the sale of real estate or the rental income derived from real estate.

[32] 12 CFR 34.43 (OCC), 12 CFR 225.63 (Board), 12 CFR323. 3 (FDIC).

[33] See *www.ffiec.gov/hmda/*.

[34] Interagency Appraisal and Evaluation Guidelines, 75 FR 77450 (December 10, 2010). See also Interagency Advisory on the Use of Evaluations in Real-Estate Related Transactions, March 4, 2016; Federal Reserve SR letter 16–5; OCC Bulletin 2016–8; FDIC FIL–16–2016, ''Supervisory Expectations for Evaluations.''

[35] See 15 U.S.C. 1639e; 75 FR 66554 (October 28, 2010) (Interim Final Rule); 75 FR 80675 (December 23, 2010) (Technical Corrections). These rules are published at 12 CFR 226.42. In December 2011, the CFPB published an interim final rule substantially duplicating the rules. See 12 CFR 1026.42.

[36] 78 FR 10368 (February 13, 2013) (Final Rule); 78 FR 78520 (December 26, 2013) (Supplemental Final Rule).

[37] 78 FR 78520 (December 26, 2013) (Supplemental Final Rule); 81 FR 86250 (November 30, 2016) (annual exemption threshold adjustment).

to a national registry maintained by the ASC.[38]

EGRPRA Comments

The agencies received comments on the subject of appraisal requirements from over 160 bankers, banking trade associations, associations of appraisers, and other commenters. As discussed in more detail below, the majority of these comments focused on whether the agencies should increase the transaction value thresholds at or below which an appraisal would not be required by the Title XI appraisal regulations. The agencies also received comments on the availability of appraisers in rural areas, evaluations, appraisal requirements for HPMLs, and AMCs.

Appraisal thresholds

Approximately 25 commenters suggested that the agencies consider increasing the appraisal thresholds in the Title XI appraisal regulations. These commenters noted that the current thresholds have not been adjusted since they were established in 1994, even though property values have increased, and that the time and cost associated with the appraisal process negatively impacts completion of real estate-related transactions. Several commenters suggested that the agencies raise the existing threshold for residential and commercial loans from $250,000 to $500,000 and raise the existing threshold for real estate secured business loans from $1 million to $2 million. Another commenter suggested that the agencies consider increasing the threshold to $1 million for loans secured by multiple 1–4 family rental properties with documented independent sources of cash flow.

Other commenters suggested alternative bases for establishing thresholds such as the loan-to-value ratio of the transaction, market location of the property, median house price in the region, or asset size or the amount of capital retained by the institution. Similarly, some commenters argued that technological advances, such as the internet, or involvement of third parties, have resulted in alternative sources of reliable market and property valuation information that have reduced the need for appraisals. One commenter also suggested that the agencies should allow institutions the option of using appraisals prepared by non-certified appraisers in order to reduce costs and regulatory burden.

Some commenters also stated that the time and financial costs attributed to meeting the appraisal requirements at the current threshold level negatively affect the competitiveness of certain banks, particularly in rural markets. Commenters specifically noted that the costs associated with an appraisal on a small residential loan are high compared to the potential loss on the loan. In addition, some commenters at the outreach session on rural banking issues indicated that they believed that the federal banking agencies' examiners require appraisals, even when evaluations are permissible.

Approximately 125 comments received by the agencies opposed increasing the appraisal thresholds. One commenter argued that the agencies should reduce the threshold from $250,000 to $25,000, which is the threshold for an exemption from the HPML appraisal rule. One professional appraiser association commented that the agencies should set the threshold at $100,000. Several professional appraiser associations argued that raising the threshold could undermine the safety and soundness of lenders and diminish consumer protection for mortgage financing. These commenters argued that increasing the thresholds could encourage banks to neglect collateral risk-management responsibilities. One professional appraiser association stated that the agencies should not rely on the policies of other regulators with appraisal requirements, such as the FHFA, or on the GSEs to fulfill the safety and soundness and consumer protection purposes of Title XI. Commenters also stated that higher thresholds would subject the least sophisticated borrowers to increased risk.

In addition, several commenters argued that alternatives to appraisals, such as evaluations and automated valuation models (AVMs), which can be used in evaluations, often result in less reliable property valuations than appraisals. More specifically, several commenters stated that AVMs often result in less reliable home valuations because they do not include a physical inspection of the property being valued, and inaccurately base calculations on data from public records. Commenters also suggested that property valuations not performed by a state-certified or licensed appraiser are unreliable indicators of the market value of properties. Some of these commenters noted that certified and licensed appraisers must satisfy rigorous qualification requirements, and thus, their expertise is helpful in areas with less property information, such as rural markets. Similarly, one commenter stated that the expertise of appraisers is needed to value properties in unique circumstances or special property types.

In addition, commenters noted that there are more quality control standards for appraisals than for evaluations and suggested that appraisals impose less regulatory burden and risk on institutions because the appraisal standards are clearer than the regulatory expectations for evaluations. The commenters noted instances of deficient evaluations even though the evaluations aligned with the agencies' 2010 Interagency Appraisal and Evaluation Guidelines. Several commenters also claimed that evaluations do not contain sufficient market information to allow for informed decisions; that the persons preparing evaluations are not professional appraisers and therefore are not accountable; and that evaluations are costly.

Several commenters also expressed the belief that raising the thresholds would hurt the appraisal profession. A commenter noted that appraisers are unable to compete with valuation services not bound by the Uniform Standards of Professional Appraisal Practice (USPAP).

A professional association for appraisers and an appraisal firm claimed that the agencies do not have the authority to raise the thresholds, asserting that raising the $250,000 threshold would effectively repeal Title XI and be contrary to congressional intent. The agencies also received a comment that questioned whether the agencies have the legal authority to raise the appraisal threshold prior to a determination by the CFPB regarding the potential impact such action would have on consumers.[39]

Appraiser shortages in rural areas

Several commenters asserted that there is a shortage of appraisers in rural areas and that because of this shortage, appraisers are significantly backlogged and appraisals take much longer to complete. Some of these commenters asserted that this shortage has brought the rural housing market to a halt in some rural communities. Other commenters expressed that there is no appraiser shortage, only a lack of availability because of the unwillingness of some appraisers to perform appraisals in rural areas. Some commenters also noted that there are few subdivisions, similar houses, or similarly sized tracts of land available for comparison in rural areas. These

[38] 80 FR 32657 (June 9, 2015).

[39] See 12 U.S.C. 3341(b). As noted, the statute requires that the agencies receive concurrence from the CFPB that the threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.

commenters noted that there are often few comparable sales within a year and that it is not uncommon to have acceptable comparable sales located 20 or more miles from the appraised property.

Evaluations

At EGRPRA outreach meetings, community bankers, particularly those in rural areas, raised questions regarding the value and appropriate use of evaluations. In particular, they questioned how to determine the market value of real estate through the evaluation process, especially in rural areas where there have been no or few comparable sales.

Appraisals for HPMLs

As discussed above, the Dodd-Frank Act established appraisal requirements for HPMLs (termed ''higher-risk mortgages'' in the statute), which are defined as closed-end consumer credit transactions secured by a consumer's principal dwelling that have annual percentage rates above a certain threshold.[40] The Dodd-Frank Act requires creditors to obtain a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the home's interior before making these loans.[41] The Dodd-Frank Act also requires creditors to disclose to HPML applicants information about the purpose of the appraisal and provide consumers with a copy of the appraisal report(s) at no charge within certain timeframes.[42]

The agencies received six comments concerning the HPML appraisal requirements. One small rural bank commenter suggested that the HPML appraisal requirements impose undue burden on borrowers and lenders. This commenter stated that, due to the HPML appraisal requirements and other rules, some community banks are leaving the home lending market.[43] The commenter suggested that low-and-moderate income (LMI) borrowers purchasing homes under $50,000 are affected disproportionately by the compliance burden of these rules. A commenter from a state bank trade association argued that the agencies should expand the HPML exemptions to include an exemption based on the value of the collateral, and mentioned that, for example, home values in rural areas of this state are between $40,000 and $50,000 (which is higher than the current $25,000 exemption). This commenter also suggested that creditors in rural areas with few appraisers might be concerned about having to obtain an appraisal conducted by an appraiser from a distant area and, therefore, might be faced with a decision about whether to price a loan based on risk in the transaction or to price it lower to avoid triggering the HPML appraisal requirements. The commenter asserted that allowing local bank or real estate brokers to perform valuations for very low value properties would allow rural borrowers in particular to obtain more accurate and less costly valuations and would increase credit availability.

A national community bank trade association suggested that HPML appraisal requirements should be the same as non-HPML appraisal requirements, citing complaints by community banks about having to comply with more than one set of appraisal rules.

A community bank commenter discussed the disclosure requirements for valuations under Regulation B (Equal Credit Opportunity Act (ECOA))[44] as compared to the HPML appraisal rule.[45] The commenter pointed out, for example, that qualified mortgages (QMs) are exempt from the HPML appraisal rule, but not the Regulation B rule, and that the Regulation B valuation disclosure rule applies to business and consumer first-lien loans secured by a 1–4 family property, whereas the HPML disclosure requirement applies to HPMLs, which are closed-end, first- or second-lien loans secured by a consumer's principal dwelling (thus, only consumer loans). The bank commenter also expressed confusion about timing requirements for Truth in Lending Act-Real Estate Settlement Procedures Act (TILA-RESPA) mortgage disclosures and the HPML timing requirement for providing the consumer with a copy of the appraisal (three business days before closing).

Finally, one commenter suggested that it would be premature to change the HPML exemption threshold since it has been in effect only for a short period of time. This commenter cited heightened consumer protection risks for consumers of HPMLs and noted that creditors do not bear the cost of appraisals but pass them along to consumers.

AMCs

Several commenters addressed the role of AMCs in the appraisal process. Some of these commenters criticized AMCs' role as intermediary between lenders and appraisers, raising concerns over AMCs' impact on the increasing cost of appraisals, the extended time period that is required to complete appraisals, and the quality of appraisals. Several commenters argued that AMCs circumvent the regulatory process and appraisers, and that their administration of the appraisal process is driven by profit and expansion, rather than concern for the appraisal profession, the mortgage industry, or accurate property valuations. Several commenters suggested that some AMCs have pressured appraisers to reach desired property values, and that appraisers risk losing work if they do not comply. The commenters also suggested that the perceived shortage of certified appraisers is caused by the low fees that AMCs pay appraisers to value properties, and that appraisers are leaving the industry as a result. Two commenters stated that regulations requiring that creditors and AMCs pay appraisers customary and reasonable fees are not enforced. Several of the commenters argued that increasing the appraisal threshold (to exempt more transactions from the Title XI appraisal requirement) is not necessary, and would only exacerbate underlying issues in the appraisal process that are attributed to AMCs. Some commenters also asserted that completion times for appraisals have become a competitive selling strategy for many AMCs, often at the expense of appraiser competency for the assignment. As a solution to these issues, some commenters suggested removing AMCs from the appraisal process.

Agencies' response

Appraisal thresholds

The agencies considered the appropriateness of the existing appraisal thresholds in the context of the comments received and the agencies' prudential standards for safety and soundness. The agencies also gave special consideration to the issue of appraiser shortages in rural areas.

The agencies recognize that the thresholds were last modified in 1994. Given increases in property values since that time, in certain circumstances, the current thresholds may require institutions to obtain Title XI appraisals

[40] See, *e.g.,* 12 CFR 1026.35(a)(1).

[41] 15 U.S.C. 1639h(a) and (b).

[42] Id. section 1639h(c) and (d).

[43] The commenter also mentioned home ownership counseling requirements under the Home Ownership and Equity Protection Act as well as ''new CFPB housing rules.'' The agencies do not have authority over these requirements.

[44] 12 CFR 1002.14.

[45] Another EGRPRA commenter raised concerns specifically about the CFPB's Regulation B valuation disclosure requirement because it does not distinguish between consumer-purpose and business-purpose loans. This commenter did not mention the HPML appraisal disclosure requirements.

on a larger proportion of loans than was required in 1994. The agencies recognize that this proportional increase in the numbers of appraisals required may contribute to the increased time and cost issues raised by the EGRPRA commenters. As such, the federal banking agencies, along with the NCUA, are developing a proposal to increase the threshold related to commercial real estate loans from $250,000 to $400,000. As part of that proposal, the agencies plan to gather more information about the appropriateness of increasing the $1 million threshold related to real estate-secured business loans.

The agencies also considered the potential burden created by the current $250,000 threshold for loans secured by residential real estate.[46] As noted above, certain other federal government agencies and the GSEs are involved in the residential mortgage market, and have the authority to set appraisal requirements for loans they originate, acquire, or guarantee. Therefore, raising the appraisal threshold for residential transactions in the Title XI appraisal regulations would have limited impact on burden, as appraisals would still be required pursuant to the rules of other entities.

The agencies also considered safety and soundness and consumer protection concerns that could result from a threshold increase for residential transactions. The last financial crisis showed that, like other asset classes, imprudent residential mortgage lending can pose significant risks to financial institutions. In addition, the agencies recognize that appraisals can provide protection to consumers by helping to assure the residential purchaser that the value of the property supports the mortgage amount assumed. Overall, the agencies believe that the interests of consumers are better served when appraisal regulations are coordinated among government agencies.

In considering the EGRPRA comments on this issue, the agencies also conferred with the CFPB. As noted earlier, changes to the appraisal threshold require the CFPB's concurrence that the adjusted threshold level ''provides reasonable protection for consumers who purchase 1–4 unit single-family residences.'' [47] CFPB staff shared concerns about potential risks to consumers resulting from an expansion of the number of residential mortgage transactions that would be exempt from the Title XI appraisal requirement.

Based on considerations of safety and soundness and consumer protection, the agencies do not currently believe that a change to the current $250,000 threshold for residential mortgage loans would be appropriate. The agencies will continue to consider possibilities for relieving burden related to appraisals for residential mortgage loans, such as coordination of our rules with the practices of HUD, the GSEs, and other federal entities in the residential real estate market.

Appraiser shortages in rural areas

The agencies have considered the concerns raised regarding potential appraiser shortages and related issues in rural areas. Title XI grants the ASC temporary waiver authority. Specifically, Title XI grants the ASC the authority, after making certain findings and with the approval of the FFIEC, to grant temporary waivers of any requirement relating to certification or licensing of a person to perform appraisals under Title XI in states or geographic political subdivisions of a state where there is a shortage of appraisers leading to significant delays in obtaining an appraisal in connection with federally related transactions.[48] These temporary waivers would allow institutions lending in affected areas access to more individuals eligible to complete the appraisals required under Title XI, which would alleviate some of the cost and burden associated with having a shortage of certified or licensed appraisers in an area. As Council members of the FFIEC and members of the ASC, the federal banking agencies participate in this waiver process.

Additionally, state appraiser certifying and licensing agencies have existing authority to recognize, on a temporary basis, the certification or license of an appraiser issued by another state.[49]

In order to address the concerns related to rural areas, the agencies will work with the ASC to streamline the process for the evaluation of temporary waiver requests. The agencies also intend to issue a statement to regulated entities informing them of the availability of both temporary waivers and temporary practice permits, which are applicable to both commercial and residential appraisals, and may address temporary appraiser shortages. The agencies note that the waiver option is available for all types of federally related transactions. In addition to other measures discussed in this report to relieve burden related to appraisals, the agencies affirm that they will continue to consider possibilities for relieving burden related to appraisals for residential real estate loans, such as coordinating our rules with the practices of HUD and other federal government agencies that are involved in the residential mortgage market, as well as with the GSEs.

Evaluations

To address comments and to clarify current supervisory expectations regarding evaluations, the agencies issued an interagency advisory on evaluations in March 2016.[50] The advisory reiterated what transactions permit the use of evaluations; these include transactions valued under the dollar thresholds established in the appraisal regulations and certain refinance or subsequent transactions. The advisory also explained that the Title XI appraisal regulations do not require that evaluations be prepared by a state-licensed or state-certified appraiser or to conform with USPAP, and that there is no standard format for an evaluation report. Furthermore, the advisory explained that an evaluation does not need to be prepared only by using sales of comparable properties to estimate market value. For areas where comparable sales are in short supply, the advisory reminded bankers that evaluations may use other valuation approaches.

Appraisals for HPMLs

Regarding comments about the HPML appraisal rule, the agencies note that the rule is a joint rule among the federal banking agencies and agencies that are not part of the EGRPRA process (the NCUA,[51] CFPB, and FHFA). The federal banking agencies have determined not to pursue changes to the HPML appraisal rules at this time, but will continue to consider the comments offered through the EGRPRA process.

Regarding the comment that requirements for HPMLs be the same as for non-HPMLs, the agencies note that the HPML appraisal rules implement specific statutory provisions that Congress enacted for loans that they considered to be ''higher-risk.'' [52] At the same time, the agencies take seriously

[46] Residential real estate transactions typically include 1–4 family consumer loans. Typically, multifamily residential real estate transactions are considered commercial real estate transactions for which the agencies intend to propose a threshold increase.

[47] 12 U.S.C. 3341(b).

[48] 12 U.S.C. 3348(b).

[49] 12 U.S.C. 3351(a).

[50] Interagency Advisory on the Use of Evaluations in Real-Estate Related Transactions, March 4, 2016; Federal Reserve SR letter 16–5; OCC Bulletin 2016–8; FDIC FIL–16–2016, ''Supervisory Expectations for Evaluations.''

[51] Although not required to by statute, NCUA voluntarily conducted its own, separate EGRPRA review.

[52] 15 U.S.C. 1639h.

concerns raised by commenters about the burden of complying with these rules. In this regard, the federal banking agencies note that many significant exemptions from the HPML rules are already in place. The statutory provisions establishing special appraisal rules for HPMLs exempt all QMs (a large proportion of the mortgage market).[53] Further, in two separate rulemakings,[54] the federal banking agencies, NCUA, CFPB, and FHFA jointly exempted several additional classes of loans from the HPML appraisal rules, including certain construction loans, bridge loans, reverse mortgages, refinance transactions meeting certain criteria, and loans of $25,000 or less, adjusted annually for inflation ($25,500 for 2016).[55]

In establishing the transaction size exemption threshold, the six agencies issuing the rules carefully considered all of the comments submitted on the issue, including suggestions that the exemption threshold be higher.[56] The six agencies set the threshold bearing closely in mind the two-pronged statutory standard for establishing exemptions from the HPML appraisal rules: the agencies must jointly determine that any exemption ''is in the public interest and promotes the safety and soundness of creditors.'' [57]

In addition, the six agencies that jointly issued the rules gave special study and consideration to manufactured home lending and endeavored to design rules tailored to address valuation issues unique to this market segment. In so doing, the agencies sought to craft HPML appraisal rules that would make sense in that industry, while still addressing the consumer protection and other risks Congress sought to mitigate in the Dodd-Frank Act.[58]

Regarding the comment expressing confusion about overlapping disclosure requirements, the agencies note that the HPML appraisal rule provides that compliance with the Regulation B/ECOA valuation disclosure requirement satisfies the HPML disclosure requirement.[59] Generally, the timing of the HPML disclosure requirement coincides with the required timing for providing the TILA-RESPA Loan Estimate (generally three business days after application).[60] The timing of the HPML requirement for providing the consumer with a copy of the appraisal also coincides with the required timing for providing the TILA-RESPA Closing Disclosure (generally three business days before consummation).[61] The agencies appreciate that confusion can result from multiple disclosure requirements and will consider further how to clarify questions regarding them. The agencies conduct regular meetings with the CFPB regarding implementation of the various mortgage rules, and will continue to seek interagency coordination on issues concerning these rules.

AMCs

The agencies also have considered the comments raised regarding AMCs. The Dodd-Frank Act amended Title XI to require the agencies, along with the NCUA, CFPB, and FHFA, to develop minimum requirements for the registration and supervision of AMCs operating in participating states and to apply certain requirements to federally regulated AMCs. In addition, the Dodd-Frank Act amendments required that a National Registry of AMCs be established and administered by the ASC.[62] In June 2015, the agencies, along with the NCUA, CFPB and FHFA, issued joint rules establishing minimum requirements for AMCs. The AMC regulation integrates AMCs into the existing framework for the supervision of appraisers and appraisal-related services, and maintains standards for the development and quality of appraisals. As part of the system, newly registered AMCs now are responsible for applying minimum standards to their business activities. Further, AMCs are now required to engage only certified and licensed appraisers for federally related transactions and must direct appraisers to perform such assignments in accordance with USPAP. The agencies believe that the rule addresses the AMC-related issues raised by the EGRPRA commenters by providing minimum requirements for state supervision of AMCs and establishing oversight of federally regulated AMCs.[63]

The AMC rule establishes minimum requirements for states electing to register and supervise AMCs covered by the rule to ensure that the AMCs engage appraisers who are independent and competent for a particular transaction. The agencies believe that the safety and soundness of institutions is enhanced when appraisers are given a reasonable amount of time to complete assignments, so that they can ensure that the appraisal report has sufficient information to support the decision to engage in the transaction and that safety and soundness is served when appraisers are engaged based on their competency for the assignment.

Title XI allows states up to three years following the finalization of the AMC rule to establish registration and supervision systems that meet the regulatory requirements. AMCs that are not either subject to oversight by a federal financial institution regulatory agency or registered in a particular state will be prohibited from providing services for federally related transactions in that state. In any state which does not adopt a registration and supervision system, all AMCs that are not subject to oversight by a federal financial institutions regulatory agency will be prohibited from providing services for federally related transactions. The ASC, with the approval of the FFIEC, may delay the implementation deadline for an additional year, if a state has made substantial progress toward implementing a system that meets the criteria in Title XI. Because states are still in the process of implementing the AMC rule, the agencies need additional time to assess the rule's impact.

Regarding concerns expressed by commenters about appraiser fees, the Board issued the 2010 interim final rule on valuation independence and customary and reasonable fees for appraisers within 90 days after the enactment of the Dodd-Frank Act, as directed by the statute.[64] Any future rules implementing these statutory provisions must be issued on an interagency basis by the Board and five other agencies—the OCC, FDIC, NCUA, CFPB and FHFA.

[53] 15 U.S.C. 1639h(f)(1).

[54] 78 FR 10368 (February 13, 2013) (Final Rule); 78 FR 78520 (December 26, 2013) (Supplemental Final Rule).

[55] See 12 CFR 34.203(b) (OCC); 12 CFR 226.43(b) (Board); 12 CFR 1026.35(c)(2) (CFPB, applies to FDIC-supervised institutions).

[56] 78 FR 78520, 78528–73532 (December 26, 2013).

[57] 15 U.S.C. 1639h(b)(4)(B).

[58] See 78 FR 78520, 78542–78561 (December 26, 2013).

[59] See 12 CFR 34.203(e)(1) (OCC); 12 CFR 226.43(e)(1) (Board); 12 CFR 1026.35(c)(5)(i) (CFPB, applies to FDIC-supervised institutions).

[60] See 12 CFR 1026.19(e)(1)(iii) (Loan Estimate); 12 CFR 34.203(e)(2) (OCC), 12 CFR 226.43(e)(2) (Board), and 12 CFR 1026.35(c)(5)(ii) (CFPB, applies to FDIC-supervised institutions) (appraisal disclosure for HPMLs).

[61] See 12 CFR 1026.19(f)(1)(ii) (Closing Disclosure); 12 CFR 34.203(f)(2) (OCC), 12 CFR 226.43(f)(2) (Board), and 12 CFR 1026.35(c)(6)(ii) (CFPB, applies to FDIC-supervised institutions) (copy of appraisal for HPMLs).

[62] Dodd-Frank Act, section 1473(f)(2), 12 U.S.C. 3353.

[63] 80 FR 32657 (June 9, 2015).

[64] See *www.federalreserve.gov/newsevents/press/bcreg/20101018a.htm* (October 18, 2010), 75 FR 66554 (October 28, 2010) (Interim Final Rule); 75 FR 80675 (December 23, 2010) (Technical Corrections). These rules are published at 12 CFR 226.42. In December 2011, the CFPB published an interim final rule substantially duplicating the rules. See 12 CFR 1026.42.

When it issued the 2010 interim final rule, the Board determined that the statute's requirement for paying ''customary and reasonable'' fees did not authorize the Board to set appraiser fees at a particular level. Accordingly, the interim final rule gives lenders two market-based methods to follow. To address appraisers' concerns, the agencies expect to review the interim rule and study its impact to help determine whether there are alternative approaches that could be more effective.

4. Frequency of Safety and Soundness Examinations

Background

Section 10(d) of the Federal Deposit Insurance Act (FDI Act) generally requires the appropriate federal banking agency for an IDI to conduct a full-scope, on-site examination of the IDI at least once during each 12-month period.[65] However, the statute permits a longer cycle—at least once every 18 months—for a well capitalized and well managed IDI that meets certain other supervisory criteria, including having total assets below a specified threshold.[66]

EGRPRA Comments

Over 30 different banking institutions and industry organizations addressed the frequency of safety and soundness examinations. Commenters generally expressed support for an increase in the amount of time between safety and soundness examinations and for an increase in the associated asset size threshold for institutions that qualify for an 18-month examination cycle.

Specifically, the agencies received comments requesting that they raise the total asset threshold for an IDI to qualify for the extended 18-month examination cycle. Commenters asserted that the $500 million threshold for 18-month examinations was too low and should be increased to amounts ranging from $1 billion to $2 billion. The majority of these commenters advocated raising the total asset threshold for a longer examination cycle to $1 billion.

The agencies also received several suggestions to extend the amount of time between examinations for well-capitalized and well-managed IDIs. These commenters suggested increasing the time between examinations from 18 months to between 24 and 36 months.

Some commenters also suggested a more tailored approach to determining the amount of time between safety and soundness examinations that would be based on examiner judgment and discretion. These commenters recommended that the agencies consider the activities of the banking institution in determining the frequency of examinations, with more traditional community banks receiving more time between examinations. One commenter, however, suggested that the agencies should have no discretion in determining which institutions would qualify for an extended examination cycle and that such extended examination cycles should be automatic.

Agencies' Response

The agencies indicated support for revisions to the statute regarding examination frequency. Subsequently, in December 2015, President Obama signed into law the FAST Act.[67] Section 83001 of the FAST Act raised the threshold for the 18-month examination cycle from less than $500 million to less than $1 billion for certain well capitalized and well managed IDIs with an ''outstanding'' composite condition and gave the agencies discretion to similarly raise this threshold for certain IDIs with an ''outstanding'' or ''good'' composite condition. The agencies exercised this discretion and issued an interim final rule on February 29, 2016, that, in general, makes qualifying IDIs with less than $1 billion in total assets eligible for an 18-month (rather than a 12-month) examination cycle.[68] On December 16, 2016, the agencies published this rule as a final rule with no changes.[69] Agency staff estimate that the final rules increased the number of institutions that may qualify for an extended 18-month examination cycle by approximately 611 institutions, bringing the total number of qualifying institutions to 4,793 IDIs.[70]

5. Community Reinvestment Act

Background

The CRA requires the agencies to assess a financial institution's record of meeting the credit needs of its entire community, including LMI neighborhoods, consistent with safe and sound operations.[71] The CRA also requires the agencies to take the financial institution's CRA performance record into account in evaluating applications for deposit facilities. Congress has amended the CRA statute since its enactment to require written public evaluations and, when a financial institution has branches in more than one state, ratings in each state where it has branches or deposit taking ATMs.

The agencies have implemented the CRA through interagency regulations that set forth several evaluation methods for institutions of different sizes and business strategies.[72] Large institutions (those with assets of $1.226 billion or more in 2017) are evaluated under lending, investment, and service tests. The lending test involves an analysis of an institution's home mortgage, small business, and small farm lending. The agencies may evaluate consumer lending under certain circumstances. The agencies evaluate small institutions (assets under $307 million in 2017) under a streamlined lending test, which includes an evaluation of lending based on the bank's major product lines. The agencies evaluate intermediate small institutions (assets between $307 million and $1.226 billion in 2017) under the small bank lending test and a community development test. Wholesale and limited purpose banks are evaluated using a community development test. Finally, any financial institution may choose to be evaluated under an agency-approved strategic plan that sets forth performance goals that have been developed with community input.

EGRPRA Comments

Over 60 EGRPRA commenters discussed the CRA. These commenters included primarily banking industry and community and consumer organizations and included participants at the EGRPRA outreach sessions. The commenters addressed a variety of issues related to regulatory burden, but many also addressed broader issues related to modernizing the CRA regulations and related guidance. Among the most frequently raised issues were (1) the assessment area definition; (2) incentives for banks and savings associations (collectively, banks or financial institutions) to serve LMI, unbanked, underbanked, and rural communities; (3) regulatory burdens associated with recordkeeping, reporting requirements, and asset thresholds for the various CRA examination methods; (4) the need for clarity regarding performance measures and better examiner training to ensure consistency and rigor in examinations; and (5) refinement of CRA ratings methodology.

[65] The agencies' implementing regulations for frequency of safety-and-soundness examinations are set forth at 12 CFR 4.6 (OCC), 12 CFR 208.64 (Board), 12 CFR 337.12, and 12 CFR 347.211 (FDIC).

[66] 12 U.S.C. 1820(d).

[67] Public Law 114–94, 129 Stat. 1312 (2015).

[68] See 81 FR 10063 (February 29, 2016).

[69] 81 FR 90949 (December 16, 2016).

[70] Id.

[71] 12 U.S.C. 2901 et seq.

[72] The agencies' CRA regulations are set forth at 12 CFR parts 25, 195, 228 (Regulation BB) and 345.

Assessment area definitions

The largest number of comments received on CRA involved assessment area definitions. Numerous community group and industry commenters observed that the assessment area definition no longer reflects the way in which financial services are delivered and urged the agencies to revise the definition to ensure the CRA's continued effectiveness. These commenters noted that technological advances now allow financial institutions to take deposits and make loans without branches and suggested that the current requirements for assessment areas have not kept pace with banking practices that no longer are tied to the physical location of branches. Many commenters asserted that the current assessment area definition should move away from branch-based banking and reflect a world in which banking is increasingly virtual, national, or global. A few commenters mentioned that CRA requirements should occur where depositors reside. Others commenters recommended that regulators should define assessment areas as a metropolitan statistical area where a bank conducts significant business activity.

One commenter specifically provided the following proposed language amending the regulatory definition of assessment area: ''the geographies in which the bank has its main office, its branches, and where a substantial number of depositors reside, as well as geographies in which the bank has originated or purchased a substantial portion of its loans.''

Another commenter suggested that a bank's assessment area should be based on the market it believes it can reasonably serve and that a bank should not be inhibited from providing credit to customers outside of its immediate communities due to artificial restrictions imposed by CRA. A few commenters also suggested revising the assessment areas to include deposits from prepaid cards. Two commenters requested more flexibility for small banks and rural banks. A few commenters suggested that the agencies should promote community development financial institutions (CDFIs) by providing favorable treatment for all investments in CDFIs without regard to assessment areas.

Incentives for banks to serve LMI, unbanked, underbanked, and rural communities

Industry and community commenters addressed the need for more effective incentives for financial institutions to serve LMI individuals and areas, including rural areas. Some commenters suggested enhanced consideration of CRA activities that require significant effort and expertise, particularly community development loans, investments, and services tailored to meet the needs of LMI people, such as low-cost deposit and transaction accounts. Some commenters suggested more specific evaluative criteria for certain activities, while others suggested additional rating categories as performance incentives.

The commenters argued that banks need incentives to develop creative solutions to operate in and serve their local communities, particularly LMI and rural areas. A few commenters urged the agencies to set measurable goals and metrics for every bank assessment area to better serve the unbanked and underbanked. Other commenters recommended that the agencies provide additional CRA consideration for high impact projects such as opening or maintaining homeownership preservation offices in LMI neighborhoods. One commenter suggested that the agencies create a rating of ''outstanding plus'' to reward banks for truly outstanding CRA efforts to offer innovative low-cost micro-loans to small businesses.

Several commenters also recommended including an explicit performance factor on the design of, and access to, transaction and savings products and consumer education for LMI people. Some commenters urged the agencies to give CRA consideration to institutions that offer low-cost, safe accounts (particularly accounts that do not include overdraft) and credit building products, such as low-cost alternatives to payday loans. Commenters also suggested additional CRA consideration for mobile branches, prepaid cards, and alternative delivery systems. Two commenters recommended that the agencies provide meaningful and measurable consideration under the service test for alternative delivery systems that effectively deliver services, particularly to LMI individuals.

Similarly, commenters suggested that the agencies consider a number of factors in the evaluation of retail banking services in order to encourage institutions to serve LMI individuals. These factors included consideration of changes in branch locations, branch products, and services resulting from branch closures; LMI customer retention; bank account products and data; and identification policies. Two commenters also favored requiring banks to disclose, and the agencies to consider as part of the CRA exam, demographic information on account holders, accounts, and transactions, including key variables such as the census tract of the account holder's residence, number of new accounts opened, age of account, and percent of bank income generated by fees. One commenter also encouraged the downgrade of banks for consumer services that it alleges strip financial capacity and resources, such as overdraft programs.

Data collection

Commenters also addressed issues related to burden associated with the CRA regulations' current data retention and reporting requirements. Industry commenters urged the agencies to update the regulations' public file requirements by allowing financial institutions to maintain their files electronically, citing the new HMDA rules as a model. One commenter requested that regulators eliminate the requirement that a bank identify all geographies contained in its assessment area due to expense or alternatively require that the public CRA file refer interested parties to a government website with census tract information. One commenter also suggested that the FFIEC manage the public files of all institutions.

Some commenters also discussed the expense associated with collecting and reporting data on community development loans and census tracts within their assessment areas. One commenter suggested raising the CRA regulations' threshold for small business loans from $1 million to $3 million in gross annual revenues. By contrast, community organizations opposed any reduction in CRA reporting requirements. One community group urged the agencies to require intermediate small banks to collect and report small business data in order to allow for a more accurate evaluation of small business credit conditions by the public.

Evaluation thresholds

Several commenters addressed the burden associated with the asset thresholds for the various evaluation methods. One commenter suggested thresholds as high as $5 billion for small bank or intermediate small bank performance standards. Another commenter recommended that the intermediate small bank evaluation method be eliminated altogether in favor of the streamlined examination for small banks. A few commenters addressed the particular needs of small

rural banks, suggesting further streamlining of the evaluation with one commenter advocating that small rural banks should be exempt from CRA altogether. One commenter suggested that the CRA examination threshold limits should not be asset based but rather focused on the market or business model of the institution. In addition, a few industry commenters raised the burden associated with the frequency of examinations, arguing for longer intervals between examinations for banks with satisfactory or outstanding ratings. Community organizations opposed extending the examination cycle, which they believe would decrease the level of CRA activity in underserved communities.

Other commenters recommended changes for small banks. These commenters suggested updating the rules related to rural banks (suggesting that the agencies should look at rules, including definitions, to consider not only a bank's size but also the bank's location and relationship to the community). One commenter suggested that the strategic plan option process is too cumbersome and should be streamlined for smaller institutions. A commenter recommended an exemption for any community bank that reinvests a large percentage of its deposits back into its community.

Examination and compliance standards

Several commenters from both industry and community organizations raised the need for more clarity in the examination process. Some commenters focused on more specific standards, with a few suggesting matrices of requirements by bank size, and others suggesting performance benchmarks or scorecards. One commenter supported more data driven performance context information that includes credit needs of an assessment area. In the case of retail services, a commenter argued that the test should include a quantitative and qualitative analysis of how bank services impact LMI communities. Many commenters asserted that the CRA criteria should place more emphasis on the quality of an institution's activities and its impact on the communities it serves. Several commenters stated that the CRA regulations are not applied consistently and urged the agencies to provide more examiner training to promote effective and consistent examinations. Commenters mentioned a need for more consistent treatment of banks within and among the different agencies regarding performance criteria, performance context, and application of definitions. One commenter mentioned that the agencies need to improve and standardize examiner training on CRA to promote effective examination and consistency.

CRA ratings

Several comments from community and consumer organizations raised concern that assigned CRA ratings are not assessing properly the degree to which banks are addressing community credit needs. These commenters based this conclusion on the fact that a significant proportion of banks are rated ''satisfactory'' or ''outstanding'' even though critical community credit needs remain unmet, according to commenters. Commenters offered a variety of suggestions for revising the CRA ratings criteria so that they are more rigorous and offer a more nuanced picture of CRA performance. Several commenters from community organizations argued that a bank's CRA ratings should be negatively impacted by harmful lending and services practices in addition to the illegal or discriminatory lending practices that are currently considered. Some of these commenters urged the agencies to revise the regulation as well as the guidance to provide for greater consideration of harmful and unlawful banking practices. One commenter argued that an institution should not be eligible to receive a ''satisfactory'' CRA rating after a Department of Justice discrimination suit or settlement for violations of fair lending laws. A few commenters suggested that banks should be downgraded for violations of fair housing laws and other consumer protections. In contrast, an industry commenter disagreed with this approach, provided that all other aspects of the bank's performance are ''satisfactory'' or ''outstanding.'' This commenter stated that the agencies should not automatically lower CRA ratings due to an adverse fair lending examination. In addition, some commenters expressed concern that the fair lending discussion contained in the CRA public evaluation is not sufficiently detailed to independently judge the examiners' conclusion.

Commenters also asserted that current ratings do not reflect the reality of differences in bank performance in serving communities and recommended replacing the 0- to 24-point scale with a point system of 1 to 100. Some commenters further contended that measures currently used do not distinguish institutions whose community reinvestment activities are barely satisfactory and need to be improved. Another commenter recommended dividing the ''satisfactory'' CRA rating into ''high satisfactory'' and ''low satisfactory'' ratings as another way to better distinguish performance. Other commenters noted that CRA examinations should be rigorous and should evaluate an institution's process for achieving performance, not just the results of lending, investment, and service activities.

Treatment of affiliate activities in CRA evaluations

Currently, for CRA evaluation purposes, the agencies may consider loans made by bank affiliates if requested by the IDI. Some commenters suggested that the agencies instead should consider affiliate activities when they have a significant impact on community needs. One commenter suggested a single evaluation at the holding company level that would include all CRA-covered subsidiaries.

Role of CRA in merger applications

Several community and consumer groups advocated that the CRA should play a more significant role in mergers, with consideration given to both past performance and future plans. A few commenters suggested specific steps the agencies could take to ensure that merging banks are attentive to community reinvestment matters, which they alleged can suffer in a merger situation. One commenter suggested that banks should be required to make public benefit commitments prior to merger approvals detailing how the expanded bank will invest in the community. One community commenter opposed expedited merger procedures for CRA reasons, and another community commenter favored making a merger approval contingent on an outstanding CRA rating. Another commenter suggested that when a large bank leaves a market by merging or closing branches, the bank should have a continuing obligation to serve that market.

CRA's consideration of neighborhood stabilization program (NSP) activities

Two commenters recommended that the CRA definition of ''community development'' continue to include NSP-related or similar activities. In 2010, the agencies revised their CRA regulations to consider NSP-eligible activities shortly after the temporary program was created by Congress and these CRA provisions are scheduled to sunset two years after the last date appropriated funds for the temporary program are required to be spent.

Limited-scope evaluation areas

Some commenters raised concerns about the negative impact of using limited-scope examination procedures in smaller cities and rural areas. These commenters suggested that the performance records of limited-scope assessment areas for each state be aggregated and weighted as one full-scope assessment area so that performance in these areas would have more weight on an institution's overall rating. Specifically, two commenters argued that this approach would boost consideration of performance in smaller cities and rural counties. A few commenters contended that limited-scope assessment areas do not receive meaningful evaluation, which harms smaller cities and rural counties because bank performance in these areas does not count at all or to a very small extent in the CRA rating.

Consideration of race and ethnicity

Two commenters suggested that race and ethnicity be an explicit consideration in evaluating an institution's CRA record. The commenters opined that if the CRA considered race, lenders would be less likely to engage in redlining and other racially discriminatory practices, which would lessen compliance costs for lenders and create a more robust and competitive lending market in minority communities.

Database of community development activities

One commenter urged the agencies to create a publicly available database of community development activities to help identify opportunities and needs for community development financing.

Additional comments

Two commenters also recommended that the agencies provide CRA consideration for financial education and similar programs regardless of the economic status of the recipients.

One commenter mentioned the burden associated with finding and receiving CRA consideration for worthwhile investment projects. The commenter suggested eliminating the investment test and instead having investments considered as a performance enhancement by the bank.

Two commenters opined that CRA's coverage should be expanded to include credit unions.

Agencies' Response

The agencies have revised the Interagency Questions and Answers Regarding Community Reinvestment (Interagency CRA Q&As), the primary vehicle for interagency CRA guidance, to address several topics, including some comments raised in the EGRPRA process.[73] Specifically, the recent revisions to the Interagency CRA Q&As made clarifications designed to improve the consistency of examinations across and within the agencies; reaffirm that community development activities conducted in the broader statewide or regional area that includes a bank's assessment area, but that do not benefit the bank's assessment area, will be considered (provided that the bank has been responsive to community development needs and opportunities in its assessment area(s)); add examples of the activities considered to meet the purpose test for qualifying economic development activities; distinguish between community development services and retail products tailored to meet the needs of LMI people; and add examples of qualifying community development loans, investments, and community development services to help illustrate the types of activities that are eligible for CRA consideration.

In addition to revising existing guidance, the agencies added new questions and answers that address how examiners determine the availability and effectiveness of alternative delivery systems, whether products and services are tailored to meet the needs of LMI areas and individuals, and how they weigh quantitative and qualitative evaluative criteria to evaluate community development services. Still other new questions and answers were added to explain what the agencies mean by the terms ''innovativeness'' and ''responsiveness'' in the context of CRA evaluations.

The agencies believe that this new guidance is responsive to many of the concerns raised by comments they received through the EGRPRA process and elsewhere. However, the agencies recognize that more can be done to improve the CRA evaluation process. To this end, the agencies are reviewing their current examination procedures and practices to identify policy and process improvements. The agencies also are developing new examination tools to support more rigorous performance evaluations, more nuanced understanding of performance context information, and more transparency in the written public evaluations of CRA performance. Moreover, the agencies understand the importance of providing additional examiner training with regard to CRA and are committed to working together to develop and deliver interagency training for the examination staff.

The agencies note that a number of the topics addressed by commenters might require a statutory change. First, the overall ratings that the agencies assign are dictated by statute and any changes would require a statutory amendment. Second, suggestions to expand CRA coverage to financial institution affiliates might require a statutory change. Finally, expanding the CRA's coverage to include other non-depository institutions and credit unions would also require a statutory amendment.

6. Bank Secrecy Act

Background

The BSA authorizes the Secretary of the Treasury to issue rules, in consultation with the appropriate federal banking agencies, requiring financial institutions to establish a BSA compliance program.[74] The BSA also authorizes the Secretary to issue rules requiring institutions to identify and report suspicious activity and to file various reports regarding currency transactions.[75] The Secretary has delegated to the FinCEN the authority to issue regulations implementing these requirements, which are set forth at 31 CFR Chapter X.

In addition, section 8(s) of the FDI Act,[76] provides that each appropriate federal banking agency must prescribe regulations requiring IDIs to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA.[77] The agencies' regulations implementing section 8(s) provide that IDIs must establish a BSA compliance program, including establishing and maintaining procedures to ensure and monitor their compliance with the BSA, and the regulations issued by Treasury set forth at 31 CFR Chapter X. On May 9, 2003 the agencies published in the **Federal Register**[78] an amendment to the BSA regulations, to require financial institutions to establish a customer identification program as a part of their BSA compliance program in accordance with regulations the agencies prescribed jointly with FinCEN implementing section 326 of the USA PATRIOT Act.[79] The customer identification program

[73] 81 FR 48506 (July 25, 2016).

[74] 31 U.S.C. 5318(h).

[75] 31 U.S.C. 5318(g) and 5313.

[76] 18 U.S.C. 1818(s).

[77] 31 U.S.C. 5311 et seq. (BSA). The agencies' regulations are set forth at 12 CFR 21, subpart C; 12 CFR 208.63; 12 CFR 326, subpart B; and 12 CFR 390.354.

[78] 68 FR 25109 (May 9, 2003).

[79] Public Law 107–56, codified at 31 USC 5318(l) and 31 CFR 1020.220.

must include reasonable procedures to verify the identity of any person seeking to open an account. In addition, the agencies have issued regulations requiring IDIs to file SARs with the appropriate federal law enforcement agencies and the U.S. Treasury, as required by the BSA and consistent with FinCEN's regulations.[80] Specifically, financial institutions must report known or suspected criminal activity, at specified thresholds, or transactions over $5,000 that they suspect involve money laundering or attempts to evade the BSA by filing a SAR.[81]

EGRPRA Comments

Approximately 40 commenters and outreach meeting participants addressed the BSA. Recurring BSA comments related to increasing the threshold for filing CTRs, the SAR threshold, the overall increasing cost and burden of BSA compliance, and increasing the number of months between examinations for smaller, non-complex banks. Additional comments included possible changes to BSA reporting, greater clarity regarding customer due diligence requirements and supervisory expectations, and BSA examination consistency.

Because FinCEN also has rules implementing the statutory SAR and BSA compliance requirements, any increases to the SAR filing threshold or changes to the BSA compliance program requirement would need to be a joint effort by FinCEN and the agencies.

Furthermore, all comments on the CTR form or on CTR reporting relate to FinCEN requirements and are outside the scope of the agencies' review of their regulations.[82] Accordingly, FinCEN rather than the agencies would need to make any changes related to CTRs. The agencies provided a detailed summary of the EGRPRA comments to the Department of the Treasury's Office of Terrorism and Financial Intelligence and FinCEN, and their response is included in appendix 5. Additionally, FinCEN has published information regarding how information submitted to them is used.[83]

Increase the reporting thresholds for CTRs and SARs

The majority of commenters discussing BSA requirements suggested that the $10,000 threshold for CTRs be raised. For the majority of the comments, the CTR threshold issue was the only BSA issue identified. Most of the commenters stated that the current CTR threshold has been in place since 1970, when Congress enacted the BSA, and that the $10,000 amount has not kept pace with inflation or the current way cash is used. Some commenters stated that increasing the threshold would reduce excess reporting and could make the reports more meaningful to law enforcement.

In addition, several commenters suggested that the agencies also review thresholds for SARs. Specifically, commenters noted that there are different thresholds for SARs depending on the subject identified and the nature of the activity, and these commenters suggested that the agencies should consider raising or calibrating thresholds depending on the activity. Many of the commenters mentioned that increasing the thresholds would decrease the number of filings for banks and, therefore, would reduce overall compliance costs and the amount of resources needed to comply with the BSA.

Costs and burdens of BSA compliance

Commenters on BSA-related regulations also noted the increasing cost and burden associated with complying with the BSA. A few commenters noted the high cost of software generally needed or expected to be used to comply with various aspects of the BSA. One commenter stated that automated systems are expensive and drain staff resources, noting that there is often a need to hire dedicated compliance staff to oversee the conversion to, and running of, the new system. Another commenter felt that too much time, attention, and resources are directed toward regulatory compliance instead of providing credit and financial services to the community. This commenter suggested tailoring changes to make BSA compliance more commensurate with the risk profile of institutions of all sizes. Another commenter, a trade association, suggested that law enforcement and regulators are shifting their responsibilities associated with BSA, AML, and U.S. Housing and Urban Development Department data collection onto bank staff.

Reducing the frequency of examinations for smaller, non-complex banks

The agencies are required under 12 USC 1818(s)(2) to include reviews of BSA compliance programs in their examinations of IDIs. Such reviews are performed during statutorily required on-site examinations of IDIs, generally on a 12- to 18- month cycle.[84] Several commenters addressed the possibility of extending the examination cycle from 12 to 18 months for well-rated, smaller, non-complex banks. While this issue is not specific to BSA, several comments did highlight the BSA examination frequency when discussing examinations in general.

Additional issues

Some commenters suggested additional changes to SAR and CTR requirements. For the SAR requirement, a few comments suggested changing the review period for reporting ongoing suspicious activity from 90 days to 180 days. Other commenters suggested the possibility of eliminating a SAR requirement for certain activities, such as structuring transactions to avoid CTR filings. Two comments state that certain courts have misinterpreted the SAR safe harbor to require disclosures be made in ''good faith.'' The commenters believe that failure by the agencies to clarify that a good faith standard is not required to qualify for the SAR safe harbor could increase uncertainty by banks to proactively file SARs. For CTRs, several commenters offered alternatives to filing a CTR on individual transactions. Three commenters suggested an aggregate filing and one other suggested bulk data downloads.

Some commenters discussed inconsistent approaches in BSA examinations. Although examiners follow the FFIEC BSA/AML Examination Manual,[85] commenters suggested a need for standard application of procedures.

A few comments addressed customer due diligence requirements. One commenter addressed the potential burden associated with a notice of proposed rulemaking issued by FinCEN that would require banks to obtain beneficial ownership information for legal entity customers. Two other commenters stated that customer due diligence requirements are becoming overly burdensome and noted that they feel like investigators instead of bankers.

[80] 31 U.S.C. 5318(g); 31 CFR 1010.320.

[81] 12 CFR 21.11, 12 CFR 163.180(d), 12 CFR 208.62, 12 CFR 353, and 12 CFR 390.355.

[82] See FinCEN regulation at 31 CFR 1010.310.

[83] See for example, Prepared Remarks of FinCEN Associate Director for Enforcement, Thomas Ott, delivered at the National Title 31 Suspicious Activity & Risk Assessment Conference and Expo, August 17, 2016. *www.fincen.gov/news/speeches/prepared-remarks-fincen-associate-director-enforcement-thomas-ott-delivered-national.* See also SAR statistics contained in FinCEN's SAR Technical Bulletins at *www.fincen.gov/news-room/sar-technical-bulletins.*

[84] See 12 U.S.C. 1820(d).

[85] FFIEC BSA/AML Examination Manual.

Agencies' Response

The comments regarding the CTR threshold cannot be addressed through the EGRPRA process because changing this threshold would require an amendment to FinCEN's regulation at 31 CFR 1010.310. Similarly, an increase in the SAR threshold would require a change to FinCEN's regulation at 31 CFR 1010.320 as well as to the agencies' regulations.

With regard to the costs and burdens of BSA compliance, the high cost of software and the use of automated monitoring systems, the agencies expect banks to have effective BSA programs commensurate with their money laundering and terrorist financing risks. Accordingly, the sophistication of monitoring systems should be dictated by the bank's risk profile, with particular emphasis on the composition of higher-risk products, services, customers, entities, and geographies.

While existing regulations do not require banks to use automated systems, many U.S. banks use them to comply with the BSA due to their increased efficiencies, effectiveness, and the resulting human resource benefits and economies of scale. Banks that engage in lower-volume and lower-risk activities with low risk customers within the institution's geographic footprint are not expected to have automated systems but must have an effective BSA compliance program.

As discussed more fully above in section D.1., the agencies have acted to reduce the examination burden for smaller institutions. On February 29, 2016, the agencies issued an interim final rule that raised the asset threshold by which well-capitalized and well-managed IDIs are eligible for an expanded 18-month examination cycle. Specifically, the interim final rule raised the total asset threshold for eligible IDIs from less than $500 million to less than $1 billion. The agencies published the interim final rule as final and with no changes on December 16, 2016,[86] which means that IDIs that qualify for less frequent safety-and-soundness examinations also will be eligible for less frequent reviews of BSA program compliance.

The 90-day supplemental time to report continuing suspicious activity is set forth in FinCEN guidance and not in a regulation. FinCEN's guidance states that banks may continue to report an ongoing suspicious activity by filing a report with FinCEN at least every 90 calendar days. Subsequent guidance permits banks with SAR requirements to file SARs for continuing activity after a 90-day review with the filing deadline 120 calendar days after the date of the previously related SAR filing.[87] With respect to the comments on the SAR safe harbor, FinCEN notes in their response letter attached as appendix 5 that they provided language to Congress to amend the current safe harbor provisions. If enacted, FinCEN states in its response that it will work expeditiously to amend related implementing regulations.

The agencies also support promoting efforts to increase consistency in the application of examination procedures across the agencies through enhanced examiner training. The FFIEC BSA/AML Working Group meets regularly to share information among its members about various BSA/AML supervisory and policy matters, including significant issues, emerging concerns, member initiatives, and projects. In accordance with the charter of the BSA/AML Working Group, members strive to coordinate interagency efforts as appropriate to ensure consistent approaches across the different agencies charged with responsibilities for BSA/AML supervision, training, guidance, and policy. In addition, the FFIEC annually holds a BSA/AML Workshop and an Advanced BSA Specialists Conference for all FFIEC examiners to promote consistency in the examination process and highlight emerging trends and practices.

The agencies note that in May 2016, FinCEN issued final rules under the BSA to clarify and strengthen customer due diligence requirements for banks, credit unions, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities.[88] The rules contain explicit customer due diligence requirements and include a new requirement to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions. Any changes to these due diligence requirements would need to be made by FinCEN together with the agencies.

E. Other Agency Initiatives to Update Rules and Reduce Burden

During the EGRPRA process, the agencies jointly and individually undertook efforts to reduce regulatory burden on institutions that they supervise and regulate. These initiatives took various forms ranging from regulatory changes, streamlining of supervisory processes, and revisions of agency handbooks. These efforts collectively contributed to EGRPRA's main purpose of identifying outdated or otherwise unnecessary regulatory requirements on financial institutions and eliminating unnecessary regulations to the extent appropriate.

1. Interagency Initiatives

A. Disclosure and Reporting of CRA-Related Agreements ("CRA Sunshine")

Background

Section 48 of the FDI Act imposes disclosure and reporting requirements on IDIs with respect to certain agreements related to the CRA.[89] Specifically, this section requires that each IDI or affiliate must file, at least annually, a report with the appropriate federal banking agency detailing agreements made with nongovernmental entities or persons (NGEPs) pursuant to or in connection with the fulfillment of the CRA. This section also requires each party to an agreement to make available the entire agreement to the public and to the appropriate federal banking agency. In addition, section 48 requires each NGEP to file an annual report disclosing the use of any funds received pursuant to each agreement with the appropriate federal banking agency or with the relevant institution, which then must promptly forward the report to the agency. The agencies' implementing regulations also require IDIs and their affiliates to file quarterly reports with the appropriate federal banking agency disclosing all agreements entered into during that quarter.[90]

EGRPRA Comments

The agencies received three written comments on the CRA Sunshine rule, one from an industry trade association and two from community organizations. In addition, one participant and one audience member commented on the CRA Sunshine rule during the EGRPRA outreach sessions. The commenters either recommended total repeal of the reporting requirement or streamlining of the reporting requirements, which commenters viewed as burdensome.

Specifically, two community organization commenters recommended the repeal of the CRA Sunshine statute. Both organizations urged the agencies to use the EGRPRA process as an opportunity to acknowledge that the law imposes an unnecessary regulatory

[86] 81 FR 90949 (December 16, 2016).

[87] Refer to FAQs Regarding the FinCEN Suspicious Activity Report, Question #16.

[88] 81 FR 29398 (May 11, 2016).

[89] 12 U.S.C. 1831y. This section was added by section 711 of the Gramm-Leach-Bliley Act.

[90] The agencies' CRA Sunshine rules are set forth at 12 CFR parts 35, 207, and 346.

burden on banks and community organizations.

One community organization asserted that the provision was designed to discourage business partnerships between banks and community organizations. Another commenter similarly asserted that the disclosure, monitoring, and reporting requirements are draconian and intended to punish organizations for working on reinvestment matters.

Three community organizations and one industry trade association criticized the paperwork burden associated with the quarterly disclosure and annual reporting of CRA agreements. The industry trade organization commenter stopped short of calling for a complete repeal of the CRA Sunshine statute. Instead, this commenter recommended that the agencies eliminate the quarterly reporting requirement and limit disclosures to the annual reporting requirement. The commenter highlighted the burden associated with creating and providing both quarterly and annual reports; noting that the dual requirements are unnecessary, redundant, and time consuming for both the depository institution and the agencies' staff who must review the reports.

Agencies' Response

The agencies agree with the commenters that the quarterly and annual reporting of CRA-related agreements and the actions taken pursuant to those agreements are unduly burdensome on both financial institutions and the NGEPs that are parties to the agreements. Therefore, the agencies are considering whether to discontinue the quarterly reporting requirement, as quarterly reporting is not statutorily required.

B. Loans in Areas Having Special Flood Hazards

Background

Pursuant to the National Flood Insurance Act of 1968 [91] and the Flood Disaster Protection Act of 1973,[92] the agencies' flood insurance regulations [93] provide that a regulated lending institution (lender) may not make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area (SFHA) in which flood insurance is available under the National Flood Insurance Program (NFIP), unless the building or mobile home and any personal property securing the loan is covered by appropriate flood insurance for the term of the loan. The statute and regulations also require lenders, or loan servicers acting on the lenders' behalf, to force place flood insurance if they determine at any time during the life of a covered loan that the secured property is not adequately insured. Furthermore, lenders are required to provide notice to borrowers and servicers of this flood insurance requirement as well as of the availability of private flood insurance in addition to the NFIP coverage. The agencies amended their rules to implement the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) [94] and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) [95] with respect to the escrow of flood insurance premiums, the force placement requirements, and an exemption to the mandatory purchase requirement for detached structures.[96] The agencies also recently proposed amendments to implement the Biggert-Waters Act's provisions on private flood insurance.[97]

The agencies received 13 comments from banking industry trade associations and regulated institutions on the agencies' flood insurance rules. Several commenters asked that the agencies provide more guidance to the industry on flood insurance requirements, particularly with respect to renewal notices for force-placed insurance policies, the required amount of flood insurance, and flood insurance requirements for tenant-owned buildings and detached structures. One commenter specifically requested that the agencies update their Interagency Flood Q&As [98] in light of recent statutory amendments to the flood insurance laws by the Biggert-Waters Act and HFIAA.[99]

Agencies' Response

The agencies agree with these EGRPRA commenters that additional agency guidance on flood insurance requirements would be helpful to the banking industry and that the Interagency Flood Q&As should be updated to address recent amendments to the flood insurance statutes. In fact, the agencies have begun work on revising the Interagency Flood Q&As to reflect the agencies' recently issued final rules implementing the Biggert-Waters Act and HFIAA requirements and to address other issues that have arisen since the last update in 2011. As part of this revision, the agencies also plan to address many of the flood insurance issues raised by EGRPRA commenters. The agencies note that in the past, the agencies have issued these Interagency Flood Q&As for notice and comment so that interested parties may provide input and request further clarification on the proposed Q&As.

C. Other Joint Agency Initiatives

The agencies also are taking action in a number of other areas where they received a more limited number of comments. These actions are described below.

Management Official Interlocks

In general, pursuant to the DIMIA,[100] agency regulations prohibit a management official of a depository institution or depository institution holding company from serving simultaneously as a management official of another depository organization if the organizations are not affiliated and both either are very large or are located in the same local area.[101]

The agencies received one comment letter regarding the DIMIA regulations, from a trade association. Among other things, the commenter suggested that the agencies update their regulations based on the asset thresholds in the major assets prohibition in 12 U.S.C. 3203. In general, this prohibition states that a management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such organizations) may not serve as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such organizations), regardless of the location of either organizations. The agencies agree with this comment and plan to propose amendments to their rules to update these thresholds. The agencies' DIMIA regulations specifically provide that the agencies will adjust the $2.5 billion and $1.5 billion thresholds ''as necessary'' based on inflation or market conditions, and the agencies have not adjusted these thresholds since the agencies implemented this provision in 1999. The agencies note that the current inflation adjusted thresholds would be $3.6 billion and $2.16 billion, respectively.

[91] Public Law 90–448, 82 Stat. 572 (1968).

[92] Public Law 93–234, 87 Stat. 975 (1973).

[93] 12 CFR part 22; 12 CFR 208.25 (Reg. H); 12 CFR 339.

[94] Public Law 112–141, 126 Stat. 916 (2012).

[95] Public Law 113–89, 128 Stat. 1020 (2014).

[96] 80 FR 43216 (July 21, 2015).

[97] 81 FR 78063 (November 7, 2016).

[98] 74 FR 35913 (July 21, 2009), as revised by 76 FR 64175 (October 1, 2011).

[99] These comments, as well as additional comments on the agencies' flood insurance rules, are summarized in detail in section F of the report.

[100] 12 U.S.C. 3201 et seq.

[101] 12 CFR part 26; 12 CFR part 212; 12 CFR part 238, subpart J; 12 CFR part 348.

Limits on Extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirements (Regulation O)

The Board's Regulation O [102] implements sections 22(g) and 22(h) of the Federal Reserve Act, which places restrictions on extensions of credit made by a member bank to an executive officer, director, principal shareholder, of the member bank, of any company of which the member bank is a subsidiary, and of any other subsidiary of that company. Federal law also applies these restrictions to state nonmember banks, FSAs, and state savings associations. OCC and FDIC regulations enforce these statutory and regulatory restrictions with respect to national banks and FSAs, and to state nonmember banks and state savings associations, respectively.[103] Among other comments, a trade association suggested that the agencies create a chart that summarizes the rules and limits of Regulation O, as added guidance for the industry. The agencies believe that such a chart would be helpful to the industry and are working to provide a chart or similar guide either in an interagency issuance or a publication posted on their respective websites on the statutorily required rules and limits on extensions of credit made by an IDI to an executive officer, director, or principal shareholder of that IDI, its holding company, or its subsidiaries.

Cybersecurity and Information Technology Coordination

The agencies coordinate regulatory efforts on cybersecurity and information technology risks so as to ensure consistency in guidance and expectations of our institutions. For example, over the past two years the agencies published the FFIEC Cybersecurity Assessment Tool to assist institutions in identifying their risks and assessing their cybersecurity preparedness and have issued joint statements notifying institutions of matters such as risks associated with malware-based cyberattacks, distributed denials of service, and preparedness alerts to institutions. The agencies also issued revisions to the *FFIEC Information Technology Examination* handbook and provided webinars, outreach, and other resources to help institutions address cybersecurity threats and other IT risks.

[102] 12 CFR part 215.

[103] See 12 CFR part 31, 12 CFR 337.3, and 12 CFR 390.338.

2. Board Initiatives

During the EGRPRA review period, the Board has undertaken a number of initiatives to reduce unnecessary regulatory burden on the financial organizations it regulates and supervises. Such initiatives included revisions of various aspects of the Board's supervisory, regulatory, monetary policy, payments, and consumer protection rules, procedures, and guidance. In connection with its regulations and supervisory processes, the Board will continue to identify appropriate regulatory and supervisory revisions to reduce unnecessary burden while ensuring the safety and soundness of institutions, protecting the integrity of the financial payment systems, and safeguarding customer protections.

Initiatives Related to Supervision

A. Small BHC/SLHC Policy Statement

Background

On February 3, 2015, the Board invited comment on a proposed rule to expand the applicability of its Small Bank Holding Company Policy Statement (policy statement) and also apply it to certain savings and loan holding companies. Specifically, the proposed rule would have allowed bank holding companies and savings and loan holding companies with less than $1 billion in total consolidated assets to qualify under the policy statement, provided the holding companies also comply with certain qualitative requirements. At the time of the proposal, only bank holding companies with less than $500 million in total consolidated assets that met the qualitative requirements could qualify under the policy statement.

The Board issued the policy statement in 1980 to facilitate the maintenance of local ownership of small community banks in a manner consistent with bank safety and soundness. The Board has generally discouraged the use of debt by bank holding companies to finance the acquisition of banks or other companies because high levels of debt can impair the ability of the holding company to serve as a source of strength to its subsidiary banks. The Board has recognized, however, that localized small bank holding companies typically have less access to equity financing than larger bank holding companies and that the transfer of ownership of small banks often requires the use of acquisition debt. Accordingly, the Board adopted the policy statement to permit the formation and expansion of small bank holding companies with debt levels that are higher than typically permitted for larger bank holding companies. The policy statement contains several conditions and restrictions designed to ensure that small bank holding companies that operate with the higher levels of debt permitted by the policy statement do not present an undue risk to the safety and soundness of their subsidiary banks.

EGRPRA Comments

The Board received 11 comments on the proposed rule. Comments were submitted by financial trade associations, individuals associated with financial institutions, and a law firm that represents bank holding companies and savings and loan holding companies. While each commenter expressed general support for the proposed rule, some commenters recommended revisions to the proposed rule. For instance, one commenter expressed support for raising the asset threshold higher than $1 billion. Another commenter expressed support for the nonbanking and off-balance sheet activity requirements but suggested that the Board consider rescinding or revising the requirement relating to outstanding debt or equity securities registered with the Securities and Exchange Commission.

Board response

The Board approved a final rule in April 2015 raising the asset threshold of the Board's Small Bank Holding Company Policy Statement from less than $500 million to less than $1 billion and expanding its application to savings and loan holding companies. As a result, 89 percent of all bank holding companies and 81 percent of all savings and loan holding companies were covered under the scope of the policy statement. The policy statement reduces regulatory burden by excluding these small organizations from certain consolidated capital requirements. It also reduces the reporting burden associated with capital requirements by eliminating the more complex quarterly consolidated financial reporting requirements and replacing them with semiannual parent-only financial statements. As of issuance of the final rule, the policy statement covered approximately 414 additional bank holding companies and 197 saving and loan holding companies. In addition, raising the asset threshold allowed more bank holding companies to take advantage of expedited applications processing procedures.

B. Collection of Checks and Availability of Funds (Regulation CC)

Background

The Board received numerous comments related to the regulations governing collection of checks and availability of funds. Regulation CC was promulgated to implement the Expedited Funds Availability Act (EFAA).[104] The EFAA requires banks to (1) make funds deposited in transaction accounts available to their customers within certain time frames, (2) pay interest on interest-bearing transaction accounts not later than the day the bank receives credit, and (3) disclose their funds-availability policies to their customers.[105]

EGRPRA Comments

Many commenters suggested that the Board allow extended hold times for checks, in part, due to check fraud concerns. Several other commenters argued that the Board should modernize its hold periods, for example, by reducing the maximum hold period for nonproprietary ATM deposits and reducing the reasonable hold extension period for non-''on us'' checks to two business days. Many commenters suggested that Regulation CC should be amended to account for changes in technology such as remote deposit capture and mobile deposits. In addition, a few commenters argued that the concept of nonlocal checks is outdated and should be removed from Regulation CC.

Board response

The Board and the CFPB have joint rulemaking authority over subpart B of Regulation CC pertaining to funds-availability and disclosure provisions of the EFAA. The Board and CFPB will take the comments received relating to subpart B into account when making amendments in the future. In particular, the Board expects that provisions that are outdated and no longer applicable will be updated or removed accordingly.

In response to the comments received on the remaining subparts of Regulation CC, the Board will take these into account when considering future amendments to these provisions. Specifically, the Board has proposed to amend Regulation CC to reflect today's virtually all-electronic environment by amending check collection and return rules to create a regulatory framework for the collection and return of electronic checks. These proposed changes include defining the terms ''electronic check'' or ''electronic check return.'' The Board has received many comments in support of these newly defined terms as well as the proposal to apply existing check collection and return rules to electronic checks. Reflecting broad input by the industry, the Board believes its proposed changes reflect the modern environment and will encourage the remaining banks using paper to send and receive checks electronically instead.

C. Board Regulation II (Debit Card Interchange Fees and Routing)

Background

The Board received several comments from banks, retailers, community organizations, and others concerning Regulation II.[106] The majority of these comments concerned provisions in the regulation that cap the interchange fee that a debit card issuer with over $10 billion in consolidated assets may either charge or receive from a merchant for an electronic debit transaction.

Regulation II implements section 920 of the Electronic Fund Transfer Act (EFTA), which was added by the Dodd-Frank Act. Regulation II sets forth standards for reasonable and proportional interchange transaction fees (interchange fees) for electronic debit transactions, standards for receiving a fraud-prevention adjustment to interchange fees, exemptions from the interchange fee limitations, prohibitions on evasion and circumvention of the interchange fee limitations, and prohibitions on payment card network exclusivity arrangements and routing restrictions for debit card transactions. Specifically, Regulation II establishes a cap on the base level interchange fee that an issuer with consolidated assets of $10 billion or more may either charge or receive from a merchant for an electronic debit transaction. The regulation allows for a fraud-prevention adjustment to the cap on an issuer's debit card interchange fee if the issuer develops and implements policies and procedures reasonably designed to achieve the fraud-prevention standard set out in the regulation. Certain small debit card issuers, government-administered payment programs, and reloadable general-use prepaid cards are exempt from the interchange fee limitations. Regulation II also prohibits all issuers and networks from restricting the number of networks over which debit transactions may be processed to less than two unaffiliated networks and from inhibiting a merchant's ability to direct the routing of a debit transaction for processing over any payment card network that may process such transactions.

EGRPRA Comments

Interchange fee cap

Several commenters suggested that the cap on interchange fees has been effective in introducing transparency and competition in the debit card market. The commenters suggested that the fee cap has allowed merchants to accurately assess the fees they are charged for debit card transactions and pass any savings they receive to consumers. The commenters asserted that consumers have reaped benefits from these measures, particularly in industries with low profit margins. In these industries, the commenters said, companies have a greater economic incentive to pass cost savings to consumers. Some of these commenters also noted that the majority of banks are exempt from the cap on interchange fees, and thus, may continue to collect fees above the cap set forth in Regulation II.

Some commenters discussed whether the cap on interchange fees should be lowered or removed. Several commenters representing retail trade organizations suggested that, while merchants and consumers have realized some savings, the Board's current cap level offers issuers high profit potential, and as a result, has become a de facto floor. Some of these commenters suggested that the cost for accepting debit card transactions has continued to decline for issuers and, therefore, recommended a reduction in the cap. Some commenters also argued that the cap on interchange fees has resulted in a net-negative effect for consumers. Most of these commenters asserted that retailers do not have an economic incentive to pass their cost savings from lower interchange fees to consumers. Furthermore, some commenters contended that the cap has increased the cost of banking, as issuers have sought to offset losses in interchange fees by increasing the prices they charge consumers for banking services. Several commenters suggested that this outcome has increased the number of unbanked and underbanked individuals. For these and other reasons, several commenters argued that Congress should pass legislation that removes the cap on interchange fees under Regulation II.

Board response

In late 2016, the Board published a report containing summary information on costs incurred by issuers for 2015.

[104] Regulation CC, 12 CFR part 229.

[105] 12 U.S.C. 4001 et seq.

[106] 12 CFR 235.

This data as well as any other industry developments, will inform any future consideration by the Board as to whether changes to the interchange fee standard are appropriate.

Exemption to the cap on interchange fees for prepaid cards

The Board received several comments concerning the exemption to the cap on interchange fees for eligible prepaid cards. Commenters noted that banks subject to the cap, in an effort to conform their prepaid card products to the exemption, have eliminated features in the prepaid cards they offer consumers, including access to online bill payments. Several commenters argued that this outcome has impeded the functionality of prepaid fees offered by large banks, and as a result, has negatively impacted consumers with limited access to basic banking services.

As a solution, several commenters suggested that the Board redefine prepaid cards for purposes of the exemption under Regulation II, and remove certain criteria that impede the functionality of prepaid cards. They argued that a revision would be consistent with the Board's policy concerns relating to the exemption, since many of the prohibited features relating to the functionality of prepaid cards do not generate interchange fees, and therefore, would not allow banks to evade the cap under Regulation II. In addition, several commenters also suggested that the Board consider using the definition of ''prepaid accounts'' in the CFPB's proposed rule on prepaid accounts.

Board response

Under Regulation II, a prepaid card that provides access to the funds underlying the card through check, Automated Clearing House (ACH), wire transfer or other method (except when all remaining funds are provided to the cardholder in a single transaction) is not eligible for the exemption because such a prepaid card would function nearly in the same manner as a debit card. As stated in the preamble to the final rule, prepaid cards that provide access to underlying funds through alternative payment methods would not meet the requirements of section 920(a)(7)(A)(ii)(II) of the EFTA.[107] That section provides that an exempt prepaid card may not be issued or approved for use to access or debit any account held by or for the benefit of the cardholder.

Fraud prevention adjustment to the interchange fee standard

A commenter representing a retail organization suggested that, in light of the migration by U.S. card issuers to chip-enabled card technology intended to reduce fraudulent transactions, the Board should revisit the appropriateness of the fraud-prevention adjustment to the interchange fee standard under Regulation II. The commenter suggested that maintaining the fraud-prevention adjustment once chip-enabled cards have been widely adopted would allow issuers to charge interchange fees in excess of the reasonable costs they incur for electronic debit transactions.

Board response

In late 2016, the Board published a report containing summary information on fraud-prevention costs for 2015. This data, as well as any other industry developments will inform any future consideration by the Board as to whether changes to the fraud-prevention standard are appropriate.

Limitations on payment card restrictions

One commenter stated that Regulation II goes beyond the statutory requirement under section 920(b)(1)(A) of the EFTA. That section provides that an issuer shall not restrict the number of payment card networks on which an electronic debit transaction may be processed to fewer than two unaffiliated networks. The Board interpreted that section to require issuers to ensure that the debit cards they issue are enabled on at least two unaffiliated networks.[108] The commenter argued that the statutory provision does not require the Board to impose such an affirmative obligation on the issuer. The commenter suggested that the requirement imposes an economic burden on issuers, particularly smaller banks, and makes it more difficult for issuers and payment card networks to deploy innovative technologies or otherwise improve their services. The Board also received several comments in support of its interpretation. The commenters suggested that requiring at least two unaffiliated networks on each debit card increases competition among payment card network providers by allowing competitors to invest in technologies that increase the efficiency of transactions; they also suggested that it allows merchants to choose the most cost-effective route for processing a debit transaction.

Board response

The Board addressed this concern in the preamble to the final rule. Some commenters had argued that the statute does not mandate a minimum number of payment card networks to be enabled on a debit card as long as an issuer or payment card network does not affirmatively create any impediments to the addition of unaffiliated payment card networks on a debit card. The Board stated that, by its terms, the statute's prohibition on exclusivity arrangements is not limited to those that are mandated or otherwise required by a payment card network. The Board stated that individual issuer decisions to limit the number of payment card networks enabled on a debit card to a single network or affiliated networks are also prohibited as a ''direct'' restriction on the number of such networks in violation of the statute.[109] The Board stated that to conclude otherwise would enable an issuer to eliminate merchant routing choice for electronic debit transactions with respect to its cards, contrary to the overall purpose of section 920(b) of the EFTA.[110]

D. Other initiatives

Initiatives related to the safety and soundness supervisory process

The Federal Reserve has developed various technological tools for examiners to improve the efficiency of both off-site and on-site supervisory activities, while ensuring the quality of supervision is not compromised. For instance, the Federal Reserve has automated various parts of the community bank examination process, including a set of tools used among all Reserve Banks to assist in the pre-examination planning and scoping. Central to this effort, the Federal Reserve uses forward-looking risk analytics and Call Report data to identify high- and low-risk community banks, allowing the Federal Reserve to focus its supervisory response on the areas of highest risk and reduce the regulatory burden on low-risk community banks. Additionally, the Board issued SR letter 16–8, ''Off-site Review of Loan Files,'' announcing the Federal Reserve's off-site loan review program to state member banks and U.S. branches and agencies of foreign banking organizations with less than $50 billion in total assets. Under the off-site loan review program, covered institutions have the option to have Federal Reserve examiners review loan files off site during full-scope or target

[107] 76 FR 43394, 43438 (July 20, 2011).

[108] See paragraphs 7(a)–1 and 7(a)–5 of the commentary to Regulation II.

[109] 76 FR 43394, 43451 (July 20, 2011).

[110] Id.

examinations if they maintain electronic loan records and have invested in technologies that would allow Federal Reserve examiners to do so.

The Board has issued rules and guidance, and made program changes to clarify and tailor expectations surrounding certain aspects of the safety-and-soundness supervisory process. For example, the Board:

- Issued SR letter 16–4, ''Relying on the Work of the Regulators of the Subsidiary Insured Depository Institution(s) of Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of Less than $50 Billion,'' to reinforce and formalize the Federal Reserve's existing practice of relying on the work of IDI regulators when supervising consolidated holding companies with assets of less than $50 billion.
- Issued SR letter 16–11, ''Supervisory Guidance for Assessing Risk Management at Supervised Institutions with Total Consolidated Assets Less than $50 Billion,'' which sets forth an update to the Federal Reserve's supervisory guidance for assessing risk management at supervised institutions with less than $50 billion in total consolidated assets, and provides clarification on and distinguishes supervisory expectations for the roles and responsibilities of the board of directors and senior management for an institution's risk management.
- Revised the rule implementing the Dodd-Frank Act-required company-run stress testing for bank holding companies with total consolidated assets of more than $10 billion but less than $50 billion and savings and loan holding companies with more than $10 billion in total consolidated assets.[111] The changes to the Board's rule provide additional flexibility with respect to required assumptions that these companies must include in their company-run tests and extend the amount of time that savings and loan holding companies have to perform and report test results. The Board eliminated its requirement that these covered companies use fixed assumptions regarding dividend payments and other capital actions over the planning horizon. The change in the rule allows these covered companies to incorporate their own capital action assumptions into their Dodd-Frank Act-required company-run stress tests. Further, the Board delayed the application of the company-run stress test requirements to savings and loan holding companies until January 1, 2017.
- Published for public comment a proposed rule to modify its capital plan and stress testing rules for large and noncomplex firms (e.g., bank holding companies and U.S. intermediate holding companies with total consolidated assets between $50 billion and $250 billion, on-balance sheet foreign exposure of less than $10 billion, and total consolidated nonbank assets of less than $75 billion). Under the proposal, large and noncomplex firms would no longer be subject to the qualitative assessment of the Comprehensive Capital Analysis and Review (CCAR).[112] The proposal would reinforce the Board's less stringent expectations for these less systemic firms, which are generally engaged in traditional banking activities.[113] The proposed rule would also reduce certain reporting requirements for large and noncomplex firms. Under the proposal, large and noncomplex firms would continue to be subject to the quantitative requirements of CCAR, as well as normal supervision by the Federal Reserve regarding their capital planning. The proposed rule would take effect for the 2017 CCAR.
- Collaborated with the FDIC, and the state banking agencies (coordinated through the Conference of State Bank Supervisors (CSBS)) to develop an information technology (IT) risk examination program (referred to as InTREx). In working together, the agencies are promoting the common goals of enhancing the identification and assessment of technology risks in financial institutions and ensuring these risks are properly addressed by management. This examination program provides supervisory staff with risk-focused and efficient examination procedures for conducting IT reviews and assessing IT and cybersecurity risks at supervised institutions. Further, under the InTREx program, comprehensive IT examinations are conducted at institutions that present the highest IT risks and more targeted IT examinations are conducted at institutions with lower IT risks. The InTREx program applies to state member banks with less than $50 billion in total assets and foreign banking organizations' U.S. branches and agencies with less than $50 billion in assets. This program also applies to certain bank holding companies and savings and loan holding companies with less than $50 billion in total consolidated assets.

The Board periodically reviews its existing supervisory guidance to assess whether the guidance is still relevant and effective. We completed a policy review of the supervision programs for community and regional banking organizations to make sure that these programs and related supervisory guidance are appropriately aligned with current banking practices and risks. The project entailed an assessment of all existing supervisory guidance that applies to community and regional banks to determine whether the guidance is still appropriate. As a result of this review, SR letter 16–9, ''Inactive Supervisory Guidance,'' was released to announce the elimination of 78 guidance letters that are no longer relevant.

Initiatives related to consumer compliance

The Board has taken several actions aimed at providing regulatory relief for its supervised financial institutions with regard to consumer compliance, which are discussed below.

The Board adopted a new consumer compliance examination framework for community banks in January 2014.[114] While we have traditionally applied a risk-focused approach to consumer compliance examinations, the new program more explicitly bases examination intensity on the individual community bank's risk profile, weighed against the effectiveness of the bank's compliance controls. In addition, we revised our consumer compliance

[111] 80 FR 75419 (December 2, 2015).

[112] CCAR evaluates the capital planning processes and capital adequacy of bank holding companies with $50 billion or more in total consolidated assets. In the current CCAR process, the Federal Reserve conducts a qualitative assessment of the strength of each firm's capital planning process in addition to a quantitative assessment of each firm's capital adequacy based on hypothetical scenarios of severe economic and financial market stress.

[113] See Board of Governors of the Federal Reserve System, Division of Banking Supervision and Regulation, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms,'' SR letter 15–18 (December 18, 2015), *www.federalreserve.gov/bankinforeg/srletters/sr1518.htm* (SR letter 15–18); Board of Governors of the Federal Reserve System, Division of Banking Supervision and Regulation, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms,'' SR letter 15–19 (December 18, 2015), *www.federalreserve.gov/bankinforeg/srletters/sr1519.htm* (SR letter 15–19).

[114] See the Board's Consumer Affairs (CA) letter 13–19 (November 18, 2013), ''Community Bank Risk-Focused Consumer Compliance Supervision Program'' *www.federalreserve.gov/bankinforeg/caletters/caltr1319.htm* and CA letter 13–20 (November 18, 2013), ''Consumer Compliance and Community Reinvestment Act (CRA) Examination Frequency Policy'' *www.federalreserve.gov/bankinforeg/caletters/caltr1320.htm.*

examination frequency policy at the same time to lengthen the time frame between on-site consumer compliance and CRA examinations for many community banks with less than $1 billion in total consolidated assets. These actions have increased the efficiency of our supervision and reduce regulatory burden on many community banks.

Initiatives related to the processing of applications

In 2010, the Board introduced an electronic applications filing system, ''E-Apps,'' an Internet-based system for financial institutions to submit regulatory filings. The introduction of E-Apps allowed firms and their representatives to file applications online, eliminating the time and expense of printing, copying, and mailing the documents. E-Apps is designed to ensure the confidentiality of the data and the identity of individual filers. This electronic tool is provided free of any fees to supervised institutions.

In 2014, the Board introduced a semiannual public report on banking applications activity regarding the applications filed by banking organizations and reviewed by the Board as of the most recent reporting period ending on June 30 and December 31 of each calendar year. The report aims to increase transparency about applications filings, while providing useful information to bankers to help them gain efficiency.

Communications and outreach to the industry

The Board continues to make special efforts to explain requirements that are applicable to community banks. The Board provides a statement at the top of each Supervision and Regulation letter and each Consumer Affairs letter that clearly indicates which banking entity types are subject to the guidance. These letters are the primary means by which the Federal Reserve issues supervisory and consumer compliance guidance to bankers and examiners, and this additional clarity allows community bankers to focus efforts only on the supervisory policies that are applicable to their banks.

The Federal Reserve also developed several platforms to improve our communication with community bankers and to enhance our industry training efforts. For example, we have developed two programs —''Ask the Fed'' and ''Outlook Live''— as well as the publication of periodic newsletters and other communication tools such as *Community Banking Connections, Consumer Compliance Outlook,* and *FedLinks*. These platforms highlight information about new requirements and examiner expectations to address issues that community banks currently face and provide resources on key supervisory policies.

The Board's Subcommittee on Small Regional and Community Banking Organizations has been encouraging research on community banking issues to inform our understanding of the role of community banks in the U.S. economy and the effects that regulatory initiatives may have on these banks. This effort includes co-sponsorship of an annual community banking research and policy conference, ''Community Banking in the 21st Century,'' along with the Conference of State Bank Supervisors (CSBS). Research discussion topics at past conferences have included community bank formation, behavior, and performance; the effect of government policy on bank lending and risk taking; and the effect of government policy on community bank viability.

3. Office of the Comptroller of the Currency Initiatives

The OCC has a broad-based, historical perspective on bank regulation and supervision, especially with respect to community banks. With this perspective in mind, the OCC is committed to updating its regulations, removing unnecessary regulatory requirements, and reducing regulatory burden where consistent with statutory requirements and the safety and soundness of, and fair access to financial services and fair treatment of customers by, national banks and FSAs. The OCC has in the past conducted various reviews of its regulations to meet this commitment. Furthermore, the OCC is cognizant of this commitment when issuing new rules, amending existing regulations, and examining and supervising institutions.

In particular, the OCC understands that regulations often disproportionately affect community banks and savings associations because of their different business models and more limited resources. For these smaller institutions, a one-size-fits-all approach to supervision and regulation may not be appropriate. Therefore, where statutorily permitted, the OCC tries to tailor its regulations to accommodate a bank's size and complexity by providing alternative ways to satisfy regulatory requirements, using regulatory exemptions or transition periods, and explaining and organizing its rulemakings so that community banks and savings associations can better understand the rule's scope and application.

EGRPRA affords the OCC yet another opportunity to update its rules and reduce unnecessary regulatory burden, especially for community banks. In light of the EGRPRA mandate and in response to many of the EGRPRA comments received, the OCC has taken the following actions prior to the end of the EGRPRA review process.

A. Regulatory Amendments

The OCC has acted to reduce burden on national banks and FSAs, including community institutions, prior to issuing this report by issuing two final rules amending regulations that further the goals of EGRPRA and that address suggestions made by EGRPRA commenters. These rulemakings also include amendments that address a recent OCC internal review of its rules that identified outdated or unnecessary provisions in addition to those suggested by EGRPRA commenters. As described below, the OCC plans to propose additional amendments to address other EGRPRA comments. Furthermore, the OCC has reduced regulatory burden and updated its regulatory requirements by integrating many of its national bank and FSA rules.

OCC licensing final rule

In May 2015, the OCC published a final rule revising national bank and FSA licensing rules (OCC licensing final rule) that included a number of amendments directly responsive to comments the OCC received through the EGRPRA process.[115] This final rule also reduced burden by simplifying OCC licensing procedures and removing outdated or unnecessary provisions. Furthermore, this final rule integrated the FSA licensing rules with those rules for national banks, thereby eliminating a number of unnecessary former OTS rules applicable to FSAs.

Among other things, this final rule:

- Makes available expedited processing procedures for a number of transactions, such as certain reorganizations to become a subsidiary of a BHC, fiduciary applications from eligible FSAs, and certain *de novo* FSA charters;
- Replaces the application process with a more expedited notice process for certain FSA business combinations;
- Removes and simplifies the public notice requirement for certain transactions;

[115] 80 FR 28346 (May 18, 2015).

- Simplifies the application process for conversions from an FSA to a national bank;
- Removes the requirement that a majority of a *de novo* savings association's board of directors must be representative of the state in which the association is located;
- Removes the requirement that an FSA shareholder meeting must be held in the state in which the association has its principal place of business;
- Removes the requirement for staggered terms for certain directors of FSAs; and
- Simplifies FSA charter and bylaw requirements.

OCC EGRPRA final rule

The OCC recently issued a second rule based in part on comments received through the EGRPRA process (OCC EGRPRA final rule).[116] Among other things, this final rule responds to EGRPRA comments by: (1) Removing the requirement for FSAs to notify the OCC before establishing a transactional website; (2) providing for the electronic submission of securities-related filings; (3) removing the requirement that a national bank make a copy of its collective investment fund plan available for public inspection at its main office during all banking hours; and (4) adjusting for inflation the asset threshold for mini-funds (a type of collective investment fund) from $1 million to $1.5 million.

This final rule also made a number of other changes to OCC rules to reduce regulatory burden and update regulatory requirements that go beyond addressing comments received from the EGRPRA process. Among other things, this final rule

- Simplifies certain business combinations involving federal mutual savings associations;
- Exempts national banks from the prior approval, notification, and certification requirements for certain changes to permanent capital;
- Clarifies national bank director oath requirements;
- Permits a national bank to deposit securities required to be pledged by a state with the Federal Home Loan Bank of which the bank is a member, in addition to the appropriate Federal Reserve Bank;
- Removes unnecessary reporting, accounting, and management policy provisions for FSAs;
- With respect to fidelity bonds:
  —Removes the requirements that FSAs: (1) maintain fidelity bonds for directors who also do not serve as officers or employees; (2) maintain fidelity bond coverage for any agent who has exposure to associations assets, instead providing that the association consider any such exposure when determining its amount of fidelity bond coverage; and (3) annually review the association's bond coverage; and
  —Permits a committee of the board of directors of an FSA to assess fidelity bond coverage instead of the entire board of directors.
- With respect to securities recordkeeping and confirmations
  —Replaces the more detailed procedures for record maintenance and storage for FSAs with the less burdensome requirements applicable to national banks;
  —Permits national banks to use a third party to provide record storage or maintenance;
  —Eliminates the requirement that a national bank send a copy of a securities transaction confirmation to a customer when such confirmation is sent by a registered broker/dealer, provided that an appropriate written compensation agreement exists with the customer; and
  —Provides that an FSA that has previously determined compensation in a written agreement with a customer does not need to provide a remuneration statement for each securities transaction with that customer;
- With respect to securities offering disclosure rules
  —Provides FSAs with the additional communication and registration/prospectus exemptions under SEC rules currently available to national banks;
  —Removes the FSA mandatory escrow requirement;
  —Increases the threshold for the application of the periodic reporting requirement for FSAs from associations with securities that are held of record by 300 or more persons to associations with total assets exceeding $10,000,000 and a class of equity security held of record by 2,000 or more persons; and
  —Removes the requirement for FSAs to file Securities Sales Reports with the OCC.

These changes take effect on April 1, 2017.

Additional regulatory changes to address EGRPRA comments

The OCC plans to propose additional regulatory amendments in one or more future rulemakings, or to revise licensing guidance, to address other EGRPRA comments as follows:

- *Financial subsidiaries.* A trade association stated that the OCC should clarify how to convert a financial subsidiary to an operating subsidiary. The OCC agrees that this clarification would be helpful and plans to add procedures for this transaction by either amending 12 CFR 5.39 or by adding this clarification to the OCC's Licensing Manual.
- *Fiduciary activities.* The OCC plans to consider further changes to its fiduciary rules to reflect additional EGRPRA comments. First, one commenter requested that the OCC provide additional flexibility with respect to the retention of fiduciary records. The OCC's current rule, 12 CFR 9.8(b), requires a national bank to maintain fiduciary records for a minimum of three years. The OCC agrees that it would be useful to consider better aligning this requirement with state statutes of limitations. Second, this commenter requested that the OCC expand the list of acceptable collateral in 12 CFR 9.10, which requires a national bank to set aside collateral for any non-FDIC-insured funds it holds awaiting investment or distribution. The OCC agrees that this list could be expanded and plans to amend this provision to allow other assets as determined appropriate by the OCC.
- *Employment contracts.* One commenter requested that the OCC eliminate 12 CFR 163.39, which sets forth specific requirements for employment contracts between an FSA and its officers or other employees. Although the OCC finds merit in retaining this rule, the OCC does agree that the requirement that an FSA's board of directors approve all employment contracts between the FSA and its officers and employees is overly burdensome. Therefore, the OCC plans to remove the requirement for board approval of employment contracts with all employees, and limit the approval requirement only to contracts with senior executive officers.

One commenter, a nonprofit organization, requested that the OCC permit national banks to adopt a benefit corporation or mission-aligned status, which requires directors to address the

[116] 82 FR 8082 (January 23, 2017).

concerns of all stakeholders, not just shareholders. The OCC plans to review whether such an option for national banks and FSAs would be appropriate, and if so, whether a regulatory change would be necessary to allow this status.

Integration of national bank and FSA rules

As a result of title III of the Dodd-Frank Act,[117] the OCC is integrating rules for national banks and FSAs into a single set of rules, where possible. The key objectives of this integration process are to reduce regulatory duplication, promote fairness in supervision, eliminate unnecessary burden consistent with safety and soundness, and create efficiencies for both national banks and savings associations. These objectives are similar to those contained in the EGRPRA review.

To date, the OCC has completed the integration of many national bank and FSA rules.[118] In so doing, the OCC has updated provisions, eliminated numerous unnecessary regulatory requirements, and amended many rules to make them less burdensome to both national banks and FSAs. The OCC continues to review its rules and expect to issue additional integration proposals that would further modernize its rules and make them less burdensome to its regulated entities.

B. Legislative Proposals

The OCC has supported a number of legislative changes to reduce regulatory burden on financial institutions. First, the OCC advocated for an increase in asset size for the community bank examination cycle which, as indicated previously, President Obama signed into law as the FAST Act last year.[119]

Second, the OCC supports a community bank exemption to the Volcker rule. Specifically, in response to concerns raised by community institutions and issues that have arisen during its ongoing Volcker rule implementation efforts, the OCC drafted a legislative proposal to exempt from the Volcker rule banks with total consolidated assets of $10 billion or less. However, any community bank exception should reserve the OCC's authority to apply the Volcker rule to a community bank that conducts activities that would otherwise be covered by the rule if the OCC determines that the bank's activities are: (i) inconsistent with traditional banking activities; or (ii) due to their nature or volume, pose a risk to the safety and soundness of the bank. Such an exception would eliminate unnecessary burden for small banks while ensuring that the OCC is able to address the risks the Volcker rule sought to eliminate. Based on its analysis, the OCC estimates that this amendment could exempt more than 6,000 small banks, including small banks regulated by the OCC, from the requirement to comply with the regulations implementing the Volcker rule.

Third, the OCC has developed a proposal to provide FSAs with greater flexibility to expand their business model without changing their governance structure. Specifically, this proposal would authorize a basic set of powers that both FSAs and national banks can exercise, regardless of their charter. This would allow savings associations to adapt to changing economic and business environments and meet the needs of their communities without having to convert to a bank.

The OCC also supports four additional legislative changes recommended by EGRPRA commenters. First, one commenter recommended that Congress amend the shareholder requirement for subchapter S corporations, 26 U.S.C. 1361(b)(1). Subchapter S corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. Among other requirements, to be a subchapter S corporation, the entity may have no more than 100 shareholders. This commenter specifically requested that the number of allowable shareholders be increased from 100 to 200. The commenter noted that this change would better allow community banks to attract outside capital. The OCC supports this legislative amendment as it would provide additional flexibility to community banks.

Second, 12 U.S.C. 72 requires, among other things, that a majority of directors of a national bank must have resided in the state, territory, or District in which the bank is located, or within 100 miles of the bank, for at least one year immediately preceding their election and during their continuance in office. The Comptroller may waive this residency requirement. Two trade associations recommended that Congress update the ''representative'' requirement for directors of national banks because of the evolution of the market and the need for qualified directors. The OCC supports the removal of the residency requirement in section 72. Given advances in technology and their effect on both communication methods and banking in general, as well as the continued importance of identifying qualified directors, the OCC believes that there is no longer a need for an individual to reside within a close proximity to a bank to perform successfully as a director.

Third, 31 U.S.C. 5318(g)(3) provides a financial institution that files a SAR with a safe harbor from civil liability. However, as indicated by EGRPRA commenters and noted above, courts have disagreed with respect to whether a bank or bank official must have a ''good faith'' belief that a violation occurred before filing a SAR in order to qualify for the safe harbor. Commenters maintain that failure by the agencies to clarify that a good faith standard is not required to qualify for the SAR safe harbor could increase uncertainty and discourage banks from proactively filing SARs. The OCC was aware of this issue prior to the EGRPRA process and has actively supported and continues to support legislative proposals clarifying that a ''good faith belief'' that a violation occurred is not necessary to qualify for the SAR safe harbor.

Fourth, section 165(i)(2) of the Dodd-Frank Act requires certain financial companies, including national banks and FSAs, with more than $10 billion in total consolidated assets to conduct annual stress tests.[120] Two EGRPRA commenters requested that this stress testing threshold be increased. The OCC agrees with these commenters, and supports legislative efforts to increase this threshold from $10 billion to $50 billion. However, the OCC believes it is important to retain supervisory authority to require stress testing if warranted by a banking organization's risk profile or condition. Along with the Board and the FDIC, the OCC issued interagency stress testing guidance in 2012 applicable to banking organizations with more than $10 billion in total consolidated assets.[121]

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[117] Public Law 111–203, 124 Stat. 1376 (2010). Among other things Title III transferred to the OCC all functions of the former OTS relating to FSAs.

[118] See 78 FR 37944 (June 25, 2013) (lending limits); 78 FR 62018 (October 11, 2013) (capital); 79 FR 29393 (May 16, 2014) (interagency rules); 79 FR 54518 (September 11, 2014) (safety-and-soundness standards); 79 FR 64518 (October 30, 2014 (flood insurance); 80 FR 28346 (May 18, 2015) (OCC licensing final rule); and 82 FR 8082 (January 23, 2017) (municipal securities dealers, Securities Exchange Act disclosures, securities offering disclosures, and insider and affiliate transactions).

[119] See Testimony of Toney Bland, OCC Senior Deputy Comptroller for Midsize And Community Bank Supervision, before the U.S. Senate Committee on Banking, Housing and Urban Affairs, September 16, 2014, *https://occ.gov/news-issuances/congressional-testimony/2014/pub-test-2014-124-written.pdf*.

[120] 12 U.S.C. 5365(i)(2)(A).

[121] Supervisory Guidance on Stress Testing for Banking Organizations with More than $10 Billion

This guidance did not implement, and is separate from, the stress testing requirements imposed by the Dodd-Frank Act. The OCC would continue to rely on this guidance and believes that stress testing can be a useful tool to analyze the range of a banking organization's potential risk exposures and capital adequacy.

Section 165(i)(2) also requires covered financial companies to disclose their stress testing results. One EGRPRA commenter noted that this disclosure requirement is particularly problematic for smaller banks and recommended that it be eliminated. The OCC notes that increasing the stress testing threshold to $50 billion would exclude banking organizations under $50 billion in assets from all Dodd-Frank Act stress testing requirements, including the requirement to disclose their stress testing results. However, if the statutory threshold in section 165(i)(2) is not increased to $50 billion, the OCC would support a separate legislative change exempting banking organizations with total consolidated assets between $10 and $50 'billion from the disclosure requirement.

In addition to legislative amendments requested by EGRPRA commenters, the OCC supports the following additional statutory changes that would reduce unnecessary regulatory burden and update the banking laws.

- *Stock ownership requirement.* In general, 12 U.S.C. 72 requires every director of a national bank to own capital stock in the bank, or its holding company, in a par value amount of not less than $1000 or an equivalent interest as determined by the OCC. Any director who ceases to be the owner of the required shares must vacate his position. The OCC recommends that Congress repeal this stock ownership requirement. The amount of $1000 does not represent a meaningful ownership stake, but the requirement can sometimes be a compliance burden, especially because there is no statutory waiver for this requirement.
- *Waiver of publication of notice of shareholders meetings.* Section 214a of Title 12 of the United States Code (conversions, mergers, or consolidations resulting in a state bank), 12 U.S.C. 215 (consolidation of banks resulting in a national bank), and 12 U.S.C. 215a (merger of banks resulting in a national bank) contain different provisions for waiver of the publication of notice to shareholders of the shareholder meeting and internally conflicting provisions regarding when the publication may be waived. The OCC recommends that Congress amend these provisions so that they contain the same notification requirements, to eliminate the technical issues, and to make these notification requirements less burdensome.
- *Shareholder actions.* Various statutory provisions specify that shareholders of a national bank must approve a permissible action at a meeting of the shareholders. For example, 12 U.S.C. 21a requires that shareholders must vote on amendments to the bank's articles of association at a meeting, 12 U.S.C. 71 provides for the election of directors by shareholders at a meeting, and 12 U.S.C. 214a(a), 215(a), 215a(a) provide that shareholders must vote to approve a merger (or a conversion of a national bank to a state bank) at a duly called shareholder meeting. The OCC recommends that Congress amend these statutes to permit shareholders to take action by means other than at a meeting, such as by mail or email, as permitted by many state corporation laws (such as New York and Delaware) and by the Model Business Corporation Act.
- *Savings association branching in the District of Columbia.* Section 5(m)(1) of the HOLA, 12 U.S.C. 1464(m)(1), requires savings associations to obtain the OCC's prior written approval before establishing or moving any branch in the District of Columbia or moving its principal office in the District of Columbia. No such prior approval is required for establishing or moving a savings association branch in any other jurisdiction. The OCC recommends that Congress remove this prior approval requirement.
- *OCC jurisdiction over District of Columbia-chartered savings associations.* The OCC recommends that Congress amend 12 U.S.C. 1466a, and elsewhere, to eliminate the authority of the OCC for savings associations chartered by the District of Columbia or state savings associations doing business in the District of Columbia. This change would be equivalent to the amendments made by section 8 of the ''2004 District of Columbia Omnibus Authorization Act,'' which removed the OCC's jurisdiction over banks established under the Code of Law for the District of Columbia and thereby treating District of Columbia banks the same as state chartered banks.

in Total Consolidated Assets, 77 FR 29458 (May 17, 2012).

C. OCC Examination and Supervisory Process

In addition to regulatory changes, the OCC has incorporated into its examination process responses to comments received from bankers at EGRPRA and other outreach meetings. First, the OCC is further tailoring its Examination Request letter to remove redundant or unnecessary information national banks and FSAs are asked to provide to the OCC in the examination process.

Second, the OCC has directed its examiners to better plan examination work using on-site and off-site techniques while leveraging technology. These techniques offer more flexibility in determining which components of an examination can best be completed off site, unbundled as a separate smaller activity, or be included as part of a horizontal review. Many banks and savings associations now provide the majority of the information requested by the OCC electronically prior to their examination instead of in paper form. This approach allows bankers and the OCC to share information more securely and examiners to perform more analysis off site, lessening the disruption an examination may have on bank and savings association staff. The OCC has instructed its examiners to detail the specific techniques and practices that will be used in each examination activity in the individual bank supervisory strategies. Examiners must tailor the practices to the risk profile of the institution and OCC supervisory goals with a focus on minimizing the impact and disruption to bank staff.

Third, the OCC continues to stress the importance of effective communication and has set communication standards on supervisory products to ensure banks receive official communication of supervisory activities findings in a timely manner.

Fourth, the OCC is continuing to review its supervisory and examiner guidance to align it to current practices and risks and to eliminate unnecessary or outdated guidance. The OCC has eliminated approximately 125 outdated or duplicative OCC guidance documents and updated and/or revised approximately 25 OCC guidance documents since 2014.[122]

Furthermore, the OCC has published guidance to assist its regulated institutions, especially community banks, with new rules and policy, such as:

[122] See *https://occ.gov/news-issuances/bulletins/rescinded/index-rescinded.html* for a list of rescinded OCC guidance documents.

- *A Common Sense Approach to Community Banking*—This booklet presents the OCC's view on how a board of directors and management can implement a common sense approach to community banking. It shares fundamental banking best practices that the OCC has found to prove useful to boards of directors and management in successfully guiding their community banks through economic cycles and environmental changes. The booklet focuses on three long-standing, underlying concepts: (1) accurately identifying and appropriately monitoring and managing a community bank's risks; (2) plotting a shared vision and business plan for a community bank with sufficient capital support; and (3) understanding the OCC's supervisory process and how a community bank may extract helpful information from this supervisory process.[123]
- *The Director's Book: Role of Directors for National Banks and Federal Savings Associations*—This document provides an overview of the OCC, outlines the responsibilities and role of national bank and FSA directors and management, explains basic concepts and standards for safe and sound operation of national banks and FSAs, and delineates laws and regulations that apply to national banks and FSAs.[124]
- *Mutual FSAs: Characteristics and Supervisory Considerations (OCC Bulletin 2014–35)*—In response to a recommendation from the members of the Mutual Savings Association Advisory Committee (MSAAC),[125] the OCC issued guidance in July 2014 to highlight unique characteristics and enhance understanding of mutual institutions.[126] This guidance has clarified expectations for both OCC examiners and mutual FSAs in risk assessments and in corporate governance. Specifically, the guidance describes the considerations examiners factor into the OCC's risk-based supervision process as they examine mutual FSAs, describes the mutual governance structure and mutual members' rights, outlines traditional operations of mutual FSAs, and identifies important structural and operational considerations in assessing risks at mutual FSAs. In particular, the guidance highlights distinctions in the areas of capital adequacy and earnings that supervisors and others should consider when examining mutual FSAs.

In the area of regulatory capital, as indicated above in section I.D., the OCC has published a number of documents to assist banks in their capital planning efforts, such as OCC Bulletin 2012–16, ''Capital Planning: Guidance for Evaluating Capital Planning and Adequacy.'' [127] In order to assist community banks in particular, the OCC published a quick reference tool, *New Capital Rule Quick Reference Guide for Community Banks.*[128] This document is a high-level summary of the aspects of the new rule that are generally relevant for smaller, non-complex banks that are not subject to the market risk rule or the advanced approaches capital rule. Additionally, the OCC intends to publish substantial revisions to its capital handbook so that the recent OCC guidance publications and the recent revisions to the OCC's capital regulations will be set forth and described in one place.

In addition, to assist community banks with new rules and guidance, the OCC has added a ''Note for Community Banks'' box to all OCC bulletins that explains if and how the new guidance or rulemaking applies to them. This box provides community banks with the information they need at the beginning of the guidance document so they know whether to expend any time or resources on the guidance.

D. Electronic Submission of Reports and Applications

Several comments received during the EGRPRA review process requested that the OCC permit national banks and FSAs to submit forms and reports to the OCC electronically. The OCC agrees that electronic filings are more efficient and less costly for national banks and FSAs, are more efficient for the OCC to review, and provide a quicker response time for banks and savings associations. The OCC currently permits the electronic filing of many of its required forms and reports though *BankNet,* the OCC's secure website for communicating with and receiving information from national banks and FSAs. As indicated above, the OCC's EGRPRA final rule permits national banks and FSAs to now file various securities-related filings electronically through *BankNet.* Furthermore, the OCC has developed a web-based system for submitting and processing Licensing and Public Welfare Investment filings called the Central Application Tracking System (CATS). Beginning in January 2017, the OCC began a phased rollout of CATS to enable authorized national bank and FSA employees to draft, submit, and track filings, and allow OCC analysts to receive, process, and manage those filings.

E. Industry Outreach, Training, and Other Resources

The OCC conducts numerous industry outreach and training activities that are particularly helpful to community banks. These outreach events promote awareness and understanding of the OCC's mission, objectives, policies, and programs; educate bankers on legal and regulatory requirements and agency processes; and enable OCC staff to obtain feedback from the banking industry, as well as consumer and community groups, on the issues that are important to them. This outreach consists of live events, webinars, conference calls or other virtual events, and participation at banking associations and industry conferences. Presentation materials, transcripts, and recordings of past events are available through *BankNet.*

In fiscal year 2016, the OCC participated in or hosted nearly 800 outreach events globally. In particular, the OCC conducted 36 Community Bank Director Workshops on issues such as compliance risk, credit risk, risk governance, and operational risk in various locations across the country with approximately 1,000 attendees. The OCC also staffed information tables at 22 industry association events, reaching over 10,000 attendees, where bankers could speak directly with OCC staff to ask questions, obtain information, or provide feedback on OCC requirements and processes. In addition, the OCC hosted over 1,000 bankers from 35 state banking associations at its Washington, D.C. headquarters and held four ''Meet the Comptroller'' meetings with bankers reaching approximately 64 attendees where bank staff could directly interact with senior OCC staff and learn more about OCC initiatives. In addition to

[123] *www.occ.gov/publications/publications-by-type/other-publications-reports/common-sense.pdf.*

[124] *www.occ.gov/publications/publications-by-type/other-publications-reports/the-directors-book.pdf.*

[125] The OCC established the MSAAC to provide advice to the Comptroller about mutual FSAs and to assess the current condition of mutual FSAs, regulatory changes that may promote mutual FSA health and viability, and other issues affecting these institutions. The committee includes officers and directors of mutual FSAs of all types, sizes, operating strategies, and geographic areas, as well as from FSAs in a mutual holding company structure.

[126] *https://occ.gov/news-issuances/bulletins/2014/bulletin-2014-35.html* (July 22, 2014).

[127] OCC Bulletin 2012–16 (June 7, 2012) *www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-16.html.*

[128] *www.occ.gov/news-issuances/news-releases/2013/2013-110c.pdf.*

providing compliance guidance to community banks, all of these events enable the OCC to receive continual feedback on its rules, policies, and processes, and to adjust its rules, policies, and procedures as appropriate.

The OCC also provides support for community banks though its online *BankNet* portal, which includes a wealth of information, resources, and analytical tools for national banks and FSAs, especially community institutions, on federal banking laws and regulations, OCC supervision, and industry trends. *BankNet* also contains a question and answer forum designed to facilitate communication between OCC-regulated institutions and the OCC that provides direct access to Washington, DC, and OCC senior management for answers to general bank regulatory and supervisory questions. In addition, *BankNet* contains a ''Director Resource Center,'' which collects information on OCC supervision most pertinent to national bank and FSA directors, and includes a ''Directors Toolkit'' for further assistance in carrying out the responsibilities of a national bank or FSA director.

F. Other Initiatives

Collaboration guidance

As it continually looks for ways to reduce community bank regulatory burden, the OCC also is studying other less conventional approaches to help community banks thrive in the modern financial world. One approach involves collaboration between community banks and is the subject of a paper the OCC published on January 13, 2015, titled *An Opportunity for Community Banks: Working Together Collaboratively.*[129]

The principle behind this approach, which grew out of productive and ongoing discussions between the OCC and its community banks, is that by pooling resources community banks can manage regulatory requirements, trim costs, and serve customers who might otherwise lie beyond their reach. The OCC already has seen examples of successful collaboration, such as community banks forming an alliance to bid on larger loan projects and banks pooling resources to finance community development activities. There are many other opportunities of this nature that can increase efficiencies and save money, including collaborating on accounting, clerical support, data processing, employee benefit planning, and health insurance. Other examples of potential collaboration between community banks could include using a shared resource to assist in a variety of basic elements of required BSA programs such as training and the development of effective policies and procedures. Sharing BSA resources could reduce regulatory compliance costs through efficiencies gained under such arrangements and, at the same time, assist depository institutions in meeting the requirements of the BSA and effectively manage the risk that illicit financing poses to the broader U.S. financial system.

The OCC is committed to encouraging these collaboration efforts to the extent they are consistent with applicable law and safety and soundness.

Another approach the OCC uses to help community banks thrive in the modern financial world involves sharing best practices for managing risk that the OCC has observed through its supervisory work. Such best practices are the subject of a bulletin issued by the OCC on October 5, 2016, titled, *Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking.*[130] This guidance focuses particularly on risk-management practices for foreign correspondent bank accounts, and describes corporate governance best practices for banks' consideration when conducting their periodic evaluations of risk and making account retention or termination decisions relating to foreign correspondent accounts.

The principle behind this approach is that by sharing observations of different methods some institutions are using to effectively manage risk, other institutions, and particularly community banks may have a roadmap for shaping their own risk controls that increases efficiencies and saves money. This guidance is designed to provide such efficiencies by communicating best practices observed by the OCC to aid all OCC supervised banks in developing practices suitable for conducting risk reevaluations of their foreign correspondent accounts. The OCC is committed to continuing to provide helpful guidance going forward that will reduce unnecessary burdens while maintaining safe and sound banking practices.

Fintech

Technological advances, together with evolving consumer preferences, are rapidly reshaping the financial services industry. While these changes are challenging traditional bank models, innovation can help community banks scale operations efficiently to compete in the future marketplace. In 2015, the OCC launched its initiative focused on financial innovation to better understand emerging industry trends and to develop a framework to support responsible innovation in the federal banking system. The OCC's framework, announced in October 2016, is designed to make certain that institutions with federal charters, in particular community banks, have a regulatory framework that is receptive to responsible innovation and supervision that supports it. The OCC also established an Office of Innovation where community banks can have an open and candid dialogue outside of the supervision process on innovation and emerging developments in the industry. When fully operational in 2017, the Office of Innovation will provide value to community banks through outreach and technical assistance to help community banks work through innovation-related issues and understand regulatory concerns early. The Office of Innovation also will assist banks in explaining regulatory expectations to the fintech companies with whom they partner. In addition, the Office of Innovations will share success stories, lessons learned, and hold ''office hours'' where bankers and others in the industry can consult OCC experts directly.

4. Federal Deposit Insurance Corporation Initiatives

The FDIC recognizes the regulatory burden facing banks and of the importance of achieving safety and soundness and consumer protection interests without imposing undue burden on the industry. As the primary federal regulator of the majority of community banks, the FDIC is especially aware of the effect of the costs of regulations on those banks, particularly smaller community banks and those located in rural communities. As described more fully below, in addition to specific changes made in response to written and oral comments received during the EGRPRA process and other outreach efforts, the FDIC has been engaged in a multiyear effort to review our supervisory processes to make them more efficient and to provide technical assistance and useful research and data to community bankers and their stakeholders.

[129] *www.occ.gov/publications/publications-by-type/other-publications-reports/pub-other-community-banks-working-collaborately.PDF.*

[130] See OCC Bulletin 2016–32 *www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-32.html.*

A. Changes Made By FDIC in Response to EGRPRA Comments and Other Outreach Efforts

Rescinded enhanced supervisory procedures for de novo banks

In response to concerns raised in the EGRPRA process regarding FDIC procedures for monitoring *de novo* institutions, on April 6, 2016, the FDIC announced the rescission of FIL50–2009, *the Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Depository Institutions*, eliminating the seven-year monitoring period for *de novo* institutions.[131]

Clarified guidance on deposit insurance filings and provided technical assistance

Some EGRPRA commenters and others indicated that there was some confusion about the FDIC's existing policies on deposit insurance filings and suggested that a clarification of existing policies would be helpful. In November 2014, the FDIC issued guidance in the form of questions and answers to assist applicants in developing proposals for federal deposit insurance.[132] The guidance addresses four distinct topics: the purpose and benefits of pre-filing meetings, processing timelines, initial capitalization requirements, and business plan requirements. Then in April 2016, the FDIC issued additional guidance in the form of supplemental questions and answers regarding developing business plans in the deposit insurance application process.[133] Also in April 2016, the FDIC announced that subject matter experts have been designated in the FDIC regional offices to serve as points of contact for deposit insurance applications. Moreover, in 2016, three outreach meetings with the banking industry have been conducted to assist industry participants in understanding the FDIC's *de novo* application approval processes.[134] The FDIC also issued for public comment a handbook for organizers of *de novo* institutions, describing the process of applying for federal deposit insurance and providing instruction about the application materials required.[135] The FDIC is also expanding its existing internal procedures for reviewing and processing applications for deposit insurance and will make the final product available to the industry to provide additional transparency to the review process.

Eliminated most part 362 applications for LLCs

In November 2014, the FDIC issued new procedures that eliminate or reduce applications to conduct permissible activities (part 362 of the FDIC rules and regulations) for certain bank subsidiaries organized as LLCs, subject to some limited documentation standards.[136] The prior procedures dated back to the time when the LLC structure was first permitted for bank subsidiaries. Commenters in the EGRPRA process and during general outreach sessions remarked, and the FDIC agreed, that the LLC structure is no longer novel. Commenters also indicated that the approval process was too lengthy. When the FDIC eliminated the filing procedure in 2014, it was estimated that in the 10 previous years, the FDIC processed over 2,200 part 362 applications relating to bank activities. Since the vast majority of those involved subsidiaries organized as LLCs, the change in procedure will result in significant reductions in filing requirements going forward.

B. Clarified Capital Rules and Provided Related Technical Assistance

The agencies received many comments from community banks that are organized S-corporation banks and their shareholders regarding the capital conservation buffer. In response, in July 2014 the FDIC issued FIL–40–2014 to FDIC-supervised institutions that described how the FDIC would treat certain requests from S-corporation institutions to pay dividends to their shareholders to cover taxes on their pass-through share of bank earnings when those dividends are otherwise not permitted under the new capital rules.[137] The FDIC told banks that unless there were significant safety-and-soundness issues, the FDIC would generally approve those requests for well-rated banks. Further, to assist bankers in complying with the revised capital rules the FDIC conducted outreach and technical assistance designed specifically for community banks that included publishing a community bank guide; releasing an informational video on the revised capital rules; and conducting face-to-face informational sessions with bankers in each of the FDIC's six supervisory regions to discuss the revised capital rules applicable to community banks.[138]

C. Improving Communication with Bank Boards of Directors and Management

On July 29, 2016, in response to commenters who provided input during the EGRPRA review as well as matters identified by the Office of Inspector General in its February 2016 report,[139] the FDIC issued a series of guidelines to improve supervisory policies and practices to make them more transparent and easy-to-understand and to improve communication with directors and management of financial institutions.

- ***Enhancing the appeals process.*** The FDIC published for public comment a proposal to amend its *Guidelines for Appeals of Material Supervisory Determinations* so that institutions have additional avenues of redress with respect to these determinations and for greater consistency with the appeals processes of the other federal banking agencies. The comment period ended on October 3, 2016, and comments are being reviewed.[140]
- ***Updated guidance regarding communications with bankers.*** The FDIC updated and replaced FIL–13–2011, *Reminder on FDIC Examination Findings*, dated March 1, 2011, to re-emphasize the importance of open communications regarding supervisory findings.[141] An open dialogue with bank management is critical to ensuring the supervisory process is effective in promoting an institution's strong financial condition and safe-and-sound operation. The FDIC encourages bank management to provide feedback on FDIC supervisory activities and engage FDIC personnel in discussions

[131] FDIC FIL–24–2016: Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance (April 6, 2016).

[132] FDIC FIL–56–2014: Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance (November 20, 2014).

[133] FDIC FIL–24–2016: Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance (April 6, 2016).

[134] FDIC Community Banking Initiative, *de novo* Outreach Meetings *www.fdic.gov/news/conferences/communitybanking/2016/DeNovo/index.html.*

[135] FDIC Press Release ''FDIC Seeking Comment on New Handbook for *De Novo* Organizers Applying for Deposit Insurance,'' December 22, 2016, *www.fdic.gov/news/news/press/2016/pr16110.html.*

[136] FDIC FIL–54–2014: Filing and Documentation Procedures for State Banks Engaging, Directly or Indirectly, in Activities or Investments That Are Permissible for National Banks (November 19, 2014).

[137] FDIC FIL–40–2014, Requests from S-Corporation Banks for Dividend Exceptions to the Capital Conservation Buffer (July 21, 2014).

[138] See the FDIC's website for a complete list of technical assistance resources related to regulatory capital, *www.fdic.gov/regulations/capital/index.html.*

[139] FDIC Office of the Inspector General, 2015 Annual Report, *www.fdic.gov/about/strategic/report/2015annualreport/2015AR__Final.pdf.*

[140] See 81 FR 51441 (August 4, 2016).

[141] See FDIC FIL–51–2016.

to ensure full understanding of the FDIC's supervisory findings and recommendations.

- ***Improved transparency regarding developing guidance and supervisory recommendations.*** The FDIC also issued two statements by the FDIC Board of Directors that set forth basic principles to guide FDIC staff in developing and reviewing supervisory guidance and in developing and communicating supervisory recommendations to financial institutions under its supervision.[142] The principles are intended to improve transparency in the supervisory process.

D. Electronic Submission of Reports

Several commenters during the EGRPRA process and in general outreach sessions indicated a desire to submit and receive reports to and from the FDIC in a secure electronic manner. Through FDIC*connect,* a secure, transactions-based website, the FDIC has provided alternatives for paper-based processes and allows the submission of various applications, notices, and filings required by regulation. There are 5,977 institutions registered to use FDIC*connect,* which ensures timely and secure access for bankers and supervisory staff, including state supervisors. Twenty-seven business transactions have been made available through FDIC*connect.* Most recently, capability was added that will permit voluntary electronic filings of audit reports required under Part 363.[143]

E. Burden-Reducing Changes to Examination and Supervisory Processes

On an ongoing basis, the FDIC looks for ways to change examination and general supervisory processes to improve efficiencies and minimize burdens on community banks. Below are a few concrete examples of initiatives in this regard.

- ***Improved pre-examination planning processes.*** The FDIC has implemented an electronic pre-examination planning tool for both risk management and compliance examinations that allows request lists to be tailored to ensure that only those items that are necessary for the examination process are requested from each institution to minimize burden. Receiving information ahead of time also allows examiners to review certain materials off site, reducing the on-site burden on bankers.
- ***Enhanced information technology examination processes.*** In June 2016, the FDIC updated its IT examination procedures to provide a more efficient, risk-focused approach.[144] The updated examination program includes a streamlined IT Profile that financial institutions will complete in advance of examinations that replaces the ITOQ. The IT Profile is intended to provide examination staff with more focused insight on a financial institution's IT environment and includes 65 percent fewer questions than appeared on the FDIC's legacy ITOQ. This enhanced program also provides a cybersecurity preparedness assessment and discloses more detailed examination results using component ratings.
- ***Reduced examiner guidance documents.*** During 2016, the FDIC reviewed approximately 650 examiner guidance documents and identified approximately 300 documents that are no longer needed. The FDIC is in the process of eliminating the outdated guidance as well as updating examiner guidance to align with current examination practices. Eliminating outdated guidance will help to ensure consistent examinations across regions and that all examinations are being conducted using current examination policies and procedures.
- ***Tested offsite loan review process.*** Piloted an automated process with certain Technology Service Providers to obtain standardized downloads of imaged loan files to facilitate offsite loan review, thereby reducing the amount of examiner time in financial institutions. The pilot is continuing with additional technology being developed by FDIC to enable the secure and simple transfer of files.
- ***Changed consumer compliance and CRA examination approach.*** The FDIC takes a forward-looking approach to supervision and has adopted supervisory strategies that focus on the risk of consumer harm in an institution's compliance management system. In November 2013, the FDIC revised its frequency schedule for small banks (those with assets of $250 million or less) that are rated favorably for compliance and have at least a Satisfactory rating under the CRA. Previously, small banks that received a Satisfactory or Outstanding rating for CRA were subject to a CRA examination no more than once every 48 to 60 months, respectively. Under the new schedule, small banks with favorable compliance ratings and Satisfactory CRA ratings are examined every 60 to 72 months for joint compliance and CRA examinations and every 30 to 36 months for compliance only examinations. This revised schedule has reduced the frequency of onsite examinations for community banks with satisfactory ratings.
- Subsequently, in April 2016, the examination frequency for the compliance and CRA examinations of *de novo* institutions and charter conversions was changed. As a result of the FDIC's supervisory focus on consumer harm and forward-looking supervision, the *de novo* period, which had required annual on-site presence for a period of five years was reduced to three years.
- ***Focused banker attention on applicable guidance and supervisory information.*** When communicating rules and guidance to the banking industry through Financial Institution Letters (FILs), the FDIC has a prominent community bank applicability statement so community bankers can immediately determine whether the content of the FIL is relevant to them. The FDIC has also created a regulatory calendar that alerts stakeholders to critical information as well as comment and compliance deadlines relating to new or amended federal laws, regulations, and supervisory guidance.

F. Community Bank Initiative—Technical Assistance and Enhanced Research and Data Regarding Community Banks

The FDIC is the primary federal supervisor for the majority of community banks, in addition to being the insurer of deposits held by all U.S. banks and thrifts. Accordingly, the FDIC has a particular responsibility for the safety and soundness of community banks, as well as a particular interest in, and commitment to, the role they play in the banking system and the challenges and opportunities they face. In 2009, the FDIC established the FDIC Advisory Committee on Community Banking to provide the FDIC with advice and guidance on a broad range of important policy issues impacting community banks throughout the

[142] See FDIC Governance—Statement of the FDIC Board of Directors on the FDIC's Code of Conduct (*www.fdic.gov/about/governance/conduct.html*) and Statement of the FDIC Board of Directors on the Development and Review of Supervisory Guidance (*www.fdic.gov/about/governance/guidance.html*).

[143] See FIL–71–2016, *Electronic Filing of Part 363 Annual Reports and Other Reports and Notices,* October 25, 2016. *www.fdic.gov/news/news/financial/2016/fil16071.html.*

[144] See FIL–46–2016: Information Technology Risk Examination (InTREx) Program. *www.fdic.gov/news/news/financial/2016/fil16043.html.*

country, as well as the local communities they serve, with a focus on rural areas. In 2011, the FDIC launched an initiative to study those challenges and opportunities and, where feasible, provide resources to community bankers to navigate the current environment. As part of the Community Bank Initiative, the FDIC completed the FDIC Community Banking Study, a data-driven effort to identify and explore issues and questions about community banks.[145] This study has been followed by a series of papers aimed at topics of importance to community banks, such as branching trends, closely held banks, efficiencies and economies of scale, community bank earnings, minority-owned banks, rural depopulation, and consolidation. The FDIC also created a section of the Quarterly Banking Report focusing exclusively on community bank performance. Most recently, in April 2016, the FDIC conducted a conference entitled, FDIC Community Banking Conference, Strategies for Long-Term Success that focused on successful community bank business models, key regulatory developments, opportunities and challenges in managing technology, and ownership structure and succession planning.

The FDIC has also provided greater technical resources to bank directors and management, including the establishment of a Directors' Resource Center on the FDIC website,[146] as a one-stop site for Directors to obtain useful and practical information to help them in fulfilling their responsibilities. Since 2013, the FDIC has issued over 25 technical assistance videos that provide in-depth, technical training for bankers to view at their convenience. The FDIC also offers additional technical training opportunities by hosting Directors' Colleges in each of its six regions. These Colleges are typically conducted jointly with state trade associations and address topics of interest to community bank directors and officers.

In 2016, the FDIC conducted 55 directors' colleges through its six regional offices. The FDIC has also held teleconferences and other training seminars with bankers to discuss new rules or emerging topics in the industry. In 2016, the FDIC conducted eight teleconferences for bankers covering such topics as accounting issues, Call Reports, and capital. In addition, the FDIC, in coordination with other bank regulatory agencies, conducted three interagency webinars for bankers covering such topics as CRA, overdraft program practices, and the Military Lending Act.

Also in 2016, the FDIC developed and distributed to all FDIC-supervised institutions a *Community Bank Resource Kit*, containing a copy of the FDIC's *Pocket Guide for Directors*, reprints of various *Supervisory Insights* articles relating to corporate governance, interest rate risk, and cybersecurity, two cybersecurity brochures that banks may reprint and share with their customers to enhance cybersecurity savvy, a copy of the FDIC's *Cyber Challenge* exercise, and several pamphlets that provide information about the FDIC resources available to bank management and board members.

G. Deposit Insurance Coverage

The FDIC receives thousands of calls each year on deposit insurance coverage by both consumers and bank employees. The FDIC regularly holds series of banker teleconferences to provide a better understanding of deposit insurance coverage. In April 2016, the FDIC revised the *Financial Institution Employee's Guide to Deposit Insurance (Guide)* that primarily is for bank employees.[147] The *Guide* includes comprehensive examples for the nine most-common deposit ownership categories and clarifies many misconceptions regarding deposit insurance coverage.

H. Enhanced Awareness of Emerging Cybersecurity Threats

The FDIC has conducted cybersecurity awareness outreach sessions in each of the FDIC's six regional offices and hosted a banker webinar to share answers to the most commonly asked questions. The FDIC also has developed cybersecurity awareness technical assistance videos to assist bank directors with understanding cybersecurity risks and related risk-management programs, and to elevate cybersecurity discussions from technical personnel to the board. The FDIC also developed and distributed to FDIC-supervised financial institutions *Cyber Challenge*, a program designed to help financial institution management and staffs discuss events that may present operational risks and consider ways to mitigate them.

I. OTS Rule Integration

Under section 316(b) of the Dodd-Frank Act, rules transferred from the OTS to the FDIC and other successor agencies remain in effect ''until modified, terminated, set aside, or superseded in accordance with applicable law'' by the relevant successor agency, by a court of competent jurisdiction, or by operation of law. When the FDIC republished the transferred OTS regulations as new FDIC regulations applicable to state savings associations, the FDIC stated in the **Federal Register** notice that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them. This process began in 2013 and continues, involving publication in the **Federal Register** of a series of proposed and final rulemakings. The FDIC has removed 16 transferred OTS rules and has issued one notice of proposed rulemaking to remove Minimum Security Procedures while making technical amendments to related FDIC rules for applicability to state savings associations.[148] The FDIC will continue its evaluation of the remaining 14 transferred regulations. Below are three examples of how the FDIC streamlined and clarified regulations through the OTS rule integration process.

- ***Repeal and remove 12 CFR part 390 subpart L, electronic operations.*** On November 27, 2015, the final rule to repeal and remove 12 CFR part 390 subpart L, Electronic Operations became effective.[149] This rule required state savings associations to file a written notice with the FDIC at least 30 days before establishing a transactional website. The FDIC had no corresponding rule for other FDIC-supervised institutions that required IDIs to notify the respective agency if they intend to establish transactional websites.[150] Rescinding and removing the Electronic Operations rule served to eliminate an obsolete and unnecessary regulation.
- ***Recordkeeping and confirmation requirements for securities transactions.*** On December 10, 2013, the FDIC issued a final rule that amended part 344 to increase the threshold for Small Transaction Exceptions applicable to all FDIC-

[145] See FDIC Community Banking Study Reference Data, *www.fdic.gov/regulations/resources/cbi/data.html*.

[146] FDIC Directors' Resource Centers, *https://fdic.gov/regulations/resources/director/index.html*.

[147] FDIC FIL–30–2016: Updated Financial Institution Employee's Guide to Deposit Insurance: Latest Version Includes Multiple Examples to Better Understand Deposit Insurance Ownership Categories (April 27, 2016).

[148] 81 FR 75753 (November 1, 2016).

[149] See 80 FR 65612 (October 27, 2015).

[150] As indicated in section E of this report, the OCC EGRPRA final rule removes this transactional website notice requirement. See 80 FR 8082 (January 23, 2017).

supervised institutions effecting securities transactions for a customer from an average of 200 transactions to 500 transactions per calendar year over the prior three-year period while removing part 390, subpart K (formerly OTS part 551), which governs recordkeeping and confirmation requirements for securities transactions effected for customers by state savings associations.[151] The threshold for part 390, subpart K's Small Transaction Exception was an average of 500 or fewer transactions over the prior three calendar-year period. Increasing the threshold for the Small Transaction Exception recognizes that the volume of securities activities of FDIC-supervised depository institutions has increased over the three decades since the FDIC established the original scope of the Small Transaction Exception and ensures parity for all FDIC-supervised institutions. The final rule became effective on January 21, 2014.

- ***Filing requirements and processing procedures for changes in control.*** In October 2015, the FDIC approved a final rule that amends part 303 of the FDIC Rules and Regulations for filing requirements and processing procedures for notices filed under the Change in Bank Control Act (notices).[152] The final rule consolidated into one subpart the requirements and procedures for notices filed with respect to state nonmember banks and state savings associations and eliminated part 391, subpart E. The final rule also adopted certain practices of related regulations of the OCC and the Board. The final rule clarifies the FDIC's requirements and procedures based on its experience interpreting and implementing the existing regulation.

J. Legislative Proposal

Section 165(i)(2) of the Dodd-Frank Act requires certain financial companies, including state nonmember banks and state savings associations, with more than $10 billion in total consolidated assets to conduct annual stress tests.[153] Two EGRPRA commenters requested that this stress testing threshold be increased. The FDIC agrees with these commenters, and supports legislative efforts to increase this threshold from $10 billion to $50 billion. However, the FDIC believes it is important to retain supervisory authority to require stress testing if warranted by a banking organization's risk profile or condition. Along with the Board and the OCC, the FDIC issued interagency stress testing guidance in 2012 applicable to banking organizations with more than $10 billion in total consolidated assets.[154] This guidance did not implement, and is separate from, the stress testing requirements imposed by the Dodd-Frank Act. The FDIC would continue to rely on this guidance and believes that stress testing can be a useful tool to analyze the range of a banking organization's potential risk exposures and capital adequacy.

Section 165(i)(2) also requires covered financial companies to disclose their stress testing results. One EGRPRA commenter noted that this disclosure requirement is particularly problematic for smaller banks and recommended that it be eliminated. The FDIC notes that increasing the stress testing threshold to $50 billion would exclude banking organizations under $50 billion in assets from all Dodd-Frank Act stress testing requirements, including the requirement to disclose their stress testing results. However, if the statutory threshold in section 165(i)(2) is not increased to $50 billion, the FDIC would support a separate legislative change exempting banking organizations with total consolidated assets between $10 and $50 billion from the disclosure requirement.

F. Rule by Rule Summary of Other EGRPRA Comments

In addition to the comments raising significant issues addressed in section D of this report, the agencies received other comments pertaining to the rules published for comment. A summary of these comments, organized by rule in each of the 12 categories, is set forth below. The comments are summarized in each category first by interagency rules, then by agency-specific rules. The agencies note that although the agencies published all of their rules (aside from rules that only affect agency internal processes), some of these rules did not generate any public comments.

1. Applications and Reporting

Interagency Regulations or Regulations Implementing the Same Statute

A. Bank Merger Act

In general, the Bank Merger Act[155] and the agencies' implementing regulations require the prior written approval of the FDIC whenever IDIs want to merge, consolidate, assume liabilities, or transfer assets from or with a noninsured depository institution.[156] The statute also requires the prior written approval of the appropriate federal banking agency before any IDI may merge or consolidate with, purchase or otherwise acquire the assets of, or assume any deposit liabilities of, another IDI. The agencies received two comment letters and a number of comments from outreach meeting participants on the Bank Merger Act application process. Several commenters suggested that the agencies change how they process applications under the Bank Merger Act, including specific requests that the agencies process applications more rapidly or increase the number of institutions that qualify for expedited processing of their applications. Yet other commenters suggested that the Bank Merger Act's comment period is too short and that the expedited merger process should be eliminated. Commenters also suggested that the agencies make definitions more uniform. Other commenters questioned how the agencies consider banks' CRA records or suggested that the agencies develop a faster process of reviewing the appeals of decisions made under the Bank Merger Act. These comments are discussed in more detail, below.[157]

Uniform definitions of "eligible" financial institutions

Two trade associations suggested that the agencies adopt a uniform definition of an institution eligible for expedited

[151] See 78 FR 76721 (December 19, 2013).

[152] See 80 FR 65889 (October 28, 2015).

[153] 12 U.S.C. 5365(i)(2)(A).

[154] Supervisory Guidance on Stress Testing for Banking Organizations with More than $10 Billion in Total Consolidated Assets, 77 FR 29458 (May 17, 2012).

[155] Section 18(c) of the FDI Act (12 U.S.C. 1828(c)).

[156] The agencies' implementing regulations for the Bank Merger Act are set forth at 12 CFR 5.33; 12 CFR 262.3 (processing and notice); 12 CFR part 225, subpart B; 12 CFR part 303, subpart D; 12 CFR part 390, subpart E. The OCC integrated its Bank Merger Act regulation transferred from the OTS, so that 12 CFR 5.33 now applies to both national banks and FSAs. See discussion of the OCC licensing final rule in section E.3 of this report.

[157] The OCC notes that many of these comments are discussed in the preamble to the OCC licensing final rule. The OCC issued the proposal for this rulemaking during the start of the EGRPRA process and issued the final rule in May 2015. When the OCC published this proposed rule, the OCC noted that it also would consider any EGRPRA comments received on part 5 when finalizing the proposal. This rulemaking is discussed in more detail in section E.3. of this report.

processing. The commenter asserted that this would provide greater clarity and reduce regulatory burden.

Appeals process for Bank Merger Act applications

One commenter recommended that the appeals process take place earlier in the applications process.

More expedited processing of mergers

Several trade associations and institutions stated that there is a need for more expedited processing of mergers because the process is cumbersome, noting that sometimes financial institution employees leave jobs because of the uncertainty. Bankers expressed concern that banks' applications for an acquisition, merger, or change of control are often delayed for extended periods of time, stating that sometimes the applications are not accepted as complete. They also stated that many delays often result from a single protest letter by a community group. One commenter suggested increasing asset thresholds associated with expedited processing, with a particular recommendation to increase the $7.5 billion threshold in 12 CFR 225.14 to $10 billion and to index it. Other commenters suggested expediting mergers for banks that are well capitalized with high CAMELS ratings and satisfactory CRA ratings.

Less expedited processing of mergers

Several commenters representing community or veterans' organizations suggested that mergers need to be carefully considered to make sure CRA considerations are addressed and that the statutory convenience and needs factor is satisfied before approval is granted. One commenter suggested that the Bank Merger Act's 30-day comment period is too short to allow people to navigate regulatory Web sites and legal notices to determine when a merger is contemplated and whether it affects their communities. Another commenter suggested that the expedited merger process should be eliminated so that no bank can merge without explicitly outlining the public benefits resulting from the merger.

Consideration of CRA in mergers

A commenter representing community groups stated that banks should have to demonstrate a record of strong community development, not just a satisfactory rating or above on the most recent CRA exam, and be required to demonstrate a clear public benefit to both the current and the expanded assessment areas, ideally in conjunction with a formal CRA agreement with the local community. Another commenter recommended that regulators should conduct interviews and public hearings to evaluate how community needs are being and will be served in a merger, in addition to accepting public comments. In addition, a commenter noted that, in the context of mergers, regulators should consider that banks that focus on online banking and ATM access do not rebuild communities the way brick-and-mortar operations do. Comments from banks and their trade associations suggested that a bank should be judged by its most recent CRA exam, or by other clear objective standards. One commenter stated that requiring public hearings and interviews would be tremendously expensive and time-consuming.

Delegated approvals for acquisitions and mergers

Several banks suggested that the agencies delegate more approval decisions to the appropriate regional office, rather than making the decision at headquarters.

Office closings as a result of mergers

Two bank trade associations recommended that the agencies be required to balance consideration of office closings with consideration of an institution's use of alternative technologies to serve customers in assessing convenience, needs, and CRA factors as part of mergers.[158]

Consideration of the ratio of loans to deposits in processing of mergers

One commenter representing a veterans' organization suggested that when out-of-state banks merge with California banks, the ratio of loans to deposits should be relatively equitable when compared to the ratio prior to the merger.

Public notice provisions

One commenter suggested amending the regulations to allow alternative forms of public notice, not just the newspaper notice required by 12 U.S.C. 1828(c)(3)(D), given advances in technology and communications.[159]

Herfindahl-Hirschman Index

One commenter suggested that the Herfindahl-Hirschman Index (HHI index) is not an appropriate metric for measuring the effect on competition of applications by small banks in rural areas. Another commenter suggested that the HHI index is outdated and does not consider new innovations and trends in the banking industry.

B. Change in Bank Control

The Change in Bank Control Act (CBCA) requires that the acquisition of control of any IDI by any person (either individually or acting in concert with others) be subject to prior notice and non-disapproval by the primary federal regulator of the institution to be acquired.[160] The agencies received two comment letters from trade associations and several comments from outreach meeting participants on the agency's CBCA rules.[161] Several commenters suggested that changes be made in how the agencies process notices under the CBCA, including specific requests that the agencies process notices more rapidly or limit the processing period by ceasing to ask for additional information. Commenters also recommended that the agencies revise or provide additional guidance in several specific regulatory areas to alleviate regulatory burden. Other commenters questioned definitions used for provisions in the regulations or asked for a process by which the agencies could issue binding interpretations determining when a filing is not required.[162] These comments are detailed below.[163]

Definitions of ''acting in concert'' and ''immediate family''

Two trade associations and a banker asserted that the agencies should use uniform definitions of ''acting in concert'' and ''immediate family.'' These commenters also stated that the presumption that two or more institutions that acquire 10 percent or more of a bank's stock are acting in concert makes it more difficult for some

[158] The agencies note that the recently issued Interagency CRA Q&As provide additional guidance on how agency examiners evaluate alternative systems for delivering retail banking services. 81 FR 48505 (July 25, 2016).

[159] The agencies note that regulations do not prohibit an institution from providing alternative forms of public notice, such as on its Web site, in addition to newspaper publication.

[160] 12 U.S.C. 1817(j).

[161] The agencies CBCA rules are set forth at 12 CFR 5.50; 12 CFR part 225, subpart E (Reg. Y); 12 CFR part 238, subpart D; 12 CFR part 303, subpart E; 12 CFR part 308, subparts D and E; 12 CFR part 391, subpart E.

[162] The FDIC issued a final rule on December 16, 2015, that among other things consolidates and conforms the change in control regulation and guidance transferred from the OTS. See FIL-60-2015 (announcing Final Rule Amending the Filing Requirements and Processing Procedures for Changes in Control). The OCC also has integrated its change in control regulation transferred from the OTS, so that 12 CFR 5.50 now applies to both national banks and FSAs. See discussion of the OCC licensing final rule in section E.3 of this report.

[163] As indicated above, many of these comments are discussed in the preamble to the OCC licensing final rule, discussed in more detail in section E. 3. of this report.

institutional investors to enter the market, thus impairing community banking.

Limiting requests for additional information

One commenter advocated for establishing a cut-off date beyond which regulators cannot ask for more information about a notice of change in bank control. The commenter noted that keeping the timeframe running indefinitely by stating that the filing is not informationally complete delays the transaction and creates uncertainty.

Binding interpretations

One commenter stated that banks should be able to ask for a binding interpretation of what constitutes a change in control so they know when filing is necessary.[164]

Definition of acceptance of application for change in control filings

A banker stated that there is no clear definition of what the acceptance of an application means, and that there needs to be more transparency about what is required and more honesty about delays.

Speed of processing

One commenter asserted that a change of control notice should be approved within 30 days because it is usually a response to a capital issue that needs to be addressed quickly.

Reduction in the burden of change of control filings

One commenter stated that, although not required by Board regulations, banks are required to follow a change in control rule every time even one single share changes hands. The commenter stated that this is tremendously expensive and time-consuming and that it would make sense if there were a threshold, in that reporting would be required if 5 or 10 percent of shares changed hands within the control group.

C. Notice of Addition or Change of Directors

Section 914 of FIRREA requires certain institutions to notify the appropriate federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution and provides the appropriate federal banking agency with the authority to disapprove the proposed individual on the basis of the individual's competence, experience, character, or integrity.[165] The agencies each have promulgated regulations pursuant to section 914.[166]

Two banking trade associations addressed the agencies' section 914 rules. The commenters suggested that the agencies amend their respective regulations to adopt uniform definitions of key terms, notice requirements, and appeals provisions. The commenters also suggested that the agencies adopt a common question and answer format for their respective regulations. These comments are detailed below.

Uniform definitions of ''Director'' and ''Senior Executive Officer''

The commenters noted that the agencies' regulations do not include uniform definitions of ''director'' and ''senior executive officer.'' The commenter suggested that the agencies amend their regulations to adopt uniform definitions.

Uniform prior notice requirement for changes in directors or senior executive officers

One commenter asked the agencies to adopt a common time period for which an institution must provide prior notice before adding or replacing a director or senior executive officer. The commenter recommended that the agencies uniformly require 30 days prior notice.[167]

Appeals of a section 914 notice

One commenter noted that the agencies' regulations are not uniform in providing for a procedure to appeal the disapproval of a FIRREA section 914 notice. The commenter recommended that each agency include an appeal provision in its regulation.[168]

Adopt a question and answer format for the changes in directors and senior executive officers regulation

One commenter recommended that the agencies each adopt a question and answer format for its section 914 regulation similar to the format adopted by the former OTS for this regulation.

D. General Comments on Application Process

A number of commenters suggested changes or offered opinions on the application process that apply more generally to the agencies' application processes and not necessarily to an interagency rule.

One commenter, a community group, asserted that information about applications subject to public comment on agency Web sites is hard to find and difficult to understand and that community groups often experience delays in receiving important communications, such as acknowledgement of the receipt of their comments and decisions regarding extension of the comment period.

One commenter, a bank, expressed a need for more guidance on the business planning process. The commenter stated that there needs to be very clear direction and specific guidance on what constitutes a deviation from the business plan, and what resulting actions need to occur by the bank if there is a deviation. This commenter also stated that the agencies should provide more guidance about the approval process for these planned or unexpected deviations from the business plan.

One commenter, a community group, suggested that the agencies should employ conditional approvals for applications to ensure that public benefits are realized.

One commenter suggested that the agencies should expand the examination procedures for branch closings to give significant weight to CRA considerations and discount the use of census tracts for rural communities.

Board Regulations

Holding companies—formations, acquisitions and nonbanking activities

The Board received comments on various aspects of its regulations related to applications and reporting.[169]

[164] With respect to the OCC, national banks and FSAs can, and often have, asked OCC staff for a legal opinion or interpretation of the statute and regulation regarding whether a change in control filing is required in the facts and circumstances described in the request.

[165] 12 U.S.C. 1831i.

[166] 12 CFR 5.51; 12 CFR part 225, subpart H (Reg. Y); 12 CFR part 303, subpart F; 12 CFR 390.360–.368; 12 CFR part 225, subpart H; 12 CFR 238, subpart H. The OCC has integrated its regulation relating to changes in directors or senior executive officers transferred from the OTS, so that 12 CFR 5.51 now applies to both national banks and FSAs. See discussion of the OCC Licensing final rule in section E.3 of this report.

[167] The preamble to the OCC licensing final rule discusses this comment.

[168] As discussed in the preamble to the OCC final licensing rule, the OCC rule includes an appeals process for section 914 decisions with respect to national banks and FSAs.

[169] The Board's regulations relating to formations, acquisitions, and nonbanking activities of holding companies are set forth at 12 CFR part 225 (Regulation Y), subparts A, B, C, D, I, and appendix C; 12 CFR 262.3; 12 CFR part 238 (Regulation LL)

Continued

Comments regarding Call Reports are separately addressed in section I.D. of this report. The comments discussed the Board's regulations and procedures for Bank Holding Company Act (BHC Act) filings, SLHC filings under the Home Owners Loan Act (HOLA), as well as Bank Merger Act filings.

BHC and SLHC reporting requirements comments

One commenter recommended that the Board streamline its FR Y-9 report form for shell holding companies of community banks. The commenter noted that the current form requires more information than is necessary in cases where the holding company has no assets except for the bank's stock. A commenter from a public meeting suggested that the agencies re-evaluate their reporting requirements in regulations and manuals in light of the banks' increasing and evolving use of technology. The commenter identified the check processing section of the operations handbook as an example where the manual should be updated in light of banks' reliance on technology. In addition, the commenter suggested that the Board consider whether all of the information required in its FR 2900 report, regarding transaction accounts, other deposits and vault cash, could be entirely automated and eliminate the need for banks to provide further explanation about those particular balances. The commenter also suggested that the inspection and annual site visit requirements in the retail payment systems handbook for banks to inspect businesses with which they pair to provide remote deposit capture be considered for elimination because of industry experience in establishing those business relationships.

A different commenter suggested reviewing the Board's FR Y-11 (Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies), FR Y-6 (Annual Report of Holding Companies), and FR Y-8 (The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transaction with Affiliates) and adjusting the reporting requirements of some of those reports from quarterly to annually if there are no actions in the interim that would merit quarterly reporting. The commenter specifically noted that the FR Y-8 could be changed to an annual reporting requirement if there were no transactions between the holding company and bank. A commenter recommended that the Board allow institutions to file electronically the Board's report FR 2052(b), the Liquidity Monitoring Report, so as to be able to attach spreadsheets and reduce the potential for human error involved in manually creating the report. The commenter also suggested that it would help institutions to be relieved from having to file by 7:00 a.m. daily Parts A, AA, and B of the Board's FR 2420 report (Selected Money Market Rates) and allowing them to provide those portions at a later time.

BHC Act, HOLA, and Bank Merger Act applications requirements comments

Commenters presented a variety of suggestions regarding the Board's application and filing requirements for banks, bank holding companies, and savings and loan holding companies. One commenter suggested eliminating the H(e) application forms used by savings and loan holding companies to engage in formations and acquisitions and replace it with the Board's FR Y-3 forms used by bank holding companies for similar activities. The commenter noted that the H(e) forms were developed decades ago, before the Board became the primary regulator of SLHCs and does not seem to have been revised to eliminate unnecessary burden. The commenter also noted that any missing information that a savings and loan holding company would be required to provide under a FR Y-3 form could be supplemented with a short form to the extent necessary for a filing. The same commenter also recommended that the Board's Regulation Y and LL provisions regarding waivers of application filing requirements be amended to permit acquisitions of both banks and savings associations where a Bank Merger Act is necessary and other conditions are met. The commenter also suggested expanding the waiver provision in Regulations Y and LL to except from an application requirement direct mergers by savings associations with other savings associations or banks, and mergers by banks with savings associations in situations where a Bank Merger Act application is filed and the acquiring holding company does not merge or acquire the shares of the target institution at any time. The same commenter also urged the Board to carefully consider incorporating features of the former OTS control analysis, such as passivity agreements and rebuttal commitments, into the Board's current regulations applicable to both bank and savings and loan holding companies. The commenter asserted that the OTS's regulation provided the benefit of more certainty and efficiency in certain cases, given the detailed control factors and explicit regulatory procedures for rebutting control, than the Board's current, less formal regulatory determinations. The commenter also suggested that the Board incorporate in Regulation LL the former OTS's exception to the filing of a change in bank control notice for a tax-qualified employee stock ownership plans (ESOP) and also provide an exception in Regulation Y for ESOPs of bank holding companies.

A commenter suggested that providing notice to the Board for a dividend waiver by an SLHC should be informational only and the Board should not be able to deny the notice as the primary regulator of the depository institution already has oversight of capital distributions.

With respect to BHC Act and Bank Merger Act applications, a commenter suggested that the Board not allow the pre-filing review process to be used to negotiate or otherwise discuss details of a proposed transaction and to automatically and promptly provide the public with detailed documentation of pre-filing communications. In addition, the commenter recommended that the agencies establish clear guidelines and expectations about what constitutes a public benefit arising from an acquisition or merger. Another commenter stated that a single comment letter regarding an application should not require the Board to act on the proposal instead of a Reserve Bank, particularly when the acquirer is financially sound and has a solid record under the CRA. One commenter recommended that the effectiveness of an institution's AML efforts should be included as a factor for applications under section 3 of the BHC Act.

OCC Regulations

Rules, policies, and procedures for corporate activities

Six EGRPRA commenters addressed 12 CFR part 5, the OCC licensing rules, and various other OCC licensing-related rules for FSAs. As indicated above, some of these commenters also addressed the OCC's proposal to amend part 5,[170] which the OCC issued during the start of the EGRPRA process and finalized in May 2015.[171] When the OCC published this proposed rule, the OCC noted that it also would consider any EGRPRA comments received on part 5 when finalizing the proposal, and most of these comments are discussed in the preamble to the OCC licensing final rule. This rulemaking is discussed

subparts A, B, C, E, F; 12 CFR part 239 (Regulation MM); 12 CFR 262.3.

[170] 79 FR 33260 (June 10, 2014).

[171] 80 FR 28346 (May 18, 2015).

in more detail in section E. 3. of this report.

Directors

Two trade associations recommended that 12 U.S.C. 72 be amended to update the ''representative'' requirement for directors of national banks given the evolution of the market and the need for qualified directors. These commenters stated that it would be appropriate to eliminate this requirement. These trade associations also recommended that the OCC eliminate the requirement under 12 CFR 143.3(d) that the majority of a *de novo* savings association's board of directors be representative of the state in which the association is located, given the ease of communication facilitated by technology and an increasingly interdependent finance market.[172]

Public benefit corporations

A nonprofit organization raised the possibility of banks becoming public benefit corporations. This commenter stressed that public benefit corporations do not pose safety-and-soundness concerns.

Approval process: fiduciary activities

Two trade associations recommended that the OCC revise 12 CFR 150.70(b) so that once the OCC has granted an institution permission to exercise some fiduciary powers, the institution may exercise all fiduciary powers without further approval. The commenter noted that this change would streamline the process.

Misleading titles

A trade association supported the provision in the OCC licensing proposed rule that would prohibit national banks from adopting a misleading title.[173]

Expiration of preliminary charter application approval

A trade association supported the provision in the OCC licensing proposed rule that would provide FSAs with a lengthier expiration of preliminary approval for charter applications.[174]

Expedited review—definition of eligible bank

A trade association stated that the OCC should not require national banks and FSAs to have an OCC compliance rating of 1 or 2 to qualify for expedited review, as in 12 CFR 5.3(g) of the OCC licensing proposed rule, noting that because the compliance rating is already included in the CAMELS composite rating the new requirement would be redundant. Furthermore, the commenter stated that there would be no greater certainty for national banks regarding eligibility for expedited review because the OCC still has the discretion to remove filings from expedited review.

Acquisitions

A trade association stated that the proposed amendment to 12 CFR 5.33 in the OCC licensing proposed rule to require an application for acquisitions conducted by national banks or thrifts that engage in a purchase and assumption transaction resulting in an increase in the asset size of the institution by 25 percent or more is a new substantive requirement for both banks and thrifts that is not connected to the task of integration.[175]

Branches

One banker suggested that if a national bank has a satisfactory rating and CRA compliance, it should not need prior approval from the OCC to open each branch.[176] This same banker noted that the OCC should revisit the 1000 foot rule for branch relocations. Two trade associations suggested that the OCC clarify that mobile phones and similar devices are not branches.[177] One trade association opined that the OCC should retain the different branching regimes for national banks and FSAs, as proposed in the OCC licensing proposed rule. The commenter strongly supported this approach over the first alternative described in the preamble to the licensing proposed rule, which would require both national banks and FSAs to file an application to branch.[178]

Necessity for new association

Two trade associations stated that the OCC should no longer consider whether a ''necessity exists'' for a federal stock association in the community to be served when deciding whether to approve an application under 12 CFR 152.1, now included in 12 CFR 5.20. They stated that necessity is duplicative of other factors the OCC considers, such as probability of usefulness and success under 12 CFR 152.1(b)(ii).[179]

Operating subsidiaries

A trade association stated that the proposed amendment to 12 CFR 5.34(e) in the OCC licensing proposed rule, which stated that ''no other person or entity has the ability to control the management or operations of the subsidiary'' for a national bank to invest in an operating subsidiary, will create uncertainty for joint venture arrangements organized as national bank operating subsidiaries. Without a definition of ''control,'' the commenter stated that it will be unclear whether the influence of a stakeholder with special expertise would prevent national banks from entering into joint ventures organized as operating subsidiaries, and that the current requirements already ensure that banks have sufficient control. This same commenter also stated that the OCC should change 12 CFR 5.34(e)(5)(ii) to ensure that joint ventures organized as operating subsidiaries are eligible for expedited notice treatment.[180]

Furthermore, this trade association stated that the proposed 12-month expiration for OCC approvals of operating subsidiaries for national banks in 12 CFR 5.34(e)(5)(viii) of the licensing proposed rule is a new substantive requirement for both national banks and FSAs.

This commenter also opposed proposed 12 CFR 5.34(e)(2)(iii) in the OCC licensing proposed rule, which requires that national banks have policies and procedures to preserve the limited liability of the bank and its subsidiaries, a requirement currently applied to FSAs. The commenter stated that the proposal did not provide sufficient analysis to explain why national banks should be subject to this requirement and that the change is not a clarifying change.

Two trade associations requested that the OCC clarify that a national bank may continue to invest in a joint venture or partnership that qualifies as an operating subsidiary under 12 CFR 5.34(e)(2) if the bank has the ability to control the management and operations of the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest in the subsidiary. These commenters requested that the OCC make a corresponding change to the

[172] The OCC has eliminated this requirement. It is not included in revised 12 CFR 5.20, which now applies to FSAs in place of part 143.

[173] The OCC adopted this provision in the OCC licensing final rule.

[174] The OCC adopted this provision in the OCC licensing final rule.

[175] The OCC licensing final rule did not include this proposed application requirement. Instead, the application provision of 12 CFR 5.53 now applies.

[176] This change would require a legislative change to 12 U.S.C. 36(i).

[177] The preamble to the OCC licensing final rule clarifies the application of the branching rules to mobile phones and similar devices.

[178] The OCC licensing final rule did not require FSAs to file an application to establish a branch.

[179] Section 5(e) of HOLA, 12 U.S.C. 1464(e), requires the OCC to consider whether a ''necessity exists.''

[180] The OCC licensing final rule includes clarifying amendments that address these comments.

proposed expedited notice procedures, 12 CFR 5.34(e)(5)(ii), to allow an investment in an operating subsidiary that is a joint venture or partnership to continue to be eligible for expedited notice treatment. They argued that the language in the licensing proposed rule is a significant departure from OCC precedent.

Bank service companies

A trade association stated that proposed 12 CFR 5.35(f)(2) included in the OCC licensing proposed rule is more burdensome than an after-the-fact notice requirement. The proposed provision required a prior notice with expedited review with notice deemed approved within 30 days unless the OCC notifies the filer otherwise instead of the current after-the-fact notice for investments in bank service companies.

Reporting

A trade association stated that the proposed requirement that FSAs submit annual reports to the OCC for certain operating subsidiaries and bank service corporations adds a new compliance burden without sufficient analysis or justification.[181]

Control of FSA operating subsidiary

Proposed 12 CFR 5.38(e)(2)(B) provides that an FSA can only invest in an operating subsidiary if it ''controls more than 50 percent of the voting interest of the operating subsidiary'' or ''otherwise controls the operating subsidiary.'' A trade association stated that, while a comparable standard has been in place for national banks under 12 CFR 5.34, this provision would be a new standard for FSAs and it would be helpful for the OCC to provide clarity on how an FSA would be deemed to ''otherwise control the operating subsidiary.''

Conversion

A trade association stated that the OCC should provide greater clarity on how to convert a financial subsidiary back to an operating subsidiary under 12 CFR 5.39.

Calculation of time

A trade association supported the proposed provision in the OCC licensing proposed rule that would calculate time for national bank filings by no longer allowing weekends or federal holidays to be filing due dates.[182]

OCC licensing proposed rule, in general

One commenter, a trade association, provided general comments on the OCC licensing proposed rule.

FDIC Regulations

Deposit insurance filing procedures

The agencies received two written comments and one oral comment on the FDIC's deposit insurance filing procedures, but no comments were received concerning FDIC or other agency regulations pertaining to *de novo* applications. The commenters' concerns centered on the view that the FDIC's policies and practices, principally, the Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Depository Institutions (Financial Institution Letter (FIL) 50-2009), discourage the formation of new depository institutions. Other comments focused on the duration of the review process with respect to applications for deposit insurance. The most frequent suggestions involved removing (1) the requirements for prior approval of a material change in business plan for a *de novo* institution's fourth through seventh years of operation, and (2) the perceived requirement to fund the bank's capital accounts at organization sufficiently to maintain capital at the level of 8 percent through the initial seven-year period. Other suggestions included issuing a new FIL to help dispel misconceptions and affirm FDIC's support for the formation of *de novo* institutions. The FDIC considered these comments in revising processes related to deposit insurance filing procedures, which are described on pages 129–31 of this report.

2. Powers and Activities

Interagency Regulations or Regulations Implementing the Same Statute

A. Proprietary Trading and Relationships with Covered Funds (the Volcker rule)

Section 619 of the Dodd-Frank Act, known as the Volcker rule, prohibits banking entities from engaging in proprietary trading and from investing in, sponsoring, or having certain relationships with ''covered funds.'' [183]

Two commenters, both industry trade associations, addressed this rule. One commenter suggested that because banks may be subject to one or more regulators who have separate rule-writing authority, supervision and enforcement authority for the rule, banks need to receive examination guidance on how to comply with the rule. This commenter also stated that the definition of a ''covered fund'' under the rule is too broad and that the agencies should clarify the definition to be either a ''hedge fund'' or a ''private equity fund'' and provide clear definitions of both terms. By changing the definition, the commenter asserted that banks would be able to have or continue relationships with ordinary corporate vehicles and other entities that the commenter stated are not ''covered funds'' that were intended to be subject to the rule. The commenter also stated that the Volcker rule should not be applied where systemic risk is absent. Another commenter suggested that the agencies should expand and clarify the scope of activities that qualify under the exclusion for liquidity management and clarify the requirements for documenting reliance on the exclusion. The commenter also stated that the Volcker rule should be amended to make clear that a violation of the proprietary trading prohibition does not arise when a covered entity acts to correct trading errors. The commenter also suggested that the agencies raise the threshold for the requirement that covered entities adopt a compliance program, reduce certain provisions of the compliance program, and create a ''safe harbor'' from imposition of compliance program requirements that takes into account the business model of a covered institution.

B. Community and Economic Development Entities, Community Development Projects, and Public Welfare Investments

12 CFR part 24 sets forth the standards and procedures that apply to national bank public welfare investments,[184] as provided by 12 U.S.C. 24 (Eleventh). Three EGRPRA commenters specifically addressed this rule.

In general

Two commenters, a law firm and a nonprofit lender, recommended that the OCC consider ways to increase the opportunity for banks to make public welfare investments, which would help CDFIs grow and would in turn help low-income communities. One of the commenters, the law firm, further noted the need for clarification of what constitutes the investment amount for the public welfare investment limit. Additionally, the commenter recommended that in addition to the

[181] The OCC licensing final rule did not include this reporting requirement.

[182] The OCC licensing final rule includes this change.

[183] 12 U.S.C. 1851. Implementing agency regulations are set forth at 12 CFR part 44; 12 CFR part 211, subpart D; 12 CFR part 248; and 12 CFR part 347.

[184] 12 CFR part 24.

general investment limit, certain investments, including small business investment corporations, CDFIs, and community development corporations, should have separate limits. Further, the commenter suggested that the OCC should change the current investment authority containing a non-exclusive list of public welfare investment vehicles to a separate investment authority for individual public welfare investment vehicles. The commenter also noted inconsistencies among the agencies about public welfare investments, such as whether an investment includes a loan, and differing capital and surplus investment percentages for public welfare investments. Lastly, the commenter recommended that the OCC clarify the difference between an equity investment and a loan, and that the OCC should incorporate OCC Interpretive Letter #1076 (December 2006) into its regulations.

Capital charge for community development and public welfare investments

One commenter, a CDFI, suggested lowering the amount of capital stock and surplus charged when banks make community development and public welfare investments. The commenter suggested that regulators become more familiar with business models of the community economic development entities that are insuring depositories making community development and public welfare investments. The commenter noted that AERIS, S&P, or other organizations rate CDFIs and therefore, the level of capital charged should not be dollar-for-dollar, but 50 or 75 percent.

OCC Regulations

A. Activities and Operations

Subpart A of 12 CFR part 7 contains a nonexclusive list of national bank and FSA powers. Subpart E of 12 CFR part 7 contains the OCC's rules related to a national bank's use of technology to deliver services and products consistent with safety and soundness. One commenter, a banker, noted that when a customer elects to receive statements and notices electronically, banks are required to confirm the customer's consent electronically in a manner that reasonably demonstrates the customer can access the information in the electronic format that it is sent. This commenter requested that the term ''reasonably'' be further defined.[185]

[185] This consumer consent requirement is not required by OCC regulations, but by the Electronic Signatures in Global and National Commerce Act (E-Sign Act). See 15 U.S.C. 7001(c)(1)(C)(ii). The E-Sign Act does not define ''reasonably'' but required the Department of Commerce and the Federal Trade Commission to provide a report on this consumer consent provision. See ibid. section 7005(b). This report was published in 2001. See *https://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-esign/esign7.pdf.*

B. Debt Cancellation Contracts and Debt Suspension Agreements

12 CFR part 37 governs the issuance of debt cancellation contracts and debt suspension agreements (DCCs) by national banks. Nine EGRPRA commenters addressed this rule.

Preemption

One commenter, representing consumer groups, suggested that the OCC revise part 37 to roll back preemption of state insurance laws and further strengthen part 37. The commenter noted that the CFPB's first enforcement actions were against credit card issuing national banks for abuses in the sale of debt suspension products and that the CFPB actions indicate a need to bolster the protections for consumers with respect to DCCs.

Enforcement actions

A trade association stated that consent orders have effectively created regulations without the due process required by the Administrative Procedures Act because they expand or conflict with OCC regulations.

Prohibited practices

One commenter, a trade association, suggested that the OCC amend 12 CFR 37.3 to add a general statement that any description of the product must be accurate and not deceptive or misleading. Another trade association suggested that the OCC expand 12 CFR 37.3(b) to apply to any description of the product, not just the required disclosure.

Refund of fees

One commenter, a trade association, suggested that the OCC delete the sentence in 12 CFR 37.4 that reads, ''A bank may offer a customer a contract that does not provide for a refund only if the bank also offers that customer a bona fide option to purchase a comparable contract that provides for a refund.'' The commenter stated that this sentence is unnecessary and burdensome because it prevents banks from offering less expensive debt protection products to customers who cannot afford more expensive contracts.

Payment of fees

One commenter, a trade association, suggested that the OCC delete the language in 12 CFR 37.5 that states a ''bank may offer a customer the option of paying the fee for a contract in a single payment, provided the bank also offers the customer a bona fide option of paying the fee for that contract in monthly or other periodic payments.'' The commenter asserted that this language is unnecessary because the purchase of debt protection products almost exclusively is financed.

Incentive compensation

Two trade associations addressed the issue of incentive compensation and DCCs. One commenter said the OCC should prohibit incentive compensation and the other said banks should be encouraged to establish and adhere to internal guidelines and metrics on incentive compensation.

Disclosure

Two trade associations addressed disclosure in debt cancellation contracts. Both commenters recommended that the disclosure rules should cross-reference Federal Trade Commission guidelines on clear and conspicuous digital disclosures and other existing standards. The commenters also suggested that the disclosure provisions should require that the following key disclosures be made before enrollment: (a) optional nature of product; (b) all fees relating to product; (c) eligibility requirements; (d) material limitations and exclusions; and (e) when cancellation or termination is permitted. One commenter recommended that the required disclosures also include contact information for the bank. Finally, both commenters recommended that the short-form disclosure should not be required for in-person transactions.

CFPB Bulletin

Three trade associations asked the OCC to amend its rules to provide clear guidance in light of CFPB Bulletin 2012–06 and enforcement orders by the CFPB, FDIC, and OCC.[186] Two trade associations recommended that the rules incorporate language on rebuttals from the CFPB Bulletin and specify that customer service manuals must provide clear guidance and language for rebuttals.

Telemarketing

Two trade associations offered recommendations on the rules governing telemarketing. Both recommended that the rules should clarify that deviations from the script

[186] See, *http://files.consumerfinance.gov/f/201207_cfpb_bulletin_marketing_of_credit_card_addon_products.pdf.*

are permitted for the assistance of customers, for natural transitions, to enhance consumer understanding, or to avoid misrepresentation. Both commenters also recommended that telemarketers make the purpose of a sales call clear before engaging in a solicitation. One commenter also recommended that telemarketing should be subjected to quality assurance reviews and that the format of telemarketing call information should be complete and clear enough to avoid deception or being misleading.

Oversight

Two trade associations said the rule should require providers to have strong management oversight, with cross-references to the OCC vendor management guidance, OCC Bulletin 2013–29.[187]

Cancellation

One trade association recommended that when a customer calls to cancel, the rules should allow the provider to provide a full explanation of the product and make inquiries about eligibility for benefits.

Claims processing

One trade association stated that the rules should require that claims be processed in a timely manner.

Complaints

One trade association noted that the rules should require a system for receiving, investigating, and resolving customer complaints, including management review.

C. National Bank Fiduciary Activities

12 CFR part 9 sets forth the standards that apply to the fiduciary activities of national banks. The OCC received EGRPRA comments on these rules from two trade associations.[188]

Retention of documents

One commenter, a trade association, requested that the OCC amend 12 CFR 9.8 to expressly permit the electronic retention of documents to satisfy regulatory requirements. The commenter stated that electronic retention would modernize the fiduciary rules and provide some burden relief while supporting the fiduciary duty to keep adequate records and render accounts. The commenter suggested specific regulatory language.

This same commenter requested that the OCC amend 12 CFR 9.8(b) to require that documents be retained for a ''necessary period'' or to refer to applicable law on the retention of documents, instead of the current three-year requirement. The commenter explained that three years may be inadequate in some situations, such as when a suit by a beneficiary against a predecessor trustee filed more than three years after the account is closed but before the state statute of limitations has run.

Collateralized deposits

A trade association commenter recommended that the OCC amend 12 CFR 9.10 to state that a bank ''may'' collateralize deposits if the deposits are directed by a third party or in the governing instrument. This same commenter also recommended expanding the acceptable collateral allowed in 12 CFR 9.10(b)(2)(iv) to include not just surety bonds but other instruments that provide similar protection from loss.

Custody of fiduciary assets

Section 9.13(a) requires a national bank to place assets of fiduciary accounts in joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. Further, 12 CFR 9.13(a) states that a national bank may maintain the investments of a fiduciary account off premises, if consistent with applicable law and if the bank maintains adequate safeguards and controls. One commenter, a trade association, explained that the requirements in 12 CFR 9.13(a) are inconsistent, and in order to reconcile the first and second sentences of the current 12 CFR 9.13(a) the OCC should amend the rule to accommodate a situation in which a separate custodian is selected before an account is established with a fiduciary. The commenter suggested specific regulatory language to replace paragraph (a).

Deposits of securities with state authorities

One commenter, a trade association, recommended that the OCC amend 12 CFR 9.14 to provide that if a bank makes a best effort to comply with this provision's requirement to deposit securities with state authorities or the appropriate Federal Reserve Bank, yet is unable to meet the deposit requirement because of a state's refusal or inaction, the bank will be deemed to have complied. The commenter noted that banks have been unable to comply because of states refusing deposits or failing to file necessary paperwork.[189]

Collective investment funds

12 CFR 9.18(b)(5)(iii) provides that a bank administering a collective investment fund that is invested primarily in real estate or other assets that are not readily marketable may require a prior notice period for withdrawals from the fund, not to exceed one year. One commenter, a trade association, recommended amending 12 CFR 9.18(b)(5)(iii), to replace references to ''real estate'' with references to ''assets that are illiquid or otherwise not readily marketable.'' The commenter suggested that the rule should recognize other types of illiquid assets, like guaranteed investment contracts, synthetic investment contracts, or separate account contracts with limits on transferability. The commenter noted that this change also would be consistent with OCC Interpretive Letter 1121 (June 18, 2009), which allows an individual bank to require a longer advance notice period when appropriate and disclosed to investors, and with the Collective Investment Funds Handbook. The commenter also stated that this amendment would allow banks not to have to apply to the OCC on a case-by-case basis for permission for advance notice requirements. The commenter suggested specific regulatory language to replace 12 CFR 9.18(b)(5)(iii).

This same commenter recommended amending 12 CFR 9.18(b)(6) to allow flexibility in the timing of a final audit when a collective investment fund is terminated shortly after the 12-month audit period ends because the cost of a stub-period audit can be substantial. Specifically, the commenter suggested allowing a bank terminating a fund within 15 months after the last audit to wait until the fund has terminated to complete the final audit.

This commenter also requested that the OCC periodically adjust the total asset limit in 12 CFR 9.18(c)(2) for mini-funds in light of inflation and economic growth. (A mini-fund is a fund that a bank maintains for the collective investment of cash balances received or held by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act that the bank considers too small to be invested

[187] *https://occ.gov/news-issuances/bulletins/2013/bulletin-2013-29.html.*

[188] As indicated in section E of this report, the OCC EGRPRA final rule made several amendments to part 9 to eliminate regulatory burden and remove outdated or obsolete provisions. Some of these amendments incorporate these EGRPRA comments on part 9 and are discussed in the preamble to this final rule. See 82 FR 8082 (January 23, 2017).

[189] The OCC EGRPRA final rule amends this provision to permit national banks to make these deposits with the appropriate Federal Home Loan Bank in addition to a Federal Reserve Bank.

separately in an economically efficient manner.) The commenter specifically stated that the OCC should raise the current threshold of $1 million to at least $1.5 million, which is the inflation-adjusted value of $1 million in 1996 dollars (the last time the threshold was revised).[190]

Furthermore, this commenter recommended that the OCC amend 12 CFR 9.18(b)(1), which requires the bank to make a copy of its written collective investment plan available for public inspection at its main office during all banking hours and to provide a copy of the plan to any person who requests it, to allow a bank to provide an electronic copy of the plan, as an alternative to mailing the plan, and to require that the bank provide a paper copy upon request. This commenter also requested that the OCC remove the requirement that a copy of the plan be available for public inspection at the bank's main office.[191]

Edge Act corporations

One commenter, a trade association, stated that part 9 should not be applied to Edge Act corporations because they are covered by Regulation K, which is inconsistent with part 9. The commenter stated that there should be a clear statement that the fiduciary and investment advisory services offered by Edge Act corporations are exclusively subject to Regulation K and other Board guidance.

D. National Bank Real Estate Lending

12 CFR part 34 sets forth standards for real estate-related lending and associated activities by national banks. The OCC received two EGRPRA comment letters representing a number of nonprofit organizations discussing the applicability of state law as set forth in 12 CFR 34.4. The commenters raised the same issues with 12 CFR 34.4 (applicability of state law) as they raised with 12 CFR part 7, subpart D. (See below.) In particular, they stated that the OCC's preemption rule in 12 CFR 34.4 ignores the intent of Congress with respect to the ''prevents or significantly interferes with'' standard articulated in the Dodd-Frank Act and the Act's ''case-by-case'' determination and CFPB consultation requirements. One commenter provided specific amendatory text. It noted that this amendatory text would restore the states' ability to protect consumers from some of the abusive practices that led to the 2008 financial crisis.

E. National Bank Sales of Credit Life Insurance

12 CFR part 2 sets forth the principles and standards that apply to a national bank's provision of credit life insurance and the limitations that apply to the receipt of income from those sales by certain individuals and entities associated with the bank. A trade association stated that it supports 12 CFR part 2 in its current form, without change or amendment.

F. Electronic Operations of Savings Associations

12 CFR part 155 sets forth how an FSA may provide products and services through electronic means and facilities. Three EGRPRA commenters addressed this rule. One bank requested that the OCC eliminate the requirement that an FSA file a written notice with the OCC prior to establishing a transactional website. Two trade associations suggested that the OCC allow FSAs to notify the OCC after they establish a transactional website in order to reduce delays with launching the website.[192]

G. Fiduciary Powers of FSAs

12 CFR part 150 sets forth the standards that apply to the fiduciary activities of FSAs.[193] Two trade associations and one nonprofit organization commented on this rule.

Ancillary activities

12 CFR 150.60 provides an illustrative list of activities that are ancillary to the fiduciary activities of an FSA. Two trade associations requested that the OCC amend this section to make clear that ancillary activities are not in and of themselves ''fiduciary activities.'' For example, some trust departments serve exclusively as directed trustee or custodian of a pension plan. They argued that if a trust department is not engaged in fiduciary activities, OCC examiners should not document that an institution is performing fiduciary activities, since that documentation can create fiduciary liability exposure (*e.g.*, under the Employee Retirement Income Security Act of 1974).

Scope/Authority

A commenter representing consumer groups argued that 12 CFR 150.136, which describes how an FSA may conduct fiduciary activities in multiple states and the extent to which state laws apply to these fiduciary activities, is outside the OCC's authority and not justified by HOLA or the Dodd-Frank Act.

H. FSA Lending and Investment

In general, 12 CFR part 160 sets forth the lending and investment authority of FSAs and establishes specific standards and requirements for this activity. One commenter, a law firm, suggested that the OCC support the repeal of the statutory limits on consumer lending for FSAs, currently required in 12 U.S.C. 1461(c)(2)(D) and 12 CFR 160.30. The commenter stated that in recent years, because congressional action has tended toward consistency and uniformity in the powers and authorities granted to banking organizations regardless of charter type, the consumer lending authority of federal savings banks should be equal to that of commercial banks with which they compete. The commenter further explained that because credit card accounts (which are not secured) are not included in the consumer loan limit, the OCC should remove the consumer loan limit to promote safety and soundness by encouraging investment in secured consumer loans.[194]

I. Preemption of State Due-On-Sale Laws (implementation of Garn-St. Germain Act)

12 CFR part 191, which implements section 341 of the Garn-St. Germain Depository Institutions Act of 1982 (Garn-St. Germain),[195] preempts state laws prohibiting due-on-sale clauses or the enforcement of such clauses, prohibits lenders from exercising due-on-sale clauses in certain transactions, and prohibits prepayment penalties in certain transactions. One commenter, a consumer group, stated that the OCC should maintain the protections against lenders exercising due-on-sale clauses for the kinds of transfers listed in 12 CFR 191.5(b)(iii), (v), and (vi) and provide additional protections to ensure

[190] As indicated in section E of this report, the OCC EGRPRA final rule amends 12 CFR 9.18(c)(2) to increase the threshold to $1.5 million with an annual adjustment for inflation, in response to this comment.

[191] As indicated in section E of this report, the OCC EGRPRA final rule amends 12 CFR 9.18 to require that the national bank make a copy of the plan available to the public either at its main office or on its website. The final rule also clarifies that a bank may satisfy the requirement to provide a copy of the plan to any person who requests it by providing it in either written or electronic form.

[192] As indicated in section E of this report, the OCC EGRPRA final rule removes this transactional website notice requirement. See 82 FR 8082 (January 23, 2017).

[193] As indicated in section E of this report, the OCC EGRPRA final rule amended this rule.

[194] As indicated in section E of this report, the OCC has developed a proposal to provide FSAs with greater flexibility to adapt to changing economic and business environments and to meet the needs of their communities without having to change their governance structure by converting to a bank.

[195] Public Law 97–320, 96 Stat. 1469, 1505–1507.

post-transfer continuity of homeownership. This commenter also stated that OCC regulations should specify that servicers must recognize the assumption of a mortgage by a successor in interest pursuant to an exempt transfer under 12 CFR 191.5(b) regardless of the default status of the loan and without additional credit screening. Finally, this commenter stated that OCC regulations should require servicers to provide information to successors and evaluate them for loan modifications before assuming the loan.

J. Preemption

12 CFR part 7, subpart D; 12 CFR 7.5002; and 12 CFR 160.110 address the applicability of state law to national banks and FSAs and set out the scope of the OCC's visitorial powers. Fifteen commenters addressed this rule.

A number of nonprofit organizations disagreed with the OCC's interpretation or implementation of the preemption provisions and visitorial powers provisions in the National Bank Act, the Dodd-Frank Act, and the Supreme Court's interpretation of visitorial powers and the standard for federal preemption. A nonprofit organization commenter noted that preemption of state laws such as the California Homeowners Bill of Rights is harmful to communities and wrong on the merits and that the OCC should consider and issue guidance on whether national banks are subject to state laws when they service loans originated by federally chartered thrifts. Commenters stated that the OCC should revise § 7.4002, regarding non-interest fees, and § 7.5002(c), regarding electronic services, to ensure that these provisions are not read to preempt state laws in a manner inconsistent with the Dodd-Frank Act or are not outdated. A commenter argued that the OCC should revisit its definition of ''interest'' in § 160.110 because it unnecessarily preempts state laws governing fees that are not ''interest'' in any real sense. Finally, a non-profit organization suggested that (i) the concept of the exclusive visitorial authority with respect to national banks is outdated in some aspects, particularly as it relates to the CRA, and (ii) states, cities, and municipalities should have the power to examine banks and bank practices as they relate to their local communities.

Two trade associations stated that the OCC's preemption regulations are an accurate interpretation of the Dodd-Frank Act and there is no need for any review or changes at this time.

FDIC Regulations

Activities of insured state banks and insured savings associations

Section 24 of the FDI Act and its implementing regulation, 12 CFR part 362, generally limit the activities and investments of state banks (and their subsidiaries) to those permitted for national banks (and their subsidiaries), absent application to and the approval of the FDIC. The FDIC may approve such applications only if the FDIC determines that the activity would pose no risk to the Deposit Insurance Fund and if the state bank meets applicable capital standards.

One comment was received regarding the activities of insured state banks and insured savings associations. The commenter objected to the FDIC's requirement of an application before a state bank may enter into a lease of mineral interests originally acquired in connection with debts previously contracted (DPC).

3. International Operations

Interagency Regulations or Regulations Implementing the Same Statute

A. International Lending Supervision

12 CFR part 28, subpart C; 12 CFR part 211, subpart D (Regulation K); and 12 CFR part 347, subpart C set forth the OCC's, Board's, and FDIC's rules, respectively, implementing the International Lending Supervision Act of 1983. Specifically, these rules require entities regulated by the agencies to establish reserves against the risks presented in certain international assets and set forth the accounting for various fees received by these entities when making international loans. These rules also provide for the reporting and disclosure of international assets. Although implementing the same statute, the agencies did not issue these rules jointly.

The agencies received one comment, from a banking trade association, with respect to this category of rules. This commenter stated that the Board's Regulation K should be the subject of a comprehensive review because of developments in international and domestic banking since 2001. In such a review, the commenter requests the following changes:

International Investment Thresholds

U.S. banking organizations are able to make investments abroad, subject to certain conditions. As required by 12 CFR 211.9(a), direct and indirect investments can be made without submitting prior notice if they are made in accordance with the general consent and limited general consent (both defined in statute) of the Board. Currently, the definition of ''general consent'' in 12 CFR 211.9(b)(4) does not allow a portfolio investment to exceed $25 million. Under 12 CFR 211.9(c)(1), the Board also grants ''limited general consent'' to investors that are not well capitalized and well managed, so long as it is the lesser of $25 million or certain thresholds tied to the investor's tier 1 capital. The commenter requested that the Board update the ''general consent'' and ''limited general consent'' thresholds from $25 to $50 million to make these fixed thresholds more consistent with current market values.

Dissolution under the Edge Act

The commenter stated that the Board should expressly permit banks to use other corporate transactions that effectively result in the dissolution of Edge Act corporations, such as the merger of Edge and agreement corporations, in addition to voluntary liquidations. Currently, banks that wish to wind down Edge Act corporations may do so under 12 CFR 211.7 only through voluntary liquidation, which involves, according to this commenter, a ''long and costly process.'' This commenter further stated that in practice, this means that banks slowly unravel these corporations by phasing out creditors and shifting liabilities away from the corporation until it can be legally dissolved.

Investments and activities abroad

Currently, under 12 CFR 211.8(b), member banks can make direct investments in certain entities, including foreign banks, domestic or foreign organizations formed to hold shares of a foreign bank, and subsidiaries established under 12 CFR 211.4(a)(8). The commenter noted that this regulation does not expressly address whether it is permissible to hold stock of an Edge Act or agreement corporation, and requested that the Board amend its regulation to reflect the established Board practice that permits a member bank to hold the stock of an Edge Act or agreement corporation.

Consistency of standards

Several commenters argued that the Board should enhance regulatory consistency with foreign regulators. Commenters specifically pointed to capital and liquidity requirements as regulatory standards that should be consistent across jurisdictions. A commenter stated that the Board should employ in its resolution planning efforts

to the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions. Another commenter stated that disclosure requirements should be as consistent as possible across jurisdictions and sufficiently detailed to allow users to perform meaningful comparisons across national regimes. A commenter suggested that the Board should release better and simpler guidance regarding who is a foreign correspondent, and regarding filing expectations for and exemptions from the Report of Foreign Bank and Financial Accounts.

Deposit and credit products

Commenters suggested that the Board clearly affirm in Regulation K the ability of Edge Act corporations to offer deposit and credit products to foreign persons who choose to hold business or personal assets in entities that are disregarded for federal income tax purposes under Regulation K.

Safe Act

A commenter argued that Regulation K or the CFPB's Regulation G should clearly indicate that Edge Act corporations are not subject to the SAFE Act and Regulation G.

FDIC Regulations

Foreign banking and investment by insured state nonmember banks

Section 109 to subpart A of part 347 authorizes state nonmember banks to make indirect investments in nonfinancial foreign organizations, but this authorization is subject to limitations. The rule states that a bank, through an authorized subsidiary or an authorized Edge Act corporation, may acquire and hold equity interests in foreign organizations that are not foreign banks or foreign banking organizations and that engage generally in activities beyond those listed in section 105(b) of the rule. Additionally, the investment in the foreign organization through the subsidiary or Edge Act Corporation cannot exceed 15 percent of the bank's tier 1 capital.

The objective of the limitations in § 347.109 is to protect insured banks from risks arising from the activities or investments of an affiliate. A primary risk that arises from the activities of a foreign organization, and that can cause losses to the bank, is country risk, *i.e.*, the risk that economic, social, and political conditions in a foreign country, including expropriation of assets, exchange controls, and currency devaluation, will adversely affect an institution's financial interests.

The agencies received one comment letter pertaining to 12 CFR part 347, subpart A, which, in part, addresses limitations on indirect investments in nonfinancial foreign organizations. The commenter recommended that the capital-based limits on investments in foreign organizations generally be raised. More specifically, the commenters argued that extensive capital requirements and calculations imposed on banks by the rules implemented under the Basel III Accord should allow for more lenient capital-based limits on investment in foreign organizations.

4. Banking Operations

Board Regulations

A. Collection of Checks and Other Items by Board and Funds Transfers Through Fedwire (Regulation J)

Regulation J provides the legal framework for IDIs to collect checks and other items and to settle balances through the Federal Reserve System.[196] The regulation specifies terms and conditions under which Federal Reserve Banks will receive items for collection from, and present items to, depository institutions. In conjunction with Regulation CC, Regulation J establishes rules under which depository institutions may return unpaid checks through Federal Reserve Banks. The regulation also specifies terms and conditions under which Federal Reserve Banks will receive and deliver transfers of funds over Fedwire, the Federal Reserve's wire transfer system, from and to depository institutions.

One commenter, a trade association that represents federal credit unions, expressed concerns with the Board's changes to Regulation J that were effective in July 2015, which changed the check settlement time for paying banks to as early as 8:30 a.m. eastern time. The commenter stated that the earlier time would lead to an increased number of daylight overdrafts for credit unions in their Federal Reserve accounts, thereby increasing fees to those credit unions, because they often do not have the same access to sources of early morning funding as other financial institutions. The commenter noted that holding higher balances or paying higher daylight overdraft fees would affect returns to credit union members.

[196] Regulation J, 12 CFR part 210.

B. Reimbursement for providing financial records (Regulation S)

Regulation S establishes rates and conditions for reimbursement to financial institutions for providing customer records to a government authority and prescribes recordkeeping and reporting requirements for IDIs making domestic wire transfers and for IDIs and nonbank financial institutions making international wire transfers.[197] Regulation S was revised shortly before 2010, and the revision became effective on January 1, 2010. The revisions to Regulation S changed the regulation in several ways. Most significantly, the personnel fees chargeable for searching and processing document requests are increased substantially. The amendments also encourage electronic document productions by not allowing a $0.25 per page fee to be charged by a financial institution for printing electronically stored information without the requesting agency's consent. The amended regulation also includes a mechanism for automatically updating the labor rates found in the regulation every three years, and makes other technical changes to the rule.

A few commenters recommended that the Board should increase the current reimbursement structure under Regulation S to account for the current costs of complying with the regulation. Specifically, commenters suggested that the Board should revise appendix A to § 219.3 to update and modernize the regulation to account for the changes in today's labor costs and to narrow the exceptions so that community banks can be reimbursed adequately for the burden of complying with government requests for documents. One commenter noted that the Board committed to update the reimbursement rate for personnel costs by relying on the Occupational Employment Statistics program maintained by the Bureau of Labor Statistics, which is updated every three years. However, the commenter indicated that the Board has not provided an update since 2009.

C. Reserve requirements of depository institutions (Regulation D)

The Board received many comments on reserve requirements for depository institutions. Regulation D imposes uniform reserve requirements on all depository institutions with transaction accounts or nonpersonal time deposits, defines such deposits, and requires reports to the Federal Reserve.[198]

[197] Regulation S, 12 CFR part 219.

[198] Regulation D, 12 CFR part 204.

Reserve Requirements

Numerous commenters suggested changes to Regulation D. Most commenters suggested eliminating or increasing the numeric limit on the number of convenient withdrawals and transfers per month that may be made from a savings deposit (six-transfer limit). Other comments included reducing the deposit reporting requirements and eliminating Regulation D altogether. Specifically, the majority of commenters suggested that the Board revise the six-transfer limit. Some commenters suggested that the Board eliminate all transfer limitations, while others suggested that the Board expand the category of unlimited transfers to include computer, online, and mobile platforms, as well as permit bank-initiated transfers to facilitate overnight sweeps. Some commenters suggested that, at a minimum, the Board increase the numeric limit on convenient transfers from six to a higher number, such as 10, 12, or 20.

Reduce deposit reporting requirements

One commenter suggested that the reserve requirement be based on ''actual dollar volume clearing'' and that the Board should require depository institutions to maintain a collateralized line of credit instead of reserve requirements.

Additional Regulation D Comments

A few commenters made additional suggestions for amendments to Regulation D. One commenter generally stated that the Board should clarify the definitions for the different types of accounts, particularly the term ''savings deposit'' and the rules for automatic transfers. Another commenter requested that the Board better define the term ''occasional basis'' as it relates to depositors who exceed the six-transfer limit. One commenter also suggested that Regulation D be eliminated altogether because reserves are no longer necessary.

OCC Regulations

Banking Operations

12 CFR 7.3000 provides the rules regarding the establishment of a national bank's hours of operation and ceremonial and emergency closings. 12 CFR 7.3001 provides the rules regarding the sharing of national bank and FSA space and employees. One commenter, a trade association, strongly urged the OCC to keep its rules relating to bank hours and shared space and employees simple and basic with additional criteria provided in guidance. It stated that these rules provide important flexibility to banks to set their hours and to innovate in the delivery of products and services to their customers.

FDIC Regulations

Assessments

Part 327 sets out the rules for determining deposit insurance assessments for certain insured institutions. The FDIC charges quarterly, risk-based assessments based on separate systems for large banks (generally, those with $10 billion or more in assets) and small banks. Assessments are calculated as an assessment rate multiplied by a bank's assessment base. A bank's assessment base generally is equal to its average consolidated total assets less its average tangible equity.

In May 2016 the FDIC adopted a final rule that revised the calculation of deposit insurance assessments for established small banks. The May 2016 rule bases assessments for these banks on an underlying model that estimates the probability of failure over three years, and eliminates risk categories for these banks.

The FDIC received two comments during the EGRPRA review on its assessments rule. Both comments pertained to a notice of proposed rulemaking that was published in the **Federal Register** in July 2015.[199] A second, revised notice of proposed rulemaking was published in the **Federal Register** in February 2016,[200] and a final rule was published in the **Federal Register** in May 2016.[201]

The first comment suggested that the definition of brokered deposits used in the proposed assessments rule was an inaccurate indicator of risk, and that banks should not be penalized (via a brokered deposits ratio in the proposed rule) for having brokered deposits. The second comment suggested that the proposed assessments rule could negatively affect community banks and commercial real estate lending by community banks. The substance of both comments was considered during the rulemaking process.

5. Capital

Interagency Regulations or Regulations Implementing the Same Statute

A. Annual Stress Tests

Section 165(i)(2) of the Dodd-Frank Act requires certain banks with total assets greater than $10 billion to conduct annual stress tests.[202] The agencies received seven comments from four banks, two trade organizations, and one individual related to their annual stress testing requirements. Some commenters requested that traditional banks (albeit with different definitions) should be excluded from the FDIC's rule on stress testing. Additionally, commenters said that the public disclosure requirement in the rule was not helpful for midsize institutions and could put unwarranted pressure on the banking system. Lastly, a commenter made various technical requests related to the CCAR program that is run by the Board.

Exempt traditional and smaller banks from stress testing

Two commenters suggested that the agencies not apply stress testing requirements to community banks. One commenter specifically suggested that the agencies not subject banks below $50 billion in assets to stress testing. These commenters argued that stress testing is not appropriate for institutions with simplistic balance sheets and that the costs outweigh the benefits. One commenter requested that the agencies provide more information on how community banks can conduct stress testing to show that they have an appropriate amount of capital for their risks.

Stress test disclosure requirements

One commenter suggested that the disclosure requirements related to stress testing are problematic and that the agencies should remove them to the extent possible. Additionally, the commenter stated that Congress should repeal the statutory basis for this requirement. The commenter was concerned that midsize bank disclosures could be misinterpreted, and in times of financial stress, could add unwarranted pressure on the banking system. The commenter asserted that the stress testing results are not directly comparable to those of CCAR institutions, are difficult to compare to other mid-size institutions, and are based on hypothetical scenarios that are not necessarily grounded in reality.

Stress testing scenarios/modifications to CCAR

One commenter suggested that the agencies should make various modifications to the CCAR process. First, the commenter suggests that certain parts of the CCAR regulations

[199] 80 FR 40838 (July 13, 2015).

[200] 81 FR 6108 (February 4, 2016).

[201] 81 FR 32180 (May 20, 2016).

[202] The agencies implementing regulations for stress tests are set forth at 12 CFR part 46; 12 CFR part 325, subpart C.

lack clarity and contain duplicative and redundant requirements that require an unnecessary expenditure of resources. In particular, duplication and redundancy in capital planning scenarios creates significant additional costs without corresponding supervisory benefits. The commenter was skeptical that the use of an ''adverse'' scenario in the CCAR process provides any material supervisory benefit beyond that already provided by the ''severely adverse'' scenario. Another commenter suggested that the agencies should have the ability not to require the ''adverse'' scenario. This commenter asserted that the adverse scenario does not provide much analytical and supervisory benefit.

FR Y–14 reports

One commenter suggested that the FR Y-14 reports contain duplicative or inconsistent requirements that result in significant duplication in the information submissions that are provided as part of the CCAR process. The commenter stated that these duplicative or unnecessary requirements increase the size of these submissions and increase the amount of time necessary to prepare and finalize them. The commenter suggested that the regulatory transitions template should not be required beginning in 2017.

Extension of time between release of scenarios and filing date

One commenter suggested that there should be more time between when the agencies release CCAR scenario information and require capital plan submissions. The commenter contended that the current timeframe unnecessarily limits the amount of thought and planning that can go into the submissions.

Mid-year cycle

One commenter suggested that CCAR should not require an additional idiosyncratic stress test during the mid-cycle timeline. The commenter argued that the Board should have discretion as to whether or not to require such test.

Agencies should disclose more

One commenter suggested that the Board should share the results of their DFAST scenarios prior to requiring banks to submit their annual capital plans. The commenter suggested that the current practice creates an element of uncertainty when banks develop their planned capital actions. Another commenter suggested that the agencies should provide more information about the models that they use for stress tests. One commenter, however, strongly supported the current CCAR process, and opposed the disclosure of agency models because disclosure would impact the efficacy of the tests and models by allowing banks to modify their processes in advance of the tests.

6. Community Reinvestment Act

Comments on CRA and CRA Sunshine are discussed in this report at sections I. D. and I.E., respectively.

7. Consumer Protection

Interagency Regulations or Regulations Implementing the Same Statute

A. Fair Housing

The OCC and FDIC have separate regulations relating to fair housing protections.[203] For the OCC, 12 CFR part 27 generally requires national banks to obtain certain information in their taking of applications for home loans. Part 27 was promulgated in 1979, before HMDA required collection of race and gender data on home mortgage loan borrowers. Even after HMDA required collection of information about home mortgage loan borrowers, part 27 has required banks to maintain in their files reasons for loan denials, while HMDA regulations have made this data element optional. The CFPB recently amended its HMDA rule, 12 CFR part 1003 (Regulation C),[204] to require all HMDA reporters to maintain denial reasons beginning on January 1, 2018. 12 CFR part 128 imposes nondiscrimination requirements for FSAs with respect to lending, applications, advertising, employment, appraisals, underwriting, and other services. 12 CFR 128.6 specifically requires savings association HMDA reporters to enter the reason for all home loan denials.

For the FDIC, 12 CFR part 338, subpart A, prohibits insured state nonmember banks from engaging in discriminatory advertising with regard to residential real estate-related transactions. 12 CFR part 338, subpart B, notifies all insured state nonmember banks of their duty to collect and retain certain information about a home loan applicant's personal characteristics in accordance with Regulation B, 12 CFR part 1002, in order to monitor an institution's compliance with the ECOA. Subpart B also notifies certain insured state nonmember banks of their duty to maintain, update, and report a register of home loan applications in accordance with Regulation C. 12 CFR part 390, subpart G, is similar to 12 CFR part 128, described above, with respect to state savings associations.

Several commenters commented on fair housing requirements. One consumer group stated that, under the Fair Housing Home Loan Data System, banks may be required to keep a fair housing log if the data show a variation in the loans between people based on race or national origin. This commenter also noted that it is very difficult for the average citizen to make a complaint because there is no way for them to tell how their loan compares to the loan issued to another person in a similar economic circumstance but with a different race or national origin.

This same consumer group also stated that the regulations need to be stronger because it seems that the only repercussion for discriminatory practices is to keep the fair housing log. An individual or a fair housing organization can file a discrimination complaint under the fair housing laws, but this requires resources that are not always available.

One commenter, an attorney, suggested that the OCC can reduce burden by removing 12 CFR part 27, which the OCC has not updated since 1994. This commenter stated that part 27 is duplicative of the HMDA and Fair Housing Act. The commenter also stated that the rule is outdated because it refers to the Board's Regulation C and not to the new CFPB HMDA rule.

One financial institution suggested that the Fair Housing Act and ECOA regulations should be merged into a single regulation.

One consumer group stated that the most valuable tool in fighting redlining is data; attempts to reduce paperwork or burdensome regulations might result in efforts to hide redlining.

One commenter recommended that the agencies adopt a more relaxed standard for the number of inadvertent mistakes in submitted HMDA/Loan Application Register (LAR) data that would require resubmission of the data.

One commenter, a state banking association, indicated that corporations, limited liability companies, and partnerships ought to be exempted from Regulation B's spousal signature requirements in order to both better align the regulation with the ECOA and assist banks to take an appropriate interest in collateral securing a loan.

B. Loans in Areas Having Special Flood Hazards

Background

As indicated in section E of the report, the agencies received over 10 comments from banking industry trade

[203] 12 CFR part 27; 12 CFR part 128 (including other nondiscrimination requirements); 12 CFR part 202; 12 CFR part 338; 12 CFR part 390, subpart G.

[204] 80 FR 66127 (October 28, 2015).

associations and regulated institutions on the agencies' flood insurance rules. Some of these comments noted that the current flood insurance system should be changed and that lenders should not bear the responsibility for requiring that property be covered by flood insurance. Some commenters requested that certain types of properties be excluded from the mandatory flood insurance requirement. One commenter specifically requested that the current $5,000 original loan principal value threshold for the flood insurance requirement to apply be increased. Some commenters also requested that certain types of loans (renewals and extensions) be exempted from required flood insurance notices. Several commenters asked that the agencies provide more guidance to the industry on flood insurance requirements and that the agencies update their Interagency Flood Q&As. These comments are detailed below.

Flood insurance—generally

Several commenters stated that the federal government needs to reconsider the federal flood insurance regime. One commenter, a banking industry trade association, stated that the flood insurance requirements in general are burdensome for bankers and that the duty to monitor flood insurance should be placed on the insurance industry and not the banking industry. This commenter noted that the current monitoring process, which is based on property financing, does not capture all properties in a flood zone because buildings without a mortgage from a regulated lending institution are not required to have flood insurance. One commenter noted that banks should be permitted to manage flood risk in the same manner as other property risks insured by a hazard insurance policy. Another commenter stated that banks need to be, but the commenter does not believe they should have to be, experts in flood insurance because the penalties are so severe that banks cannot risk error. Another bank commenter argued that flood insurance should be private and not subsidized by taxpayers. Another commenter questioned why flood insurance is required, while earthquake insurance is not, when the risk of earthquakes in some states, like California, poses a greater risk of loss than floods.

Flood insurance—exemption

By statute, flood insurance is not required for loans with an original principal balance of $5,000 or less and a repayment term of one year or less. One banker recommended that this $5,000 exemption should be raised to reflect inflation.[205] The banker stated that when the threshold was established, the average price of a home was approximately $24,000.

Required amount of flood insurance

The agencies' regulations state that the maximum amount of insurance available is limited by ''the *overall value* of the property securing the designated loan minus the value of the land on which the property is located.'' [206] Two banking industry trade associations commented that determining the insurable value of a property is difficult for bankers. One trade association specifically noted that, although the Interagency Flood Q&As sought to define ''overall value'' and provide additional guidance to the industry on regulatory expectations for making and documenting insurable value determinations, in practice, the Interagency Flood Q&As do not provide adequate clarity, and banks report that examiners increasingly challenge lender insurable value calculations. This trade association recommended that the agencies work with the Federal Emergency Management Agency (FEMA) to require insurance agents to provide the insurable value of a building on the declarations page for any NFIP policy, and that the agencies issue guidance informing lenders that they may rely on this valuation unless they have reason to believe that the figure clearly conflicts with other available information.

Detached structures

A banking industry trade association suggested that the regulators provide more guidance on the new exemption from the mandatory flood insurance purchase requirement for detached structures, as provided by HFIAA.[207]

Unused, dilapidated, low-value, or worthless buildings

A banking industry trade association, as well as a banker, stated that flood insurance regulations should not require borrowers to insure unused, dilapidated, low-value, or worthless buildings located in a SFHA.[208]

Tenant-owned buildings

A trade association stated that borrowers should not be required to procure flood insurance when a tenant of the borrower has erected a building on the real property securing the borrower's loan, and the tenant claims to retain ownership of the building.[209]

Collateral taken by the lender in an ''abundance of caution''

A banking industry trade association noted that the agencies' appraisal regulation includes an exception to the requirement for an appraisal if the collateral is taken by the lender in an ''abundance of caution.'' The Flood Disaster Protection Act (FDPA), in contrast, requires lenders to obtain flood insurance on all property located in an SFHA taken as collateral for a loan, which includes property held as collateral in an ''abundance of caution.'' The commenter notes that lenders are therefore required to determine the valuation of this collateral for flood insurance purposes even though they are not required under the appraisal rules to obtain an appraisal. The commenter recommends that the agencies provide an exception from the flood insurance purchase requirement for buildings taken as collateral in an ''abundance of caution'' in order to be consistent with the appraisal rules.[210]

[205] The agencies note that if Congress were to increase this $5,000 exemption for inflation, the amount of the exemption would be approximately $10,600 in 2016.

[206] 12 CFR 22.3; 12 CFR 208.25(c); 12 CFR 339.3.

[207] The agencies issued final regulations implementing this exemption in July 2015, 80 FR 43216 (July 21, 2015), after this commenter submitted its letter in September 2014. The preamble to the final rule provides guidance to the industry on this provision. Furthermore, the agencies addressed the detached structures provision in a webinar that the agencies hosted in October 2015 and in a newsletter article in April 2016. The materials and transcript of this webinar, ''Interagency Flood Insurance Regulation Update,'' may be found at *https://consumercomplianceoutlook.org/outlook-live/2015/interagency-flood-insurance-regulation-update/*; *https://consumercomplianceoutlook.org/2016/first-issue/interagency-flood-insurance-regulation-update-webinar-questions-answers/*.

[208] The agencies note that Interagency Flood Q&A 24 provides a suggestion for lenders with respect to buildings with limited utility or value. Furthermore, recent changes to the flood insurance law under HFIAA, which provided a new exemption for certain residential detached structures and which the agencies implemented in a final rule in July 2015, 80 FR 43216 (July 21, 2015), should further alleviate these concerns for residential properties.

[209] The agencies note that, under the federal flood insurance statutes, if a building secures a borrower's loan, flood insurance is required if the building is in an SFHA in which flood insurance is available under the NFIP. If the building does not secure the borrower's loan, then the borrower is not required to obtain flood insurance for that building. Whether a building built by a tenant secures the borrower's loan will depend on the borrower's loan documents.

[210] The agencies note that Interagency Flood Q&A 41 clarifies that both the FDPA and the agencies' regulations look to the collateral securing the loan. If the lender takes a security interest in improved real estate located in an SFHA in which flood insurance is available under the NFIP, then flood insurance is required.

Force placement of insurance

One commenter noted that the regulation does not address when a lender should send to the borrower the renewal letter if the force-placed insurance will be coming up for renewal and the loan is not maturing. The commenter stated that the agencies need to clarify whether the lender should send the letter 45 days prior to the expiration of the force-placed policy or at the expiration date. The commenter also requested that the agencies define the difference between requirements in connection with a Mortgage Portfolio Protection Program policy (the NFIP force-placed flood insurance product available to lenders) and a private force-placed insurance policy when defining the 45-day renewal letter. Some force-placed insurance policies are obtained from private insurers.

Notices for loan renewals and extensions

Two banking industry trade associations questioned the purpose of the flood insurance notice in the case of renewals and extensions, especially if the renewal is with the same lender, the property in question is already covered by flood insurance, and the flood insurance requirements remain unchanged from the original loan because the amount of the existing loan will not change. A bank commented that sending a new notice for renewals and extensions with no changes confuses the borrower and could delay the transaction. These commenters suggested that the agencies revise the flood regulations to remove the notice requirements with respect to such loan renewals and extensions. Another commenter noted that the supplementary notice required for commercial loan properties in flood zones for every renewal, increase, or extension is not beneficial as long as the existence of the current flood insurance is verified by the bank, and the lender obtains life of loan determinations at inception.[211]

Flood insurance—guidance

A number of bankers and banking industry trade associations stated that the industry needs clearer and more comprehensive guidance on flood insurance. Bankers specifically requested guidance on the escrow and force-placed insurance provisions, especially since the enactment of the Biggert-Waters Act and HFIAA. One bank specifically noted that it was challenging to know the effective dates of new requirements included in these laws. A number of commenters requested that FEMA and the agencies work together in issuing guidance, and that enhanced communication is needed among FEMA, the agencies, and banking institutions. Two banking industry trade associations suggested that the agencies work with FEMA to update and maintain the Mandatory Purchase of Flood Insurance Guidelines (guidelines), a FEMA publication that FEMA rescinded in 2013. One trade association specifically noted that although the banking industry appreciates the guidance provided by the Interagency Flood Q&As as *specific* questions and answers, it lacks the comprehensiveness of the guidelines. One banker stated that it relied upon the guidelines to comply and that lenders ''desperately need updated guidelines.''[212]

Interagency Flood Q&As—in general

One banking industry trade association noted that the Interagency Flood Q&As are outdated and in need of reworking. A banker also noted that the Interagency Flood Q&As have not been updated to reflect the Biggert-Waters Act and HFIAA changes.[213]

Loan syndications and participations

Interagency Flood Q&A 4 addresses the flood insurance obligations of lenders for loan syndications and participations.[214] It states that examiners will look to see whether the participating lender engaged in due diligence to determine whether the lead lender ensures that the borrower obtains appropriate flood insurance and monitors for ongoing maintenance of flood insurance. A banking industry trade association suggested that the responsibility for flood requirements should be only on the lead agent or lender, and that participants should not be required to demonstrate that they have exercised due diligence and adequate controls over the lead lender. This commenter specifically requested that the agencies revise this Q&A to remove the language expressly providing for an examination of each participating lender as duplicative and unnecessarily burdensome.

Consumer Outreach

One banking industry trade association suggested that the agencies do a better a job of educating consumers on the reasons for, and requirements of, flood insurance.[215]

C. Safeguarding Customer Information

The Interagency Guidelines Establishing Information Security Standards (interagency guidelines) set forth standards pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act[216] and section 39 of the FDI Act.[217] These interagency guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.[218] The guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621 and 628 of the Fair Credit Reporting Act (FCRA).[219]

One commenter asserted that core processors should be required to get their supervisory reports faster and provide banks with copies of their internal audits, so the banks can identify the core processor's deficiencies and remediation plans. The commenter also asserted that core processors should be required to timely notify banks when the core processor's system has been compromised. The commenter had not been successful in requiring this information by contract from the bank's core processor.

D. Fair Credit Reporting Act

Subpart I of the agencies' regulations that implement section 615 of the FCRA imposes duties on the user of a consumer credit report with respect to disposal of consumer information.[220] Subpart J of the agencies' regulations

[211] These notices are statutorily required. See 42 U.S.C. 4104a(a)(1).

[212] The agencies note that the preamble to the agencies' final rule to implement the escrow and force-placed insurance provisions of the Biggert-Waters Act, 80 FR 43216 (July 21, 2015), and the Interagency Flood Q&As provide additional guidance on these provisions. The agencies also note that on March 29, 2013, they issued an interagency statement to inform financial institutions about the effective dates of the Biggert-Waters Act provisions. (See OCC Bulletin2013–10; CA letter 13–2 (Board); FIL–14–2013 (FDIC)), and held an interagency webinar that discussed these matters (see reference to webinar materials and transcript in footnote 206).

[213] As noted in section E of the report, the agencies have begun revisions on the Interagency Flood Q&As. The agencies will continue work on these revisions as they finalize the recently proposed private flood insurance rule.

[214] 74 FR at 35935 (July 21, 2009).

[215] The agencies note that FEMA provides various guidance for consumers on flood insurance requirements. See *https://www.fema.gov/information-property-owners*, *https://www.floodsmart.gov/floodsmart/*, and *www.fema.gov/national-flood-insurance-program-flood-insurance-advocate*.

[216] 15 U.S.C. 6801 and 6805.

[217] 12 U.S.C. 1831p–1.

[218] 12 CFR part 30, appendix B; 12 CFR part 208, appendix D-2; 12 CFR part 225, appendix F; 12 CFR part 364, appendix B.

[219] 15 U.S.C. 1681s and 1681w.

[220] 12 CFR part 41, subpart I; 12 CFR part 222, subpart I; 12 CFR part 334, subpart I.

implements the Identity Theft Prevention Program (Identity Theft Red Flags Program) requirements and the duties of card issuers regarding changes of address that are mandated by the FCRA.[221] These regulations require that each financial institution and creditor that offers or maintains one or more covered accounts develop and provide for the continued administration of a written program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. An appendix to this subpart contains guidelines to assist financial institutions and creditors in the formulation and maintenance of this program.[222] The regulations also require a card issuer to establish and implement reasonable policies and procedures to assess the validity of a change of address and prohibit a card issuer from issuing an additional or replacement card until it notifies the cardholder or otherwise assesses the validity of the change of address in accordance with its policies and procedures.

One commenter expressed the opinion that community banks are held to a higher standard than nonbanks with regard to FCRA notice requirements generally, because banks are regularly examined for compliance.

One commenter opposed the requirement that a bank provide an annual report to its board of directors summarizing the bank's Identify Theft Red Flags Program. The commenter expressed the opinion that the requirement is obsolete because a bank's board of directors should already be aware of significant issues that arise under the Identify Theft Red Flags Program.

FDIC Regulations

Deposit Insurance Coverage

Part 330 clarifies the rules and defines the terms for deposit insurance coverage pursuant to the FDI Act. The insurance coverage provided by the act and part 330 is based upon the ownership rights and capacities in which deposit accounts are maintained at IDIs. In accordance with the statutory and regulatory framework, all deposits in an IDI that are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) are added together and insured.

The agencies received two comments regarding the FDIC's rule on deposit insurance coverage, 12 CFR part 330. The first comment was a general comment suggesting that the FDIC simplify the deposit insurance rules, noting that the deposit insurance rules for trust accounts are particularly complex. The second comment suggested a 24-hour turnaround time for the FDIC to answer a bank's request for advice on account structures with regard to deposit insurance.

8. Directors, Officers, and Employees

Interagency Regulations or Regulations Implementing the Same Statute

A. Limits on extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirements

The Board's Regulation O[223] implements sections 22(g) and (22(h) of the Federal Reserve Act, which places restrictions on extensions of credit made by a member bank to an executive officer, director, principal shareholder, of the member bank, of any company of which the member bank is a subsidiary, and of any other subsidiary of that company. Federal law also applies these restrictions to state nonmember banks, FSAs and state savings associations. OCC and FDIC regulations enforce these statutory and regulatory restrictions with respect to national banks and FSAs, and to state nonmember banks and state savings associations, respectively.[224] The agencies received numerous comments on their regulations related to directors and officers, summarized below.

Raise the Regulation O threshold extension of credit limit, both with and without prior approval

Several commenters suggested that the *de minimis* transaction limit in Regulation O be increased. One suggested increasing the threshold to $250,000. Several suggested that the amount be indexed for inflation. Many commenters suggested raising the prior-approval threshold to $750,000 or $1.2 million depending on the location of the bank. One commenter suggested expanding the applicability of the threshold limitations to principal shareholders, directors, and executive officers.

Additional comments on Regulation O

The agencies received other comments on Regulation O. One commenter suggested that the agencies should create a Regulation O summary chart to communicate limitations.[225] Two commenters indicated that the overdraft restriction provision was no longer necessary and should be eliminated. One commenter suggested that Regulation O is difficult to interpret and can cause unintended violations. The commenter suggested clarifying (1) what constitutes control of an entity for determining which entities are related entities and which entities are affiliates of the bank; (2) who is an executive officer who ''participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank''; (3) how the application of 12 CFR 215.5(c)(2) applies to Texas home equity and construction liens; and (4) the scope and applicability of the ''tangible economic benefit rule.''

B. Management Official Interlocks

In general, pursuant to the DIMIA,[226] agency regulations prohibit a management official of a depository institution or depository institution holding company from serving simultaneously as a management official of another depository organization if the organizations are not affiliated and both either are very large or are located in the same local area.[227]

The agencies received one comment letter regarding the management interlock regulations, from a trade association. The commenter suggested that because non-U.S. affiliates of the depository organizations are included in the major assets prohibition there should be an exception to the interlocks rule for depository organizations' foreign affiliates that are not engaged in business activities in the United States. The commenter also suggested that the agencies update the asset thresholds in the major assets prohibition to reflect the changes in the banking industry since the regulations were promulgated.[228]

OCC Regulations

A. National Bank Activities and Operations—Corporate Practices

12 CFR part 7, subpart B, sets forth corporate governance procedures that are consistent with safe and sound

[221] 12 CFR part 41, subpart J; 12 CFR part 222, subpart J; 12 CFR part 334, subpart J.

[222] 12 CFR part 41, appendix J; 12 CFR part 222, appendix J; 12 CFR part 334, appendix J.

[223] 12 CFR part 215.

[224] See 12 CFR part 31; 12 CFR 337.3; and 12 CFR 390.338.

[225] As indicated in section E of the report, the agencies are working to provide a chart or similar guide on the statutorily required rules and limits on extensions of credit made by an IDI to an executive officer, director, or principal shareholder of that IDI, its holding company, or its subsidiaries.

[226] 12 U.S.C. 3201 et seq.

[227] 12 CFR part 26; 12 CFR part 212; 12 CFR part 238, subpart J; 12 CFR part 348.

[228] As indicated in section E of the report, the agencies plan to propose amending their management interlocks rules to adjust these thresholds.

banking practices. The agencies received two comments on this subject.

One commenter, a nonprofit organization, noted that 12 CFR 7.2000, which explains the OCC's general corporate governance procedures, may limit the ability of national banks to adopt a benefit corporation or mission-aligned status. The commenter stated that there is no reason to treat entities with mission-aligned structures differently than corporations formed in jurisdictions with constituency statutes. The commenter also stated that mission-aligned structures: (1) Give directors more, rather than less, power to consider safety and soundness; (2) make directors accountable with respect to such considerations unlike constituency statutes; and (3) gives corporations a greater ability to serve the community and meet CRA goals. The commenter suggested that the OCC clarify the application of 12 CFR 7.2000 to mission-aligned structures.

Another commenter, a federal savings bank, recommended that there should be a transition period if an institution falls below the five-director minimum to allow the institution to fill the vacancy without having a violation of law.

B. FSA Employment Contracts, Compensation, Pension Plans

12 CFR 163.39 sets forth specific requirements for employment contracts between an FSA and its officers or other employees. One commenter, a financial institution, commented on these regulations. This commenter stated that the OCC should eliminate its employment contract regulation as it applies only to FSAs and there is no reason to distinguish FSAs from banks. It noted that the requirement for board approval of all employment contracts is unnecessary given the existence of comprehensive guidance on compensation.

FDIC Regulations

Golden Parachute and Indemnification Payments

The Crime Control Act of 1990 authorized the FDIC to prohibit or limit indemnification payments (as well as golden parachute payments). Consistent with the statute, the FDIC's regulations[229] define a ''prohibited indemnification payment'' as any payment for the benefit of a covered institution's current or former directors to pay or reimburse those individuals for (1) any civil money penalty or judgment; or (2) any other liability or legal expense. The regulations also identify circumstances where payments are not prohibited indemnification payments. The OCC and Board apply part 359 to their regulated institutions and holding companies.

Two commenters participating in the EGRPRA outreach sessions addressed the restrictions on indemnification payments, focusing their remarks on the effect of the indemnification payment restrictions on directors. Specifically, the two commenters maintained that in order to ensure that IDIs and IDI holding companies can keep qualified individuals as their directors, and effectively attract and persuade others to become directors, institutions must be able to assure these individuals that they can insure or reimburse them for the full range of liabilities to which the directors might be exposed in serving in that important role. In particular, they stated, a director should be insured for all of a director's expected liabilities, to specifically include the payment of, or insurance coverage for, civil money penalties that might be imposed on a director.

9. Money Laundering

Comments on money laundering-related rules are discussed in this report at section I.D.

10. Rules of Procedure

Interagency Regulations or Regulations Implementing the Same Statute

Civil Money Penalties and Rules of Practice and Procedure

One commenter addressed the assessment of civil money penalties under 12 USC 1818 and the agencies implementing regulations.[230] This commenter stated that the agencies should reassess the civil money penalty rules so that the amount of an agency-assessed civil money penalty is in line with the damage done by the underlying violation.[231]

11. Safety and Soundness

Interagency Regulations or Regulations Implementing the Same Statute

A. Real estate lending standards

Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the agencies to adopt uniform regulations prescribing standards for real estate lending.[232] In establishing these standards, the agencies are to consider the risk posed to the deposit insurance funds by such extensions of credit; the need for safe and sound operation of IDIs; and the availability of credit.

The agencies issued subpart A of the Real Estate Lending Standards in 1992 pursuant to section 304 of FDICIA. The rule requires each IDI to adopt and maintain comprehensive written real estate lending policies that are consistent with safe and sound banking practices and that meet specified standards for loan-to-value (LTV). The institution's board of directors must review and approve these policies at least annually. In order to supplement and clarify the standards stated in the subpart A, the agencies adopted Interagency Guidelines for Real Estate Lending Policies (guidelines). The guidelines describe the criteria and specific factors that the agencies expect insured institutions to consider in establishing their real estate lending policies.

The agencies received comments from two bankers and one trade association relating to real estate lending standards. One commenter suggested that the supervisory LTV ratio for raw land is too low. The same commenter noted the existing supervisory LTV for commercial real estate is 85 percent, and suggested a new supervisory LTV threshold of 90 percent and that a 10 percent down payment on commercial real estate would be sufficient in rural communities. The commenter suggested that performing loans whose LTV ratio exceeds the supervisory LTV threshold based on a new appraisal received after the loan's origination should be exempt from reporting requirements.

One commenter suggested that the regulations should incorporate real estate exposures in the investment portfolio. The commenter also suggested that banks with limited exposure (in the investment portfolio) should be evaluated differently than banks with collateralized debt obligations or other off-balance-sheet real estate exposures.

Another commenter requested that the agencies remove the annual board approval requirement (noted above) if there has not been a change in bank procedure or policy or if the bank has not introduced new products or entered new geographic locations.

[229] 12 CFR part 359.

[230] 12 CFR part 19, 12 CFR part 109, 12 CFR part 263, 12 CFR part 308, 12 CFR 390.30.

[231] Current law and agency process already take into account the damage inflicted by the underlying violation in setting the amount of a civil money penalty. See 12 U.S.C. 1818(i).

[232] 12 CFR part 34, subpart D; 12 CFR part 208, subpart E and appendix C (Reg. H); 12 CFR part 365; 12 CFR 160.100; 12 CFR 163.101; 12 CFR part 390, subpart P.

B. Transactions with affiliates

Sections 23A and 23B of the Federal Reserve Act [233] and the Board's Regulation W [234] provide the framework for transactions between all IDIs and their affiliates. Regulation W specifically sets forth the regulatory requirements for transactions between IDIs and their affiliates for the agencies, and OCC rules [235] refer to this Board rule. The agencies received several comments related to this regulation.

A few commenters suggested that the form FR Y–8 (Bank Holding Company Report of Insured Depository Institutions Section 23A Transactions with Affiliates) should not be required if no affiliate transactions subject to Section 23A have occurred or if relevant information has not changed since the previous quarter's report. A commenter also suggested that the Board issue a simplified version of Regulation W for non-complex community banking organizations. Finally, a commenter argued that the lack of clarity concerning the definition of ''control'' for purposes of Regulation W may cause banking organizations to over-report or under-report the occurrence of affiliate transaction subject to Regulation W.

C. Safety-and-Soundness Standards

Pursuant to section 39 of the FDI Act, the agencies have established safety-and-soundness standards in guidelines adopted after notice and comment relating to (1) operation and management; (2) compensation; and (3) asset quality, earnings, and stock valuation.[236] One commenter, a bank, requested the agencies to clarify the concept of ''excessive compensation'' in these guidelines.

OCC Regulations

Lending Limits

In general, section 5200 of the Revised Statutes [237] provides that the total loans and extensions of credit by a national bank to a person outstanding at one time shall not exceed 15 percent of the unimpaired capital and unimpaired surplus of the bank if the loan is not fully secured plus an additional 10 percent of unimpaired capital and unimpaired surplus if the loan is fully secured. Section 5(u)(1) of the HOLA [238] applies section 5200 of the Revised Statutes to savings associations. OCC regulations at 12 CFR part 32 implement these statutes for national banks and state savings associations and FSAs.[239]

The agencies received two comments on the OCC's lending limits rule from bankers who both stated that there is a need for consistency in the legal lending limits area with respect to federal and state lending limits.[240] They also noted that the lending limits rules can hinder participation with small banks, particularly given new capital requirements.

FDIC Regulations

A. Annual Independent Audits and Reporting Requirements

Part 363 of the FDIC's regulations implements section 36 of the FDI Act and imposes annual audit and reporting requirements on IDIs with $500 million or more in consolidated total assets (covered institution). Section 36 grants the FDIC discretion to set the asset size threshold for compliance with these statutory requirements, but states that the threshold cannot be less than $150 million. Specifically, part 363 requires each covered institution to submit to the FDIC and other appropriate federal and state supervisory agencies an annual report comprised of (1) audited financial statements and (2) a management report containing specified information. The management report for an institution with $1 billion or more in consolidated total assets must include additional specified information.

Two commenters requested revision of the annual audit and reporting requirements to (1) exclude IDIs that are public companies or subsidiaries of public companies that file annual and other periodic reports with the SEC and that are subject to the requirements of the Sarbanes-Oxley Act of 2002 (SOX); (2) raise the asset size threshold for complying with part 363 from $500 million to $1 billion; and (3) conform the internal control over financial reporting requirements of part 363 with the SEC's requirements under section 404(b) of SOX.

B. Unsafe and Unsound Banking Practices, Brokered Deposits

The agencies received input from 12 commenters on the FDIC's rule on brokered deposits. Brokered deposits are defined by statute as a deposit accepted through a deposit broker.[241] Some commenters suggested that certain statutory definitions be updated and that the FDIC update its interpretations on whether certain deposits are classified as brokered or not. In addition, some commenters suggested that the FDIC exclude reciprocal deposits, and other types of brokered deposits, including deposits placed by exclusive third-party agents and deposits in transaction accounts, from being classified as brokered deposits. Another commenter suggested that the FDIC clarify whether certain entities (described below) are considered deposit brokers. The FDIC's May 2016 final rule on deposit insurance assessments for established small banks addressed another EGRPRA comment related to brokered deposits. In June 2016, the FDIC finalized updates to the Frequently Asked Questions on Brokered Deposits that considered definitional and other issues raised by EGRPRA commenters.[242]

Four commenters argued that the definition of brokered deposits needs to be updated in light of modern banking requirements.

Another commenter recommended that the FDIC clarify that a dual-hatted employee (one that is employed exclusively by the bank but performs functions for an affiliate or an associated party) is not a ''deposit broker'' when the employee receives compensation that is primarily in the form of a salary and does not share his/her salary with an affiliate or an associated party; exclude call center employees or a bank employees that share office space with a broker–dealer from the definition of deposit broker; and exclude government agencies that administer benefits programs from the definition of deposit broker.

Five commenters suggested four different areas where the FDIC should reduce the impact of the brokered deposit classification. Two commenters recommended that the FDIC reduce the assessment and run-off rates associated with certain specified brokered deposit products because they provide liquidity

[233] 12 U.S.C. 371c and 371c–1.

[234] 12 CFR 223.

[235] 12 CFR part 31 (national banks), 12 CFR 163.41 (FSAs). (The OCC EGRPRA final rule removes 12 CFR 163.41 and applies 12 CFR part 31 to FSAs, effective April 1, 2017.) 12 U.S.C. 18(j) applies sections 371c–1 to nonmember insured banks ''in the same manner and to the same extent'' as member banks.

[236] Safety-and-soundness standards—12 CFR part 30, appendix A; 12 CFR part 209, appendix D–1 (Regulation H); 12 CFR part 364; 12 CFR part 170.

[237] 12 U.S.C. 84.

[238] 12 U.S.C. 1464(u)(1).

[239] The OCC has rulemaking authority for lending limit regulations applicable to national banks and to all savings associations, both state- and federally chartered. However, the FDIC, not the OCC, enforces these rules as to state savings associations.

[240] The lending limits for national banks and for federal and state savings associations are statutory. Lending limits for state chartered banks are set by the appropriate state regulator. The OCC notes that its rule at 12 CFR 32.7, pursuant to 12 U.S.C. 84(d)(1), provides a ''Supplemental Lending Limit Program'' to provide some parity with state lending limits.

[241] 12 U.S.C. 1831f.

[242] FDIC FIL-42-2016, ''Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits,'' *www.fdic.gov/news/news/financial/2016/fil16042.html.*

to banks and allow small banks to compete. Another commenter recommended that ''adequately capitalized'' banks should have fewer limitations on their ability to accept brokered deposits. A commenter suggested that if the FDIC does not exclude reciprocal deposits from its definition of brokered deposits, the FDIC should loosen its criteria for brokered deposit waivers in recognition of the difference between reciprocal deposits and regular brokered deposits. Another commenter recommended that brokered deposits should not retain its classification as a brokered deposit permanently, particularly when a deposit is renewed.

Further, another commenter recommended that the FDIC review its application of the primary purpose exception to brokered deposits to determine whether the exception has been applied consistently in the past and whether it can be applied more broadly moving forward while still achieving the purpose of the statute.

12. Securities

Interagency Regulations or Regulations Implementing the Same Statute

A. Banks as securities transfer agents

Section 17A (15 U.S.C. 78q–l) of the Securities and Exchange Act of 1934 requires all transfer agents to register with the appropriate regulatory agency. Depending on the case, the appropriate regulatory agency may be one of the agencies or the SEC. The agencies each have issued separate rules adopting registration and reporting requirements consistent with section 17A.[243]

The only commenter on these rules, a banking trade association, requested that the agencies make clear that SEC Rule 17Ad–16 is intended to require the filing of a particular notice with the Depository Trust Company (DTC) only in cases where there is a change of name or address or where the filing transfer agent is the successor to a previous transfer agent. The commenter asserted that SEC staff and the FDIC have interpreted SEC Rule 17Ad–16 as requiring transfer agents to provide the notice to the DTC for every new engagement even though that interpretation is inconsistent with the plain language of the rule. The commenter also asserted that the interpretation results in a waste of both time and money because the DTC does not need the notice and simply disposes of it. The commenter stated that it intends to seek an identical interpretation of the scope of this rule directly from the SEC in response to a recent SEC advance notice of proposed rulemaking.[244]

B. Recordkeeping and Confirmation of Securities Transactions Effected by Banks

The agencies each have issued substantively similar rules to require institutions under their respective jurisdictions to establish uniform procedures and recordkeeping and confirmation requirements with respect to effecting securities transactions for customers.[245] The agencies' rules each contain exceptions for institutions affecting a small number of securities transactions per year. The agencies patterned their requirements on the SEC's rules applicable to broker–dealers.

Two commenters, both trade associations, addressed the agencies' rules. Both commenters requested the reduction and/or simplification of specific notification requirements. More specifically, one of the commenters requested that the agencies permit banks to send securities transaction statements less frequently and the other commenter raised concerns with statements and disclosures required for certain sweep accounts.

Frequency of securities transaction statements

One commenter requested that the agencies reduce the frequency of securities transaction statements required by 12 CFR 12.5(c), 12 CFR 208.34(e)(3), 12 CFR 344.6 (c)(1), and 12 CFR 151.100(e). Under these provisions, banks that effect securities transactions in an agency capacity are required to send itemized statements at least every three months to their customers specifying the securities in the custody of the bank at the end of the reporting period, as well as debits, credits, and transactions during the period. The commenter stated that many bank customers have requested that they receive the statements less frequently because ''they do not wish to be inundated with paper statements and feel that they already receive too many from various sources.'' The commenter asked the agencies to lengthen reporting periods, such as an annual statement, if selected by the customer.

Notification and disclosure requirements for sweep accounts under 12 CFR 344.6 (and analogous rules)

Section 344.6 requires every FDIC-supervised institution effecting a cash management sweep to make certain disclosures to its customers for each month in which a purchase or sale of securities takes place, and not less than once every three months if there are no securities transactions in the account. One commenter, a banking trade association, raised concerns with these notification and disclosure requirements for these sweep accounts set forth in 12 CFR 344.6. The commenter asserted that some community bankers question ''the necessity and burden'' of the notification requirements under 12 CFR 344.6 that deal with cash management sweep accounts. The letter does not request a specific type of relief. The Board's and OCC's rule for national banks is similar to 12 CFR 344.6. However, the OCC's rule for FSA, 12 CFR 151.100, originally adopted by the former OTS, allows a FSA to satisfy its disclosure obligations under 12 CFR 151.70 for sweep accounts on a quarterly basis. The FDIC's and Board's rules, as well as the OCC's rule for national banks, are intended to mirror substantially the reporting requirements under the SEC's Rule 10b–10.[246]

Reduce and/or simplify the notification and disclosure requirements for sweep accounts under 12 CFR 360.8

12 CFR 360.8 [247] requires IDIs to disclose whether funds in sweep accounts are deposits and, if not, whether the funds would have general creditor or secured creditor status in the event of a failure. This rule also requires disclosures to be made each time a sweep agreement is renewed. FDIC FIL–39–2009 (July 6, 2009) clarifies the requirements for properly executing certain sweeps and provides that certain of the disclosure requirements in 12 CFR 360.8 apply on a transactional basis. Thus, for certain daily sweeps (i.e. repo sweeps) a bank must make daily disclosures.

A banking trade association raised concerns with the notification and disclosure requirements for certain sweep accounts discussed in FIL–39–2009. Specifically, the commenter asserted that some community bankers believe that the disclosure requirements described in FIL39–2009 are

[243] 12 CFR 9.20; 12 CFR 208.31 (Reg. H); 12 CFR part 341.

[244] 80 FR 81948 (December 31, 2015).

[245] 12 CFR part 12; 12 CFR part 151; 12 CFR 208.34 (Reg. H); 12 CFR part 344.

[246] 17 CFR 240.10b–10. See 61 FR 63962 (December 2, 1996). Rule 10b–10 required monthly reporting when 12 CFR 12.5(e) was adopted and continues to require monthly reporting today.

[247] 12 CFR 360.8 is an FDIC rule with no OCC or Board analog.

burdensome and that customers often request that daily confirmation notices be ''turned off'' when sweeps take place on a daily basis. The commenter suggested that the FDIC simplify sweep account disclosure requirements so that community banks can automatically renew daily sweeps without having to confirm each renewal on a daily basis.

C. Securities Offerings

The agencies securities offering rules set forth securities offering disclosure requirements and are based on the Securities Act and certain SEC rules.[248] One commenter, a banking trade association, recommended that the agencies establish a mechanism by which banks may electronically file registration statements, offering documents, notices and other documents related to the sale of securities issued by a bank. The commenter asserted that the agencies' regulations should keep pace with changes in technology and noted that an electronic filing mechanism would align the agencies with the SEC and the Municipal Securities Rulemaking Board, both of which have long allowed securities issuers to file offering documents electronically.[249]

Board Regulations

Regulation U

A commenter who represented a bank suggested that the Board increase the threshold value of margin stock that triggers the requirement under 12 CFR 221.3(c) of the Board's Regulation U that a bank's customer file Form FR U–1 (OMB No. 7100-0115) in connection with an extension of credit by a bank that is secured directly or directly by margin stock.[250] In general under § 221.3(c) of Regulation U, a borrower that enters into an extension of credit with a bank or with certain nonbank lenders (1) for the purpose of buying or carrying margin stock—*i.e.,* stocks listed on exchanges, stocks designated for trading in the National Market System, certain convertible bonds, and most mutual fund shares—and (2) secured directly or indirectly by any margin stock must execute a statement of purpose for an extension of credit in the form prescribed by the Board. The commenter suggested that the Board increase the threshold value of margin stock that triggers the filing requirement from $100,000 to $500,000.

[248] 12 CFR part 16; 12 CFR part 390, subpart W.

[249] As indicated in section E of this report, the OCC EGRPRA final rule incorporates this comment.

[250] 12 CFR part 221.

13. Additional Comments Received From the EGRPRA Review

The agencies received other comments that were not within the 12 categories of rules published for comment. This section summarizes these comments.

A. EGRPRA Process

The agencies received several comments recommending changes to the EGRPRA review process. Some commenters suggested that the review process should be expanded to include the CFPB and FinCEN. Other commenters suggested that the agencies modify the review process to allow the public greater access to outreach meetings and the ability to track key issues and comments received from the public. The agencies also received comments on other issues, such as whether newly issued rules should be included as part of the EGRPRA review, and whether there should be an independent EGRPRA director in charge of the review process or an ''EGRPRA czar'' to handle disputes.

Furthermore, one commenter suggested that the agencies conduct an EGRPRA review each year. Two commenters suggested that the agencies should review not just each regulation specifically, but the overall burden of rules. Finally, one commenter suggested that the EGRPRA review also should consider where regulations need to be strengthened.

B. Increase Dollar Thresholds

The agencies received several comments suggesting that the agencies increase all dollar thresholds in their regulations. Two trade associations urged that all regulatory thresholds should be regularly updated for inflation or tied to a pricing index. One bank specifically suggested that the agencies should raise the threshold for a loan examined in the Shared National Credit program.

C. Regulate Shadow Banking

The agencies received several comments recommending that the agencies regulate the shadow banking industry. ''Shadow banking'' generally refers to a diverse set of entities and markets that collectively carry out traditional banking functions outside of, or in ways loosely connected to, the traditional banking system regulated by the agencies. As shadow institutions typically do not have banking licenses and do not take deposits, they are not subject to the same regulations as traditional IDIs. These commenters argued that nonbank entities that offer products that compete with banks should be subject to regulatory requirements similar to that of banks. Some commenters suggested that the Dodd-Frank Act has benefited the shadow banking system by increasing the regulatory burden on community banks without subjecting shadow banking entities to similar requirements.

D. Regulatory Structure

The agencies received several comments suggesting that the agencies take steps to simplify the federal regulatory oversight of banks. One commenter suggested that each bank have just one regulator. Some commenters proposed simplifying the federal oversight of banks through legislation that reduces the number of federal banking regulators. The agencies also received several comments suggesting that the agencies could improve the federal regulatory oversight of banks and reduce unnecessary burden if they developed a stronger working relationship with the entities that they regulate and with other federal agencies.

Several other commenters suggested that the agencies should review regulations to make sure they are written clearly.

Some commenters suggested that the agencies be required to follow a cost-benefit analysis when issuing regulations. These commenters stated that the agencies only should issue new regulations if the benefits of a proposed rule outweigh the costs and unintended consequences of such a proposed rule.

One commenter suggested that the agencies allow more public participation in rulemakings. The commenter asserted that involving more people within the banking industry to participate in the rulemaking process in addition to the traditional notice-and-comment process would provide the agencies with a variety of perspectives.

E. Responsibilities of Boards of Directors

Several commenters suggested that the agencies consider the burden many regulations place on a bank's board of directors and distinguish between board and management responsibilities.

One commenter recommended that, for future rulemakings, the Board consider the impact of the rule on bank directors and that the Board should not implement regulations unless the benefits outweigh the burdens on banks' boards. The commenter also suggested that the Board clearly identify and provide guidance on the specific burdens that each new regulation will impose on banks' boards. Four commenters suggested that the Board

should provide public notice of any regulations that impact a board of directors.

Three commenters suggested that restrictive regulations are making it difficult to hire talented workers.

One commenter recommended that, for future rulemakings, the Board consider the impact of the rule on bank directors and that the Board should not implement regulations unless the benefits outweigh the burdens on banks' boards. The commenter also suggested that the Board clearly identify and provide guidance on the specific burdens that each new regulation will impose on banks' boards.

Eight commenters suggested that the Board should avoid implementing regulations that ''blur the line'' between director responsibilities, and management responsibilities. A commenter cited as an example the Board's Commercial Bank Examination Manual regarding board responsibilities for contingency plans for computer services.

One commenter also stated that there should be governance clarity between the board of directors and management. Currently, directors make policy and approve actions, such as loans, which is an overreach of good board governance.

F. Fair Lending

One commenter, a bank, indicated that ''[b]anks, the real estate and automotive industries are pawns in this controversial political football,'' with supervisory agencies second guessed by internal and external parties. This commenter proposed that Congress strive ''to create legislative clarity on this important topic on which we all waste vast resources.'' Another commenter, also a bank, indicated that although fair lending laws are well intended, the laws increase costs to borrowers. This commenter also indicated that it often is unable to lend to prospective borrowers because imposing higher charges on these borrowers based on their higher credit risk would amount to discrimination.

One consumer group indicated that some mortgage originators continue to target minority borrowers for higher-cost loans without regard to their qualifications and that bank redlining continues to result in the denial of residential mortgage credit to qualified minority borrowers. This commenter indicated that fair lending regulations need to be enhanced and enforced, adding that the Congress should not weaken the CFPB. Another consumer group indicated that the repercussions for fair lending violations need to be strengthened. This commenter also indicated that fair lending regulations also need to address what happens after residential lending foreclosure. Another commenter indicated that the agencies should publicly post the results of fair lending examinations, including when a fair lending complaint does not result in a fair lending referral or enforcement action.

One commenter, a bank, indicated that experienced specialists rather than field examiners should review fair lending referrals to the U.S. Department of Justice (DOJ). Another commenter, also a bank, stated that the requirement to refer to DOJ all apparent or possible fair lending violations should be eliminated where violations are *de minimis* or inadvertent. A third commenter, a state banking association, indicated that subjective interpretations of fair lending practices that involve isolated acts or omissions, rather than an actual pattern of discrimination, are costly to banks in terms of reputation, legal and related fees, and fines.

G. Community Development

The agencies received a number of comments regarding community development, CDFIs, and increasing access to banking services in underserved areas.

One commenter, a nonprofit lender, explained that CDFI assessment and rating systems offer no special consideration for EQ2s (equity equivalents). The commenter recommended incentives for banks to convert EQ2s to true equity or grants over time, and to reward banks that increase the EQ2 maturity to 15 years or more. Another commenter, a law firm, recommended that EQ2 authority should be expanded, and that the OCC should permit banks to make EQ2 investments in CDFIs. It suggested that such investments should count as equity rather than debt. Currently, CDFIs carry EQ2s on the balance sheet as liabilities. Both commenters recommended that EQ2s should be treated as equity in key asset ratios because if EQ2s are treated as part of assets rather than debt, it would make it possible to add new borrowed capital to balance sheets with no change to the net balance ratio or debt to equity ratio, which would lead to additional business loans, and in turn would create new jobs. Another commenter, a nonprofit, noted that banks are not sufficiently rewarded for making EQ2 public welfare investment anymore because regulators no longer view EQ2s as innovative and complex.

One commenter, a for-profit community development corporation, recommended that new banks acquiring CDFI stock should be permitted to convert outstanding stock to newly acquired stock if a new substantial amount of investment accompanied that stock.

One commenter, a university professor, explained that regulations should increase access to capital in underserved communities, and that CDFIs need help to increase their manufacturing portfolio or promotion value activity, including the value of the supply chain in regional and local systems. Further, the commenter suggested that regulators should examine the tax credit regulations to take into consideration the tax credit markets in different cities that have different densities. The commenter noted that regulators should consider breaking the critical linkage between place-based and people-based development.

H. Rule Writing Process

One trade association suggested that proposed rules should include a table of contents at the beginning of the document for reference. Five commenters, including banks, trade associations, and community groups encouraged more simplicity and plain language in regulations, noting that the increased complexity of rules is hurting banks and driving them out of certain businesses. Several commenters suggested that the agencies review the clarity of their regulations. Some commenters recommended that the agencies reduce the burden associated with keeping track of rulemaking proposals through procedural measures designed to make regulatory updates easier for the public to access and follow.[251]

I. Tiered Regulation

Four commenters, including banks and trade associations, encouraged regulators to advance the concept of tiered regulation. Seven commenters, including banks and trade associations, highlighted burdens on community banks, including access to capital, and urged the agencies to treat community banks differently than larger institutions. One bank suggested that the agencies move away from defining requirements strictly by asset size.

J. Harmonization and Consistency

Five commenters, including banks and trade associations, encouraged the

[251] The FDIC cites to the ''FDIC Statement of Policy: Development and Review of FDIC Regulations and Policies'' as its guide for conducting regulatory analysis. See *https://www.fdic.gov/regulations/laws/rules/5000-400.html*.

agencies to harmonize regulations and standards across jurisdictions in order to level the playing fields and allow for useful comparisons. Two commenters suggested that regulators consider the need for more parity between state and national banking institutions. One bank commented that examiners apply standards inconsistently, and that the agencies should provide more examiner training to improve consistency.

K. Other Comments Applicable to Multiple Regulations or to Agency Practices

One commenter suggested that the agencies should consider easing regulatory requirements for community banks with CAMELS composite ratings of ''1'' or ''2'' and management ratings of not lower than ''2.'' One commenter asserted that the agencies should not implement enterprise risk management unilaterally on smaller community banks and suggested that the agencies recognize a bank's risk-management practices as satisfactory if the bank has a good CAMELS rating. One commenter stated that the agencies should reduce the number and frequency of third-party audits when the management of a bank is satisfactory.

One trade association noted that the agencies should review and amend regulations to protect against the fraudulent misuse of the payment system.

One law firm suggested that the agencies should include Regulation Y's exception for well-capitalized, well-managed organizations in almost every regulation that requires a notice or approval.

One bank suggested that the agencies update their regulations to account for technological advancements in order to increase efficiency.

One bank suggested that rules should include incentives for good behavior as well as penalties for improper behavior.

One banker cautioned against the use of the term ''best practices'' because rules that start out as requirements for the largest banks become best practices for smaller banks, putting smaller banks at a disadvantage.

Two commenters suggested a need for streamlining disclosures.

L. Additional EGRPRA Comments

The agencies received a number of comments regarding a variety of additional issues.

A few commenters discussed the tax exempt status of credit unions. These commenters suggested that credit unions that perform and provide largely the same services as banks should not have an advantage over banks by being tax exempt.

One commenter suggested that banks should be able to apply to the Small Business Lending Fund of 2010 despite negative retained earnings.

One commenter recommended that Congress amend 26 U.S.C. 1361(b)(1)(B) to increase the number of allowable shareholders for Sub-Chapter S banks from 100 to 200 so that community banks can attract outside capital.

One commenter suggested that the agencies create an independent body with the power to receive, investigate, and resolve complaints against the agencies. The commenter suggested that this independent body should handle complaints quickly and confidentially and should allow banks to file complaints without retribution from the agencies and their examiners.

One commenter sought additional guidance from the agencies regarding lending and providing banking services to individuals and businesses involved in the medical marijuana industry. The commenter stated that there are inconsistencies between state and federal laws and that current guidance does not provide sufficient clarity and confidence to conduct activities in connection with the medical marijuana industry.

One commenter suggested that the agencies examine a bank's earnings in the context of the current historically low interest rate environment. The commenter stated that low interest rates have compressed earnings and banks should not receive unsatisfactory earnings ratings if all other aspects of the bank are in satisfactory condition.

One commenter suggested that institutions be allowed to use media other than newspapers, such as an accessible public website, to satisfy a public notice requirement.

One commenter requested that the agencies provide responses to requests under the Freedom of Information Act more quickly in order to allow for more public participation and comment on applications.

One commenter suggested that community banks facilitate meetings between their consumer compliance officers and members of the community in order to gain a better understanding of the needs of their communities. Another community group suggested that regulators and community groups should gather to share ideas.

One commenter recommended that the agencies implement regulations that require banks to better maintain foreclosed-upon properties in their possession.

One commenter suggested that the U.S. Postal Service should be allowed to conduct small dollar lending in order to respond to the needs of consumers who don't have access to a local bank branch.

One commenter encouraged the agencies to make all agency forms available electronically and to allow banks to submit forms electronically.

One bank suggested that the agencies provide additional clarification on how the risk-assessment process is conducted prior to examination and on how bank policies should be construed.

One banker recommended that the Ombudsman's office be expanded to include bankers instead of just examiners.

One law professor and one community group suggested that regulators should evaluate whether banks have sufficient products available and accessible to people with unconventional profiles or prior banking issues.

Two commenters recommended that regulators consider ways to make it easy for all bank customers, including non-English speakers, to file comments on specific banks and their policies.

One bank noted that loan servicing charges are driving up the cost of servicing all loans.

One commenter suggested that the threshold for systemic importance should be at least $100 billion.

Two commenters asserted that the number of disclosures given to consumers should be reduced. The commenters stated that the volume of disclosures provided to consumers for a home loan was too large and resulted in consumers not reading the information provided. Both commenters stated that disclosures were difficult for consumers to comprehend. One commenter agreed with disclosing information to consumers, but suggested that the disclosures be simplified so that consumers can understand the information provided.

Appendices

Appendix 1: State Liaison Committee Letter

February 27th, 2017

The Honorable Daniel Tarullo
Governor, Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable Martin J. Gruenberg
Chairman, FDIC
Washington, DC

The Honorable Thomas J. Curry
Comptroller, OCC
Washington, DC

Dear Governor Tarullo, Chairman Gruenberg and Comptroller Curry:

As the Federal Financial Institutions Examination Council (FFIEC) prepares to

finalize the second Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) [1] review and deliver a report to Congress detailing efforts made by the Federal banking agencies (the agencies), the State Liaison Committee [2] (SLC) offers its perspective on certain issues raised through the process. The SLC would like to underscore its priorities with respect to the matters at hand and offer suggestions to further EGRPRA efforts made by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC).[3]

The SLC serves as a conduit through which state regulators can share their regulatory and supervisory perspectives with its fellow FFIEC members. As the chartering and supervisory authorities for over 75% of the banks in the United States, state regulators are charged with protecting consumers, ensuring safety and soundness, and encouraging economic prosperity in their states. State bank regulators, represented by the SLC, charter approximately 4,713 banks with $5.3 trillion assets under supervision, and license and supervise over 177,000 mortgage companies, branches and individual mortgage loan originators. In addition to commercial banks and mortgage entities, state regulators supervise credit unions, savings banks, savings and loan associations, bankers' banks, credit card banks, industrial loan companies, and non-depository trust companies.

SLC members and other state bank supervisors participated in several EGRPRA Outreach meetings held during 2014 and 2015. Based on these discussions and conversations with industry and regulator stakeholders, state regulators have identified opportunities to fulfill EGRPRA's stated goals, without compromising safety and soundness or consumer protections, including:

1. The simplification of capital rules for smaller and less-complex institutions;
2. A continuation and expansion of Call Report burden reduction efforts;
3. A reexamination of regulatory appraisal thresholds for federally related transactions; and
4. A reevaluation of the use of the Herfindahl-Hirschman Index in determining market concentration.

I. Capital Rule Simplification

State banking regulators strongly support requiring sufficient, quality capital. However, the costs associated with the complexity of the current rules disproportionately impact smaller institutions, and potentially inhibit community banks from serving the credit needs of their markets. We urge the agencies to hasten efforts to devise a more practical approach to regulatory capital for small, non-complex banks. In both written and in-person comments at the EGRPRA Outreach meetings, small bank stakeholders and industry representatives raised concerns regarding how various aspects of the revised capital rules—such as high volatility commercial real estate and the treatment of mortgage servicing assets– are affecting small bank operations. In addition to specific concerns, commenters expressed that the general complexity of the rules requires institutions to redirect resources that could otherwise be employed to serve the financial needs of their communities. SLC members recognize that simplifying the capital rules will be a significant undertaking, and are prepared to support the agencies' efforts to tailor capital requirements commensurate with smaller and less complex institutions.

II. Call Report Burden Reduction

Regulators agree that the complexity of the capital rules complicate Call Report preparation, and recognize that simplifying the capital standards will meaningfully reduce the burden associated with reporting Schedule RC-R (Regulatory Capital). As it stands, significant resources are required to interpret lengthy, complicated instructions and gather data necessary to complete the Schedule. In addition to the capital schedule, further simplification of the Call Report is necessary to reduce burden on smaller and less complex banks.

SLC members participated in and acknowledge the deliberate efforts of the FFIEC members that resulted in the creation of the new Consolidated Reports of Condition and Income for Eligible Small Institutions (FFIEC 051). A more streamlined Call Report was a requisite first step; however, industry reaction indicates that this work needs to accelerate and broaden in scope. Small and less complex institutions continue to comment on the time-consuming effort and cost associated with completing several Schedules, as well as line items that require a high degree of manual intervention. Even after the burden reduction process that resulted in FFIEC 051, the aforementioned capital Schedule RC-R remains fourteen pages long and comprises a significant portion of the full Call Report.

To further reduce Call Report-related burden on small and less complex banks, we look forward to working with our fellow FFIEC members to expand eligibility criteria for FFIEC 051. Currently, domestically-based institutions with assets less than $1 billion will be eligible to file FFIEC 051. We recommend consideration of an indexed, multi-factor set of criteria such as the FDIC's Community Bank Research definition from its 2012 Community Banking Study.[4] In addition to the adoption of a broader eligibility threshold for FFIEC 051, we look forward to participating in further Call Report improvement efforts while striving to ensure that simplification does not unduly compromise the ability of regulators to monitor financial performance and risk.

III. Appraisals for Federally Related Transactions

The SLC members find the appraisal regulation thresholds, established by the agencies to implement the Financial Institutions Reform Recovery and Enforcement Act (FIRREA) [5] to be outdated and are concerned they may unnecessarily impede credit availability, particularly in rural and underserved urban markets. The current threshold of $250,000 for both residential and nonresidential (commercial) real estate transactions has not been adjusted since 1994.[6] Real estate loans over the dollar threshold must be supported by an appraisal performed by a licensed or certified appraiser, while loans below the threshold may have the market value of the property determined by an evaluation [7] that conforms to published regulatory guidelines.[8] In many instances, the costs associated with an appraisal on a relatively small real estate loan are high in comparison to the property's purchase price.

Further, the lack or limited number of qualified appraisers in numerous markets throughout the country can lead to even higher appraisal costs and delays in the real estate transaction process. Costs, appraiser shortages, outdated thresholds, as well as the inflexible nature of the appraisal thresholds, impact credit availability. These issues, singly or in combination, can hamper real estate lending activity. The SLC also notes that while real estate transactions in rural areas may comprise a low volume of the total transactions nationwide, each rural transaction can have significant impact on the local community.

State regulators support updating the dollar thresholds for federally related transactions requiring an appraisal to reflect inflation. We also suggest indexing the thresholds to account for changes in real estate value over time. SLC members believe

[1] *See* 12 U.S.C. 3311. The stated goal of the statute is to identify outdated, unnecessary, or unduly burdensome regulations, and consider how to reduce regulatory burden on insured depository institutions while, at the same time, ensuring their safety and soundness and the safety and soundness of the financial system.

[2] Pursuant to 12 U.S.C. 3306, the SLC is comprised of five representatives of State agencies that supervise financial institutions, including the SLC Chair who is a voting member of the Council.

[3] The SLC commends the NCUA for its voluntary participation in the EGRPRA process. As the NCUA is not statutorily mandated by the EGRPRA, this letter only addresses the federal banking agencies within the framework of the FFIEC. State regulators filed comments directly with the NCUA, pursuant to the public request for comment throughout the NCUA's voluntary EGRPRA review.

[4] *See https://www.fdic.gov/regulations/resources/cbi/report/CBSI-1.pdf.* The FDIC Community Banking Study (December 2012) defines an institution with assets over $1 billion as a community bank if loans to assets are greater than 33%, core deposits to assets are greater than 50%, it operates more than one office but no more than the indexed maximum number of offices, it serves equal to or less than two large MSAs with offices, it serves equal to or less than three states with offices, and no single office has more deposits than the indexed maximum branch deposit size.

[5] *See* 12 CFR 34.43.

[6] *See* 12 CFR 323.3(a)(1).

[7] *See* 12 CFR 323.3 (b). An evaluation provides an estimate of the property's market value but does not have to be performed by a state licensed or certified appraiser.

[8] *See https://www.fdic.gov/news/news/financial/2010/fil10082a.pdf* and *https://www.fdic.gov/news/news/financial/2010/fil10082a.pdf.* Regulatory expectations for evaluations are detailed within the December 10, 2010 Interagency Appraisal and Evaluation Guidelines, and the March 4, 2016 Interagency Advisory on Use of Evaluations in Real Estate-Related Financial Transactions.

a reasonable increase in the threshold level does not present an undue threat to the safety and soundness of institutions, and that real estate evaluations conforming with regulatory guidance provide reasonable support for market values as well as protection for consumers. Evaluations also offer cost control for both financial institutions and borrowers.

The SLC recognizes that FIRREA requires Consumer Financial Protection Bureau (CFPB) concurrence that the threshold level provides reasonable protection for consumers purchasing 1–4 unit single-family residences.[9] We also acknowledge that the appraisal requirements of the Government-Sponsored Enterprises (GSEs) are unaffected by the dollar thresholds set by the agencies. However, action by the agencies to update the residential real estate threshold would provide flexibility for institutions to make and retain a greater number of such loans, which would still be subject to the agencies' criteria for evaluations as well as safety and soundness examination by bank regulatory authorities.

In addition to raising the appraisal dollar thresholds, we suggest the agencies consider a transaction-based, de-minimis test for real estate loans. A de-minimis test presents a simple option for relief that would significantly reduce regulatory burden for banks that retain a limited number of real estate loans exempt from the appraisal requirements. SLC members urge the agencies to consider the effective, simple, and lasting solutions discussed above.

Agencies' Options for Relief

The agencies have offered a solution to the appraiser shortage whereby requests may be made to the Appraisal Subcommittee [10] for temporary waivers of any requirement relating to certification or licensing of a person to perform appraisals.[11] This would not waive the appraisal requirement for real estate transactions above the thresholds, but suspend the requirement that appraisals be performed by certified or licensed individuals. SLC members question the feasibility of this option. Instituting waiver proceedings to address widespread appraiser shortages is untested. The related regulatory process is not expedient, and provisions for waiver termination are required. It is unclear whether this option creates a third category of estimating the market value of real property: a USPAP-conforming appraisal performed by individuals otherwise unauthorized to do so.

In addition to the waiver option, the agencies also emphasize that state appraiser certifying and licensing agencies may temporarily recognize the credentials of an appraiser issued by another state under certain conditions.[12] This transfer of certifications across state lines is outside the authority of the agencies, presents limited potential relief, and assumes the incoming appraiser has sufficient familiarity with the market to make a reasonable determination of value. Based on the experience of state regulators, the greatest factor impacting the reliability of real estate market value estimates—whether in the form of an appraisal or an evaluation—is the preparer's familiarity with the specific market.

After considering both options, the SLC has concluded neither is likely to materially improve the state of appraiser availability in affected markets. Both are temporary, unclear, and do not address the persistent nature of the issue. The associated cost to borrowers is also unknown.

IV. Herfindahl-Hirschman Index

The SLC recommends a reevaluation of how the Herfindahl-Hirschman Index (HHI) is used when considering the effects on market competition of proposed mergers. This topic was heavily discussed at the Federal Reserve Bank of Kansas City EGRPRA Outreach meeting. The HHI serves as the principle measure of market concentration, and its efficacy is highly dependent upon both the definition of the market(s) and the products or services considered in determining market share. The agencies focus on branch networks and deposit shares of depository institutions in a local banking market. Unless specified on a case-by-case basis, non-depositories' market influence is not factored into HHI calculations, and credit union deposits must fulfill specific conditions to be included, albeit often at a lower weight.[13] SLC members recognize that due to the reliance on deposits and the discounting of credit unions' deposit influence on the market, the resultant HHI calculation does not offer a representative assessment of market concentration. Consequently, as currently employed, use of the HHI may impede in-market merger and acquisition activity in markets populated by small institutions.

The HHI's reliance on deposit market-share to determine market concentration is problematic, as non-depositories with substantial market influence are not considered. There are numerous examples of institutions that, despite engaging in a considerable degree of activity, are not accounted for. Because of its reliance on deposits as a proxy for activity, the HHI does not consider the market share of a wide breadth of financial firms, including: specialty lenders in mortgages and credit cards, commercial lending finance companies, accounts receivable finance companies, and money market mutual funds for deposits. SLC members have found that, without consideration of the market influence of non-depository financial firms, the HHI cannot provide a realistic representation of market concentration.

For example, in many rural markets, Farm Credit Associations (FCAs) hold nearly as much agricultural loan market-share as their insured depository counterparts, but are not considered in HHI calculations. Researchers at the Federal Reserve Bank of Kansas City [14] found that, in assessments of market concentration in rural areas, non-depository FCA market influence was not considered because of a lack of deposits. Hypothetical inclusion of FCA market influence in HHI calculations indicates a lower degree of market concentration. Researchers also found that when measures of market concentration include FCAs, in-market mergers are less likely to be halted because of competitive concerns. This example illustrates that the HHI's dependence on deposits as the measure of market influence not only provides a limited view of the market, but that this practice has a demonstrable effect on in-market merger and acquisition activity.

The SLC recommends that, if deposits remain the primary data used to construct market shares, credit union deposits be weighted commensurate with their market influence. Generally, if a credit union is included in HHI calculations, its deposits are applied a weight of 50%, which suggests their competitive influence in the deposit market is half that of another institution. SLC members find that the general weight applied to credit union deposits underestimates their market influence.

The HHI's reliance on deposits as a proxy for market share could inhibit small firms from engaging in in-market merger and acquisition activity. Furthermore, this disadvantages in-market mergers of peer institutions and could result in the entry of a large, deposit-gathering branch of a nationwide institution. In-market acquisitions better serve consumer preference, as the majority would rather hold deposits at a community bank.[15] The SLC recommends that the agencies reconsider the HHI's reliance on deposits and the weight applied to credit union deposits, as it may place smaller institutions at a disadvantage.

We appreciate the efforts made by the Federal banking agencies over the two-year EGRPRA process. State regulators agree there is much to be done to better tailor the current regulatory environment to the diversity of the financial services industry. In the spirit of fulfilling the goals of the Economic Growth and Paperwork Reduction Act, SLC members

[9] *See* 12 U.S.C 3341(b).

[10] The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) was created on August 9, 1989, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI). Title XI's purpose is to ''provide that Federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.''

[11] *See* 12 CFR part 1102.

[12] *See* 12 U.S.C. 3351(a).

[13] *See* here. Credit unions are typically included in these calculations if two conditions are met: (1) the field of membership includes all, or almost all, of the market population, and (2) the credit union's branches are easily accessible to the general public. In such instances, a credit union's deposits will generally be given 50% weight. Commercial bank deposits are weighted at 100%, and deposits of thrifts are weighted at 50%. Thrifts may receive 100% weight under certain conditions.

[14] *See* here. The Farm Credit System makes loans to their member borrowers through 76 Farm Credit Associations. Farm Credit Associations originated about 40% of agricultural loans in 2014.

[15] *See* here. According to the 2015 Consumer Banking Insights Study, if everything were equal, 66% of U.S. adults would rather bank at a community bank or credit union than a larger competitor.

offer these straightforward and practical recommendations to address certain persistent regulatory challenges. We look forward to continued discussion and coordination with the agencies and our other fellow FFIEC members.

Sincerely,

[Karen K. Lawson, signed]

Karen K. Lawson, Chair

State Liaison Committee

Appendix 2: Economic Growth and Regulatory Paperwork Reduction Act of 1996

12 U.S.C. § 3311
United States Code Annotated

Title 12. Banks and Banking

Chapter 34. Federal Financial Institutions Examination Council

Section 3311. Required review of regulations

(a) In general

Not less frequently than once every 10 years, the Council and each appropriate federal banking agency represented on the Council shall conduct a review of all regulations prescribed by the Council or by any such appropriate federal banking agency, respectively, in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

(b) Process

In conducting the review under subsection (a) of this section, the Council or the appropriate federal banking agency shall—

(1) categorize the regulations described in subsection (a) of this section by type (such as consumer regulations, safety and soundness regulations, or such other designations as determined by the Council, or the appropriate federal banking agency); and

(2) at regular intervals, provide notice and solicit public comment on a particular category or categories of regulations, requesting commentators to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome.

(c) Complete review

The Council or the appropriate federal banking agency shall ensure that the notice and comment period described in subsection (b)(2) of this section is conducted with respect to all regulations described in subsection (a) of this section not less frequently than once every 10 years.

(d) Regulatory response

The Council or the appropriate federal banking agency shall—

(1) publish in the **Federal Register** a summary of the comments received under this section, identifying significant issues raised and providing comment on such issues; and

(2) eliminate unnecessary regulations to the extent that such action is appropriate.

(e) Report to Congress

Not later than 30 days after carrying out subsection (d)(1) of this section, the Council shall submit to the Congress a report, which shall include—

(1) a summary of any significant issues raised by public comments received by the Council and the appropriate federal banking agencies under this section and the relative merits of such issues; and

(2) an analysis of whether the appropriate federal banking agency involved is able to address the regulatory burdens associated with such issues by regulation, or whether such burdens must be addressed by legislative action.

CREDIT(S)

(Pub. L. No. 104-208, Div. A, Title II, Section 2222, September 30, 1996, 110 Stat. 3009-414.)

Appendix 3: Notices Requesting Public EGRPRA Comment on Agency Rules (four)

1. 79 FR 32172 (June 4, 2014) [1]

Notice of regulatory review; request for comments.

2. 80 FR 7980 (February 13, 2015) [2]

Notice for regulatory review; request for comments.

3. 80 FR 32046 (June 5, 2015) [3]

Notice for regulatory review, request for comments.

4. 80 FR 79724 (December 23, 2015) [4]

Notice for regulatory review, request for comments.

Appendix 4: Notices Announcing EGRPRA Outreach Meetings (six)

(1) 79 FR 70474 (November 26 2014) [1]

Notice of outreach meeting, Los Angeles, CA.

(2) 80 FR 2061 (January 15, 2015) [2]

Notice of outreach meeting, Dallas, TX.

(3) 80 FR 20173 (April 15, 2015) [3]

Notice of outreach meeting, Boston, MA.

(4) 80 FR 39390 (July 9, 2015) [4]

Notice of outreach meeting, Kansas, MO.

(5) 80 FR 60075 (October 5, 2015) [5]

Notice of outreach meeting, Chicago, IL.

(6) 80 FR 74718 (November 30, 2015) [6]

Notice of outreach meeting, Washington, DC.

BILLING CODE 4810–33–P

[1] See, *https://www.gpo.gov/fdsys/pkg/FR-2014-06-04/pdf/2014-12741.pdf.*

[2] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-02-13/pdf/2015-02998.pdf.*

[3] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-06-05/pdf/2015-13749.pdf.*

[4] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-32312.pdf.*

[1] See, *https://www.gpo.gov/fdsys/pkg/FR-2014-11-26/pdf/2014-27969.pdf.*

[2] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-01-15/pdf/2015-00516.pdf.*

[3] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-04-15/pdf/2015-08619.pdf.*

[4] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-07-09/pdf/2015-16760.pdf.*

[5] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-10-05/pdf/2015-25258.pdf.*

[6] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-30247.pdf.*

Appendix 5: FinCEN Response to EGRPRA Comments

UNITED STATES DEPARTMENT OF THE TREASURY
FinCEN
FINANCIAL CRIMES ENFORCEMENT NETWORK

December 9, 2016

Governor Daniel K. Tarullo
Board of Governors of the Federal Reserve
Martin Building, Room 3378
Twentieth and C Streets, Northwest
Washington, D.C. 20551

Chairman Martin J. Gruenberg
Federal Deposit Insurance Corporation
550 Seventeenth Street, Northwest
Washington, D.C. 20429

Comptroller Thomas J. Curry
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Dear Governor Tarullo, Chairman Gruenberg and Comptroller Curry:

The Financial Crimes Enforcement Network (FinCEN) has reviewed a subset of the comments submitted to you pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)[1] that relate to the Bank Secrecy Act (BSA), as well as a summary of the comments your agencies provided to the U.S. Department of the Treasury. EGRPRA requires the Federal Financial Institutions Examination Council (FFIEC) and its member Federal Banking Agencies (FBAs)[2] to review at least once every ten years the regulations they prescribe.

Although EGRPRA does not cover the BSA itself,[3] it does cover those BSA obligations

[1] 21 U.S.C. § 3311

[2] Member FBAs include the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Board of Governors of the Federal Reserve System. The National Credit Union Administration is conducting a separate review of its regulations for the EGRPRA.

[3] The BSA is codified primarily in 31 U.S.C. §§ 5311-5314, 5316-5332. Title 12 contains certain Treasury BSA authorities, including recordkeeping requirements for funds transfers and requirements for uninsured banks codified at 12 U.S.C. §§ 1829b and 1951-1959. FinCEN issues implementing regulations, which appear at 31 C.F.R.

under the FBAs' supervisory authority that are incorporated into Title 12.[4] As part of the EGRPRA process, the FBAs may, therefore, collect comments regarding the potential burden on the private sector resulting from certain BSA requirements imposed by the FBAs under Title 12, as well as their related supervisory process under Title 31. Although FinCEN is not required to consider such comments, FinCEN finds the information helpful when assessing whether to revise, eliminate, or add BSA requirements under Title 31.

We look forward to continue working with your agencies to review BSA-related comments pursuant to EGRPRA, particularly through the Bank Secrecy Act Advisory Group (BSAAG), where many of these issues have been, or are being, considered.[5] The BSAAG, which FinCEN chairs, consists of representatives from state and federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to BSA requirements. Given the range of representatives from the appropriate constituencies, we believe the BSAAG is an appropriate and productive forum for considering the EGRPRA comments. Our respective staffs also regularly discuss these and other issues, including through the FFIEC BSA/Anti-Money Laundering Working Group monthly meetings. I look forward to further discussion and collaboration among our respective agencies on these issues in the coming year.

In reviewing the BSA-related EGRPRA comments, FinCEN considered the comments that relate to suspicious activity reports (SARs), currency transaction reports (CTRs), information sharing, and examination procedures. With respect to CTRs and SARs, several comments suggest reviewing CTR and SAR thresholds. Specifically, they propose discussing with law enforcement officials whether current thresholds are appropriate and whether law enforcement receives the information they need to accomplish their objectives. CTRs and SARs are a critical component of FinCEN's efforts to safeguard the financial system from illicit use, to combat money laundering and to promote national security. FinCEN uses this information for its own analysis and to support law enforcement investigations. FinCEN has discussed the threshold issue with law enforcement and other relevant stakeholders in the BSAAG meetings, and participating law enforcement officials affirmed that the current SAR and CTR thresholds are appropriate and should not be raised. Officials emphasized that the information they receive through these reports (at existing thresholds) is invaluable to law enforcement efforts. In illustrating law enforcement use of FinCEN's data, keep in mind that 10,000 law enforcement and regulatory users make over 30,000 searches of the BSA data every day.

Chapter X.

[4] For example, 12 U.S.C. 1818(s) requires FBAs to impose anti-money laundering program requirements and to examine banks for compliance with the BSA.

[5] The Annunzio-Wylie Anti-Money Laundering Act of 1992 (the Act) requires the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group on Reporting Requirements (the Advisory Group) consisting of representatives of the Departments of the Treasury and Justice, the Office of National Drug Control Policy, and other interested persons, financial institutions, and trades and businesses subject to the reporting requirements of the Currency and Foreign Transactions Reporting Act (known as the Bank Secrecy Act) or Section 60501 of the Internal Revenue Code of 1986.

FinCEN continues to highlight the benefits of BSA data - which FinCEN receives primarily through CTRs and SARs - to support criminal investigations and prosecutions, including through its Law Enforcements Awards program.[6] In addition to providing law enforcement with direct access to BSA data, FinCEN uses BSA data to analyze and disseminate financial intelligence to Treasury colleagues and law enforcement and intelligence community partners. FinCEN has made effective use of BSA data at existing thresholds for both money laundering and terrorist financing purposes. Accordingly, we do not anticipate revising the CTR or SAR thresholds in the immediate future based on current information. FinCEN will, however, continue to consider periodically the appropriateness of these thresholds.

Through the BSAAG, FinCEN is discussing potential changes to the CTR requirements that could ease reporting burdens, without harming the value of these reports to law enforcement. The EGRPRA comments and BSAAG discussions highlight two related key CTR issues: aggregating transactions to determine if a CTR needs to be filed and the process for exempting vetted cash-intensive businesses to reduce CTR filing burdens.

Financial institutions indicated that the CTR aggregation issue should be prioritized for further discussion at the BSAAG. We are continuing to review the CTR aggregation process, including ways in which the reporting process could be expedited or simplified. Following these discussions, FinCEN can address the process for certain CTR exemptions. We encourage staff from each of your agencies to continue participating as an integral part of these ongoing discussions.

Treasury has already addressed the EGRPRA comments that relate to enhancing existing safe harbor provisions to protect financial institutions from liability associated with information sharing. Specifically, industry suggested: i) modifying the existing BSA safe harbor provisions to ensure financial institutions can file SARs without incurring civil liability; and ii) amending Section 314(b) of the USA PATRIOT Act to allow financial institutions to share information about any activity that may be reported under 31 U.S.C § 5318(g) or other statutes, not just suspicious activity related to money laundering or terrorist financing, to ensure that institutions can share information relating to any possible violation of law or regulation. Following interagency discussions and agreement that included your agencies, Treasury provided language to Congress to amend the current safe harbor provisions accordingly. If Congress enacts these changes, FinCEN will work expeditiously to amend related implementing regulations.

Finally, FinCEN is considering through the BSAAG the EGRPRA comments that involve the supervisory process and expectations related to BSA examinations of financial institutions. FinCEN will continue to discuss these issues in the BSAAG

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[6] *FinCEN Awards Recognize Partnership Between Law Enforcement and Financial Institutions to Fight Financial Crime*, https://www.fincen.gov/news/news-releases/fincen-awards-recognize-partnership-between-law-enforcement-and-financial.

working group that is charged with evaluating the difference or delta between BSA reporting requirements and supervisory expectations. As FinCEN has delegated its examination authority to your agencies, we request that your respective staff participate in these discussions to review examination expectations and procedures with FinCen, with implementing the BSA and its related regulations for which FinCen is charged with administering.

I appreciate your seeking FinCen's input and response to BSA-related comments received through the EGRPRA process. We look forward to continuing our collaborative efforts to enhance and improve BSA requirements as well as examination procedures relating to BSA compliance.

Sincerely,

[Jamal El-Hindi, signed]
Jamal El-Hindi
Acting Director

cc: Under Secretary Adam Szubin

BILLING CODE 4810–33–C

II. NCUA Report

ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT

NATIONAL CREDIT UNION ADMINISTRATION BOARD

REPORT TO CONGRESS

Introductory statement by National Credit Union Administration Acting Chairman J. Mark McWatters

Introductory Statement by National Credit Union Administration Acting Chairman

J. Mark McWatters

The EGRPRA review process designed by Congress provides a useful framework for the NCUA Board to assess the impact of its rules on the operations of federally insured credit unions and their communities, a process that as acting chairman of the agency I have welcomed.

While the NCUA is first and foremost a prudential regulator for credit unions and the manager of the National Credit Union Share Insurance Fund (NCUSIF), the Board recognizes the significant regulatory burdens credit unions face. If we can minimize those burdens without jeopardizing safety and soundness or ignoring congressional directives, it is reasonable for us to do so.

For public policy reasons, the NCUA Board has chosen to participate in the regulatory review process provided by EGRPRA, although our regulatory review includes other agency initiatives to assess credit union compliance costs and benefits. The EGRPRA review process enhances the agency's comprehensive annual review of one-third of its regulations. It also facilitates the NCUA's overall regulatory approach, which is to implement statutory requirements through regulations, guidance, policies, and practices that accomplish the goals of Congress in an efficient and effective manner, imposing the minimum burden necessary to promote the safety and soundness of credit unions and their members' deposits. As set out more fully in this report, the EGRPRA review process has led to several important improvements and modifications to the NCUA's regulations.

The NCUA Board is committed to providing effective, targeted regulation and appropriate supervision while containing requirements that impede innovation at our nation's credit unions. The NCUA Board continues to look for ways to strengthen its capabilities to identify emerging concerns in a timely way even as we review our rules to help limit credit union compliance burdens. More and more rules not only curtail credit unions and their members, but also impose growing costs and resource allocation dilemmas on the NCUA.

Consistent with the goals of EGRPRA, the NCUA Board looks forward to continuing our efforts to fulfill congressional mandates while affording well managed credit unions important flexibility and discretion, consistent with safety and soundness, in order to help them meet the changing financial needs of their members now and into the future.

Without limitation, we intend to substantially revise the risk-based net worth rule; permit credit unions to issue supplemental capital for risk-based net worth purposes; revise and finalize the proposed field of membership and securitization rules; and modernize the central liquidity facility, stress-testing, and corporate credit union rules, among others; all in strict compliance with the Federal Credit Union Act and other applicable law. We will also work with Congress to update the FCUA to facilitate credit union operations and growth so as to ensure the safety and soundness of the NCUSIF.

[J. Mark McWatters, signed]
J. Mark McWatters
Acting Chairman

I. Executive Summary

Congress enacted EGRPRA as part of an effort to minimize unnecessary government regulation of financial institutions consistent with safety and soundness, consumer protection, and other public policy goals.[1] Under EGRPRA, the appropriate federal banking agencies (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation; herein agencies [2]) and the Federal Financial Institutions Examination Council must review their regulations to identify outdated, unnecessary, or unduly burdensome requirements imposed on insured depository institutions. The agencies are required, jointly or individually, to categorize regulations by type, such as ''consumer regulations'' or ''safety-and-soundness'' regulations. Once the categories have been established, the agencies must provide notice and ask for public comment on one or more of these regulatory categories.

NCUA is sympathetic to the need for regulatory compliance burden reduction on behalf of the credit unions we regulate. At

[1] EGRPRA, Public Law 104–208, Div. A, Title II, section 2222, 110 Stat. 3009 (1996); codified at 12 U.S.C. 3311.

[2] The Office of Thrift Supervision was still in existence at the time EGRPRA was enacted and was included in the listing of agencies. Since that time, the OTS has been eliminated and its responsibilities have passed to the agencies and the Consumer Financial Protection Bureau.

the same time, the agency is cognizant and respectful of its responsibility as a safety-and-soundness regulator. The financial crisis of 2008 and the Great Recession that ensued thereafter underscored the need for effective, prudential regulation within the U.S. financial sector. As is documented throughout this report, the agency is guided by the need to strike a balance between these competing considerations. The agency has worked diligently within the EGRPRA process to identify needed regulatory changes and then take quick action, where possible, to adopt those reforms. We also have identified several statutory issues that Congress may want to consider acting on to provide credit unions with more regulatory relief going forward.

NCUA looks forward to continuing its approach as a responsive regulator, continually re-examining and re-considering its rules and regulations to assure that compliance burden remains within reasonable limits, with significant flexibility and discretion afforded well managed credit unions consistent with safe and sound operations.

Since 1987, NCUA has followed a well-delineated and deliberate process to continually review its regulations and seek comment from stakeholders, such as credit unions and their representatives. Through this agency-initiated process, NCUA conducts a rolling review of one-third of its regulations each year—we review all of our regulations at least once every three years.

This long-standing regulatory review policy helps to ensure NCUA's regulations:

- accomplish what Congress intended;
- minimize compliance burdens on credit unions, their members, and the public;
- are appropriate for the size and risk profile of the credit unions regulated by NCUA;
- are issued only after public participation in the rulemaking process, consistent with the Administrative Procedure Act; and
- are clear and understandable.

This rolling review is intended to be transparent for stakeholders. NCUA publishes on our website a list of the applicable regulations under review each year and invites public comment on any or all of the regulations.

II. Overview of NCUA Participation

NCUA is not required to participate in the EGRPRA review process, because NCUA is not defined as an ''appropriate Federal banking agency'' under EGRPRA.[3] Nonetheless, the current board embraces the objectives of EGRPRA and in keeping with the spirit of the law, the Board has participated in the review process. (The NCUA also participated in the first EGRPRA review, which ended in 2006).

The categories used by NCUA to identify and address issues are:

- Agency Programs;
- Applications and Reporting;
- Capital;
- Consumer Protection;
- Corporate Credit Unions;
- Directors, Officers, and Employees;
- Money Laundering;
- Powers and Activities;
- Rules of Procedure; and
- Safety and Soundness.

These categories are comparable, but not identical, to the categories developed jointly by the banking agencies covered by EGRPRA but they reflect some of the fundamental differences between credit unions and banks. For example, 'corporate credit unions' is a category unique to NCUA's chart. For the same reason, NCUA decided to publish its notices separately from the joint notices used by the banking agencies, although all of the notices were each published at around the same time. NCUA included in its EGRPRA review all rules over which NCUA has drafting authority, except for certain rules that pertain exclusively to internal operational or organizational matters at the agency, such as NCUA's Freedom of Information Act rule.

Copies of the four notices the NCUA published in the **Federal Register** in connection with the EGRPRA process are attached as an appendix to this report.[4]

NCUA did not elect to participate in the outreach sessions sponsored by the agencies, because the sessions were targeted directly to banks, and understandably, much of the discussion focused on issues of principal applicability to banks. NCUA routinely conducts town-hall meetings, listening sessions, and other outreach activities, during which views from stakeholders are solicited and discussed. In addition to providing information on agency proposals, rules, personnel contact information and board members' travel schedules, since 1987 NCUA has invited public comment on one-third of its existing rules each year.[5] The result is a review of the agency's rules completed within rolling three-year cycles. Comments received during this rolling one-third review are blended in with and considered as applicable along with comments submitted in response to the EGRPRA notices.

NCUA is also mindful that credit unions are subject to certain rules issued or administered by other regulatory agencies, such as the Consumer Financial Protection Bureau (CFPB) and the Department of the Treasury's Financial Crimes Enforcement Network. Because we have no independent authority and limited ability to change such rules, our notices—as do the joint notices prepared by the other agencies—advise that comments submitted to us but focused on a rule administered by another agency will be forwarded to that other agency for appropriate consideration.

III. Summary of Comments Received Under the NCUA EGRPRA Review

1. Applications and Reporting

Field of Membership and Chartering

Two commenters addressed this topic;[6] each of whom suggested that NCUA expand its definition of ''rural district'' and provide greater flexibility to federal credit unions seeking to add a rural district to their field of membership. Two commenters also requested that NCUA eliminate or modify quality assurance reviews for associational common bond, including extending the ''once a member always a member'' principle into this area. One commenter proposed that NCUA simplify procedures for conversion from one type of charter to another and allow federal credit unions converting to community charter to continue serving their pre-existing field of membership, including new members. One commenter proposed that NCUA should allow a credit union converting to a federal charter to accept new members from associational groups that had been served prior to the conversion. One commenter requested that NCUA simplify the process for adding underserved areas, and another commenter proposed that NCUA should add to the list of associations for which automatic approval is available. This commenter also proposed that NCUA eliminate the threshold determination concerning membership eligibility for certain associational groups. As discussed more thoroughly later in this report, the Board did propose and adopt several significant changes in this area in 2016.

Fees Paid by Federal Credit Unions

One commenter addressed this topic and suggested that NCUA provide clearer disclosure to credit unions as to how fees paid to the agency are managed.[7] The commenter requested that NCUA provide non-aggregated components of the expenditures from the several funds NCUA manages, such as how monies from the National Credit Union Share Insurance Fund are allocated to the NCUA budget.

Applications for Insurance

One commenter addressed this matter,[8] focusing on provisions governing interest rate risk pursuant to 12 CFR 741.3. Specifically, the commenter asked that the rules in this particular area be clarified and simplified.

Financial, Statistical, and Other Reports

One commenter wrote on these provisions.[9] The commenter suggested that NCUA conduct a comprehensive review and evaluation of the current Call Report protocol, with a view toward making the 5300 Call Report more in line with the Federal Financial Institutions Examination

[3] See 12 U.S.C. 1813(q).

[4] Dates of publication were as follows: June 4, 2014, (79 FR 32,191); December 19, 2014, (79 FR 75,763); June 24, 2015, (80 FR 36,252); and December 23, 2015, (80 FR 79,953).

[5] Interpretive Ruling and Policy Statement (IRPS) 87-2, 52 FR 35,231 (September 8, 1987), as amended by IRPS 03-2, 68 FR 32,127 (May 29, 2003).

[6] Applications and reporting—79 FR 32,191 (June 4, 2014); Field of membership and chartering—12 CFR 701.1; IRPS 03–1.

[7] Fees paid by federal credit unions, 12 CFR 701.6.

[8] Applications for insurance, 12 CFR 741.0, 741.3, and 741.4.

[9] Financial, statistical, and other reports, 12 CFR 741.6.

Council model. The agency is considering ways to streamline the call report.

Purchase of Assets and Assumption of Liabilities

One commenter addressed this provision and recommended that NCUA ease restrictions on the purchase of assets and assumption of liabilities by federally insured, state-chartered credit unions from federally insured, non-credit union depository institutions.[10] Specifically, the commenter proposed that NCUA change its rule to simply require notice to, rather than approval by, NCUA's regional offices for purchase and assumption transactions undertaken by federally insured, state-chartered credit unions. As an alternative suggestion, the commenter advocated including in the rule a 30-day deadline for action by the regional office on requests for approval.

Conversion of Insured Credit Union to Mutual Savings Bank

Two commenters addressed this provision.[11] Both commenters urged NCUA to clarify and streamline the process under which conversions are approved. One commenter also proposed that NCUA should support legislative changes to enable a state-chartering authority, rather than NCUA, to review and approve requests by federally insured, state-chartered credit unions to convert to another form of federally insured depository institution.

Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

Three stakeholders commented on this process.[12] One commenter criticized NCUA by noting that the agency has been too selective in designating which credit unions may be merger partners for distressed credit unions. Another requested that NCUA provide more comprehensive and up-to-date guidance on how to execute and complete a merger, focusing on operational concerns; in doing so, the commenter suggested, NCUA should solicit and obtain input from stakeholders. Another suggested that NCUA should clarify which aspects of the merger and conversion rules apply to federally insured, state-chartered credit unions.

2. Powers and Activities

a. Lending, Leasing, and Borrowing

Loans to Members and Lines of Credit to Members

Two commenters addressed this rule.[13] One proposed that NCUA liberalize its policy about rental of real estate-owned properties and mandatory marketing efforts. The other commenter suggested that NCUA remove a requirement that state laws governing prohibited fees and non-preferential loans be ''substantially equivalent'' before federally insured, state-chartered credit unions are exempted from NCUA's rule. The commenter proposed that NCUA should replace this with the standard of minimizing risk.

Loan Participations

One commenter addressed this section. The commenter suggested that NCUA should exempt federally insured, state-chartered credit unions from 12 CFR 701.22 where state law provides for adequate safety-and-soundness controls. Alternatively, the commenter proposed, NCUA should streamline the rule by focusing on safety-and-soundness considerations and removing intricately detailed regulatory requirements.

Share, Share Draft, and Share Certificate Accounts

One commenter addressed this rule and proposed that NCUA should allow for pass-through insurance coverage on shares comprising lawyers' trust accounts, involving client funds held in trust by attorneys (subsequent to this comment, Congress amended the Federal Credit Union Act to specifically allow for this).[14] The commenter also proposed that NCUA should provide pass-through coverage for prepaid debit card accounts established to accept government benefits through a pooled automatic clearinghouse arrangement.

Member Business Loans

Four commenters addressed this provision.[15] It should be noted that NCUA conducted a comprehensive review of this rule in 2015, with final changes adopted in February 2016, subsequent to the receipt of these comments. Many of the issues identified by the commenters were considered and addressed during this revision process.

One commenter proposed that NCUA should:

- eliminate all regulatory requirements for member business loans not specifically required by statute;
- re-interpret the agency's posture on the exception for credit unions with a history of primarily making member business loans; and
- liberalize guidance in Letter to Credit Unions 13-CU-02 concerning waiver options.[16]

Another commenter proposed that NCUA should:

- broaden agency interpretation of federal credit unions with a history of primarily making member business loans;
- simplify and make more flexible the procedures for obtaining individual and blanket waivers; and
- support statutory changes that would liberalize the current member business loan restrictions.

A third commenter proposed that NCUA should:

- support legislative change to raise the 12.25 percent of assets limit on aggregate member business loans;
- raise the small loan exception from the member business loan definition to $100,000;
- distinguish between underwriting considerations and the statutory limit in the member business loan definition;
- eliminate the waiver requirement from the rule and simply supervise to established safety-and-soundness standards;
- distinguish in the rule between seeking forbearance about an existing loan and waiver for a prospective loan; and
- eliminate the two-year experience requirement in 12 CFR 723.5(a).

A fourth commenter suggested that NCUA should:

- enlarge to 20 percent of net worth the amount of construction and development loans that may be held;
- extend the exemption for construction loans for which the borrower has contracted to purchase the property to include financing land for residential builders where infrastructure is already in place;
- expand the categories of parties not required to provide a personal guarantee of repayment, and allow in some cases for a guarantee to be limited to ownership interest in the corporate borrower;
- increase to $500,000 the aggregate limit on loans to members or groups of associated members, and exclude the limit altogether in cases in which a loan has been transferred to ''special assets,'' with an established reserve;
- eliminate or clarify the references in the definition of construction and development loans to ''major renovations,'' which is potentially subject to different interpretation; and
- streamline and automate the waiver process, using standardized documents.

Maximum Borrowing

One commenter addressed this provision, and suggested that NCUA change the requirement that federally insured, state-chartered credit unions must request approval for a waiver from the regional office so that only notice, not approval, is required.[17] As an alternative, the commenter proposed that NCUA develop and impose a 30-day deadline for action by the regional office on requests for approval.

Leasing

One commenter commented on this section.[18] The commenter suggested that NCUA allow credit unions to determine for themselves whether to obtain a full assignment. The commenter also proposed that NCUA add more flexibility to the rule in terms of residual value limits.

b. Investment and Deposits

Designation of Low-Income Status

Receipt of Secondary Capital Accounts by Low-Income Designated Credit Unions

One commenter addressed this issue and proposed that NCUA eliminate the compliance burden on federally insured, state-chartered credit unions regarding limits

[10] Purchase of assets and assumption of liabilities, 12 CFR 741.8.

[11] Conversion of insured credit union to mutual savings bank, 12 CFR part 708a.

[12] Mergers of federally insured credit unions, 12 CFR part 708b.

[13] 79 FR 32,191, (June 4, 2014) and 12 CFR 701.21.

[14] Share, share draft, and share certificate accounts, 12 CFR 701.35.

[15] 12 CFR part 723.

[16] The entire waiver system has been eliminated from the revised rule.

[17] Maximum borrowing provision, 12 CFR 741.2.

[18] 12 CFR part 714.

on secondary capital accounts by leaving this issue to state law.[19]

Payment on Shares by Public Units

One commenter addressed this provision and recommended that NCUA eliminate compliance burden on federally insured, state-chartered credit unions by allowing limitations on the receipt of public unit deposits to be determined exclusively by applicable state law.[20]

Fixed Assets

One commenter addressed this provision.[21] The commenter proposed that NCUA raise the regulatory exemption in the current rule from $1 million to $50 million, and also add a *de minimis* exception for occupancy and raw land ownership.

Investment and Deposit Activity

One commenter addressed this provision and suggested that NCUA allow federal credit unions to purchase mortgage servicing rights as an investment.[22]

Credit Union Service Organization

Three stakeholders commented on this provision.[23] One questioned whether NCUA had legitimate authority to regulate credit union service organizations, CUSOs, directly. This commenter proposed that NCUA should remove the extra regulatory requirements affecting CUSOs engaged in complex or high-risk activities. The commenter further suggested that NCUA scale back the application of the rule to federally insured, state-chartered credit unions. Another commenter proposed the elimination of the regulatory requirement that CUSOs submit financial reports directly to NCUA. This commenter also requested that NCUA change the rule to increase the amount a federal credit union may invest in a CUSO and expand the scope of permissible CUSO activities. A third commenter cautioned that NCUA should use existing registration systems to capture CUSO data, rather than developing a new system, which the commenter indicated has the potential of being very burdensome.

c. Miscellaneous Activities

Federal Credit Union Bylaws

Two commenters addressed this topic; [24] both urged that NCUA update and streamline the bylaws to assure maximum flexibility and ease of use; one of the commenters identified specific changes to articles IV, V, and VII of the federal credit union bylaws.

3. Agency Programs

Community Development Revolving Loan Program

One commenter requested a change in the language of this section,[25] to the extent that it calls for the state regulatory authority to ''concur'' in a state-chartered credit union's application for membership in this program. Instead, the commenter suggested that the language in the rule be changed so as not to imply that the state regulator was validating the application, but rather simply recognizing it.

Central Liquidity Facility

Three commenters characterized as burdensome the requirement of purchasing stock in the Central Liquidity Facility as a prerequisite to membership and borrowing.[26] Two commenters also recommended that the Central Liquidity Facility be authorized to make short-term loans, and all three commenters encouraged NCUA to identify and support necessary legislative changes regarding the CLF to Congress.

Low-Income Designation

Four commenters addressed the low-income designation program.[27] Three advocated liberalizing the program, urging exercise of the authority to the fullest extent possible, along with expanding the universe of credit unions that are eligible for the designation. Suggestions included improving transparency, redefining the concept of ''low income'' to include other flexible standards relating to total median earnings, extending the statistical approach to include military personnel and other low-salaried people, permitting credit unions to self-designate their status as low income, expanding the benefits available to qualifying credit unions, and permitting a credit union that has achieved the designation to continue with it without having to requalify at a subsequent date. Two commenters advocated making the designation permanent. Two commenters advocated permitting credit unions to achieve the designation without having to resort to a statistical analysis, for example by permitting reference to historical performance, a certified mission statement, or based on offering products tailored specifically to meet the needs of low-income people.

One commenter suggested changing the rules applicable to federally insured, state-chartered credit unions so that NCUA, not the state regulatory authority, makes the initial designation, with the state then concurring. The same commenter noted that currently the federally insured, state-chartered credit union designation is covered by guidance, not a rule, and suggested that this disparity be addressed so that both state and federal charters get similar treatment under the rule. The commenter noted that coverage of federally insured, state-chartered credit unions in general is not clear under the current rule, which refers only to federal credit unions. This commenter also sought clarification under the rule for the mechanics of how credit unions that no longer meet the designation criteria are to be handled. The commenter suggested that compliance should be determined over four consecutive quarters; if a credit union during that time falls out of compliance, it should be given five years to come back into compliance before being treated as a non-designated institution. The commenter recommended that 12 CFR 701.34(a)(5) be eliminated from the rule, insofar as the time period identified therein has elapsed.

With regard to secondary capital for low-income designated credit unions, one commenter suggested that the issue should be governed by state law for federally insured, state-chartered credit unions; another commenter requested greater flexibility with respect to secondary capital, including permitting natural persons to make investments in the form of secondary capital, and to allow a committee of the board of directors to approve the redemption of secondary capital.

4. Capital Requirements

Focusing on 12 CFR part 702, prompt corrective action, several commenters noted that, in view of the agency's determination to re-issue its risk-based capital rule, they would stand by their separate comments submitted in response to that initiative. One commenter did note, however, that the recent final rule governing capital planning and annual stress testing for credit unions with assets over $10 billion was ''inappropriate, costly, and unnecessary.'' [28] This commenter argued that the rule was burdensome and did little to enhance the security of the National Credit Union Share Insurance Fund. Two others complained that NCUA had not demonstrated why a risk-based capital rule is necessary. Another commenter advocated a change in the law so as to allow contributed capital to count toward net worth. This commenter also argued that, in terms of risk-based net worth, $100 million presents a threshold that is too low to support the ''complex credit union'' designation; rather, the proper threshold should be $500 million. In addition, according to this commenter, consideration should be given to factors other than just asset size.

One commenter sought clarification in 12 CFR 702.206 that, with respect to federally insured, state-chartered credit unions, NCUA would share its reasoning with the state regulator concerning the adequacy of a net worth restoration plan and allow the regulator to provide its feedback, not just tell the regulator of its decision. This commenter expressed similar views with respect to NCUA's evaluation of a federally insured, state-chartered credit union's business plan. Finally, this commenter noted that it would be submitting several comments directly in response to NCUA's issuance in January 2015 of proposed amendments on the subject of capital planning and stress testing. Previewing those comments, this commenter suggested that the rule be changed to include a definition of capital policy, clarify the standards under which a credit union-administered stress test will be evaluated, include criteria under which NCUA will allow self-testing, and clarify how the agency expects institutions to conduct the stress tests on their own once that is permissible under the rule.

[19] 12 CFR 701.34.

[20] 12 CFR 701.32.

[21] 12 CFR 701.36.

[22] 12 CFR part 703.

[23] 12 CFR part 712.

[24] 12 CFR 701.2; appendix A to part 701.

[25] 12 CFR parts 705 and 725; and 12 CFR 701.34 79 (FR 75,763 (December 19, 2014)).

[26] 12 CFR part 725.

[27] 12 CFR 701.34.

[28] Capital—12 CFR part 702 and 12 CFR 741.3 (79 FR 75,763 (December 19, 2014)).

5. Consumer Protection

Truth in Savings

One commenter stated that the current disclosure form in use for this rule is outdated, costly, and burdensome, and does not work with currently available technologies.[29] The commenter noted that, given that many people now do their shopping online, credit unions need to be able to provide required disclosures in electronic format. The commenter observed that development and use of required disclosures may require the involvement of and coordination with the CFPB and the Federal Reserve Board. The commenter also recommended that credit unions be allowed to offer their members the opportunity to elect to receive disclosures electronically within 10 days of account opening or the assessment of fees. The commenter also advocated disclosures to be provided in electronic format as well as paper disclosures. Two commenters advocated that the rule be revised to permit the use of abbreviated statements when using electronic media. Two commenters advocated elimination of the requirement in 12 CFR 707.5 mandating the advance issuance of certain disclosures. One commenter noted that citations in current staff interpretation to 12 CFR 707.2 are incorrect. One commenter advocated that the language in 12 CFR part 707 make clear that references to dividends include interest.

Advertising

One commenter noted the ambiguity in the rule, for example with respect to minimum font size and style, as it relates to advertisements accessed through the Internet. This commenter included several examples of signage and logos that it uses or proposes to use. The commenter seeks clarification in the rule as to how it would apply in the texting arena, which presents challenges in terms of available space, among other things. The commenter noted a similar concern with respect to the application of the rule to its computerized telephone teller system. One commenter noted that applying 12 CFR part 740 to social media is ''unclear, complicated, and burdensome.'' Three commenters expressed similar, generalized concerns that application of 12 CFR part 740 to the various electronic and social media that are available needs streamlining, updating, and clarification, and one sought elimination altogether of the font size requirement for print media. In a similar vein, one commenter asked for liberalization of the required use of the advertising notice so that it need not be used except in cases in which the radio or television ad is at least 30 seconds in duration. This commenter also sought implementation of a mechanism by which translations into a foreign language could be standardized and approved in advance and thus readily available. This commenter also noted that implementation of the Federal Financial Institutions Examination Council's approved social media policy is quite difficult and possibly in conflict with part 740. Another commenter noted a difficulty in discerning whether NCUA or CFPB rules take precedence in this area, for example with respect to Regulation Z and its interaction with part 740, and encouraged NCUA to work closely with the CFPB to coordinate and communicate each agency's respective authority. The commenter urged NCUA to persuade the CFPB to provide safe harbor to credit unions following NCUA rules.

National Credit Union Share Insurance Coverage for IOLTAs

Three commenters urged NCUA to work with the national trade associations to implement a recent statutory change by which lawyers' trust accounts may now qualify for pass-through insurance coverage,[30] including the expansion to other types of escrow accounts such as ones used by realtors and funeral directors, as well as to stored value cards and prepaid cards.

Flood Insurance

One commenter requested greater clarification in this rule concerning the delineation of responsibility between the lender and the insurer.[31] Noting some areas of flexibility in the rule, the commenter asked that it be amended to provide more flexibility with respect to the delivery and timing of required notices. This commenter noted with approval the various areas in the rule in which sample notices are provided, and asked that NCUA expand this universe to include others, such as an ''acknowledgement of receipt'' form. One commenter asked that NCUA review and simplify the escrow requirements in the rule, and also encouraged NCUA to assure that the provisions and requirements in this rule are compatible with Regulation Z.

Uninsured Membership Shares

One commenter characterized the required reporting of this item in the form 5300 Call Report as needlessly tedious and time consuming, and advocated that NCUA simplify the rule to require that reporting be done on an annual, not quarterly, basis.[32] One commenter advocated that NCUA specifically allow federally insured, state-chartered credit unions to accept uninsured share deposits if approved by the pertinent state regulatory authority.

Fair Credit Reporting—Identity Theft Red Flags

One commenter suggested that NCUA amend its rule to reflect more thoroughly that most of the provisions in 12 CFR part 717 have been transferred to the CFPB.

6. Corporate Credit Unions

Acknowledging the importance of the corporate credit union system, and that rule changes were necessary in 2010 in response to the financial crisis,[33] two commenters urged NCUA to find ways to modernize and liberalize the requirements imposed by that rule change. For example, one commenter recommended an increase in the secured borrowing limit from 180 days to two years to enable corporates to offer true liquidity lending. In a similar vein, two commenters suggested that the rule be changed to allow for an outright suspension of the limit during periods of economic stress. One commenter also advocated that NCUA be more transparent in its description of how assets acquired from the failed corporates will be disposed of, and in its description of its strategy and timeline for satisfying the agency's obligations to the Temporary Corporate Credit Union Stabilization Fund.

Other suggestions involving the corporate rule included moving the voting-record requirement currently contained in 12 CFR 704.13 to the bylaws, and reviewing and liberalizing the requirements in 12 CFR 704.15 regarding audit and reporting requirements, which were characterized by two commenters as overly strict and unnecessary for corporates. One commenter stated that NCUA's approach under 12 CFR part 704 has had the result of homogenization of the corporate industry. Regulatory control over corporates has been monopolized at the federal level, leaving no room for diversification of approaches and possible innovation to occur at the state level, even though six corporates are state-chartered, the commenter stated. According to this commenter, a change in approach, like what has occurred with natural person credit unions and the member business lending rule, would enhance safety and soundness.

7. Directors, Officers, and Employees

General Authorities and Duties of Federal Credit Union Directors

Commenters sought greater clarity and specificity concerning the agency's expectations in this area.[34] For example, one commenter noted that the requirement in the rule for directors to act without discrimination against any member is too uncertain in its meaning and its application. Another commenter suggested that all requirements in this area be collected and codified in an appendix to this section of the rule. The commenter also suggested that NCUA should update the *Examiner's Guide* to clearly articulate which ''major policies'' need board approval. Noting that federal credit union board members are generally volunteers, two commenters urged that NCUA be as clear as possible about supervisory expectations, including identifying policies that require board approval. One commenter expressed concern that the requirements in the rule are already covered by applicable state law governing fiduciary duties of directors and so are redundant, and questioned whether ''financial literacy'' was sufficiently defined. The commenter also questioned why this was included as a duty, and also suggested that NCUA should require only one director to meet the financial literacy requirement.

[29] Consumer Protection—12 CFR parts 707, 717 (subpart J), 740, 745, and 760; 12 CFR 701.3, 701.31, 717.82, 717.83, 741.5, 741.9, and 741.10. (79 FR 75,763 (December 19, 2014)).

[30] Share insurance, 12 CFR part 745.

[31] Flood insurance, 12 CFR part 760.

[32] Uninsured membership shares, 12 CFR 741.9.

[33] Corporate credit unions, 12 CFR part 704, 80 FR 36,252 (June 24, 2015).

[34] 12 CFR parts 711, 713 and 750; 12 CFR 701.4, 701.19, 701.21(d), and 701.33. 80 FR 36,252 (June 24, 2015).

Loans and Lines of Credit to Officials

One commenter, after noting general support for the restrictions and safeguards in the rule governing loans to insiders, suggested that a change to 12 CFR 701.21(c)(8) was warranted. This section prohibits credit union officials, employees, and family members from receiving incentive payments or outside compensation from loans issued by credit unions. The rule contains an exception, and permits such compensation if based on the credit union's ''overall financial performance.'' The commenter suggested that the section be amended to include loan growth as an acceptable measure of overall financial performance, and also to direct examiners to exhibit more flexibility when determining what constitutes ''overall financial performance'' within the meaning of the rule.

Reimbursement, Insurance and Indemnification of Officials and Employees

One commenter has noted that NCUA has issued numerous opinions over the years interpreting permissible ''compensation'' for the one federal credit union board member who may be compensated for his or her work as a director. The commenter suggests these letters should be codified into an appendix to 12 CFR 701.33. One commenter stated that the provisions governing indemnification of federal credit union officials, 12 CFR 701.33, are confusing, onerous, and potentially in conflict with state law provisions governing the same topic. In addition, the commenter noted a potential conflict that could exist for a federal credit union that elected not to adopt NCUA's 2007 version of the federal credit union bylaws. Three commenters noted, generally, that the rules governing indemnification are cumbersome and vague, and may well have the unintended consequence of discouraging capable individuals from serving on federal credit union boards.

Fidelity Bonds and Insurance Coverage

One commenter specifically asked that NCUA codify separately those elements of 12 CFR part 713 that apply to federally insured, state-chartered credit unions, instead of the current approach, in which a cross reference to part 713 is set out in 12 CFR 741.201.

Golden Parachutes; Indemnification

Two commenters suggested that the provisions of 12 CFR part 750 are cumbersome, with standards that are too vague and that enable too much second guessing on the part of examiners. These commenters suggested that NCUA should liberalize the rule, revising it so that it meets agency objectives while still protecting worthy officers and directors.

8. Anti-Money Laundering

While acknowledging the importance of the Bank Secrecy Act, four commenters urged greater cooperation and coordination between NCUA and the Financial Crime Enforcement Network, or FinCEN, to ensure sensible regulations and exams that are tailored to actual risks affecting credit unions.[35] Two commenters also suggested that NCUA should work closely with the FinCEN and the Office of Foreign Assets Control to minimize the regulatory burden on credit unions, reduce the incidence of required production of duplicate information, provide greater flexibility for credit unions, and curtail the continuous due diligence requirements. These two commenters also sought to enlist NCUA's support for increases in the thresholds for filing currency transaction reports and reductions in the amount of required suspicious activity reporting, both of which are, according to these commenters, of limited usefulness to law enforcement.[36] Another commenter requested that NCUA provide a more clear and thorough explanation of examination policies in this area. The commenter also suggested that examiners be allowed more autonomy and flexibility in this area, instead of the current practice (according to this commenter) which requires immediate reporting through the NCUA chain of command.

Under 12 CFR 748.1(c)(4), a credit union must promptly notify its board of directors, or designated committee, of any suspicious activity report filed. NCUA has defined ''promptly'' in this context to mean at least monthly. One commenter suggested a liberalization of the rules to allow ''promptly'' to mean at the next board meeting, to allow a credit union to be in compliance even where its board typically meets every other month. Another commenter suggested NCUA clarify or amend its policy, as reflected in the federal credit union bylaws, to enable a federal credit union to expel a member who has engaged in illegal activity such as money laundering. This would simply require a policy statement to the effect that such a member may be deemed by the federal credit union to be ''non-participating'' within the meaning of the bylaws.

9. Rules of Practice and Procedure

Examination Appeals

Three commenters expressed concern about the process by which an appeal of an examination finding may be pursued.[37] All three commenters advocated a more formalized and established appeals procedure for the resolution of examination disputes. One commenter suggested NCUA issue an advance notice of proposed rulemaking to generate comments and ideas on how best to proceed in this area, noting that the current procedures are underutilized. The consensus of the three commenters addressing this area was that NCUA should develop and implement a process that is transparent, neutral, and effective in providing a forum for credit unions to dispute examination findings.

One commenter requested a clarification or amendment to 12 CFR 747.202, which presently provides that NCUA might seek a charter revocation in the event a federal credit union is found to have committed ''any violation'' of its bylaws or charter. The commenter noted that this language could benefit from the addition of a qualifier so that potential exposure to such an action would only be in the case of a ''material violation,'' as opposed to a technical one.

Liquidation Payout Priorities

One commenter recommended NCUA take action now to amend its rules governing liquidation to establish the creditor payout priority that will become applicable if supplemental capital becomes an available option for all credit unions.[38] The commenter noted that, although federal law controls in determining whether supplemental capital counts toward regulatory capital, the issuance itself is a function of state law for federally insured, state-chartered credit unions.

10. Safety and Soundness

Lending

Three commenters addressed the NCUA Payday Alternative Loan rule.[39] Two recommended that NCUA refrain from using prescriptive requirements in the rule, such as aggregate limits, minimum balance and maturity requirements, and minimum length of time for members to qualify for the loans. One commenter urged NCUA to resist efforts by the CFPB to regulate credit union programs, for example by establishing a maximum number of times a loan may be rolled over.

One commenter sought clarification in the lending rule concerning how the term ''overall financial performance,'' which may be considered in compensating loan officers, squares with the prohibition on the payment of incentive pay. Another recommended NCUA modify the approach it currently takes in the lending rule concerning its evaluation of whether to permit federally insured, state-chartered credit unions to comply with state law for exceptions relating to prohibited fees and non-preferential loans. The commenter recommended that, in evaluating such state laws, NCUA focus on the substantive impact on safety and soundness and not on requiring the state law to be identical in order for NCUA to accept it. The commenter recommended NCUA resurrect the approach formerly taken in the member business loan rule in which NCUA focused on substantive safety-and-soundness considerations and did not require that a state rule be identical in order to be approved.[40] Another commenter advocated that NCUA adopt a principles-based approach to the provisions in 12 CFR 701.21(h), pertaining to acquiring interests in

[35] Anti-money laundering—12 CFR part 748 (80 FR 36,252 (June 24, 2015)).

[36] The gist of the comments has been forwarded to FinCEN.

[37] Rules of practice and procedure—12 CFR parts 709, 710, and 747 (80 FR 79,953 (December 23, 2015)).

[38] 12 CFR part 709.

[39] Safety and soundness—12 CFR parts 703, 715, 722, 741, 748 (including appendices), and 749; 12 CFR 701.21 (80 FR 79,953 (December 23, 2015)).

[40] The commenter noted its objection to the mechanism NCUA settled upon in the recently finalized member business loan rule, in which the agency has indicated its review of state laws purporting to govern business lending will focus on whether the state rule covers all aspects addressed in NCUA's rule and is ''no less restrictive'' than NCUA's rule.

auto loans being serviced by third parties, as opposed to the prescriptive measures currently in the rule.

One commenter noted the need for clarification under 12 CFR 701.22 (which was not included in the categories covered by the fourth notice) as to the status of an automobile dealer who originates and transfers loans to a credit union. The commenter suggested that 12 CFR 701.22 clarify that a dealer acting in that capacity be characterized in the rule as an agent of the credit union. The commenter also recommended the rule be cross-referenced in 12 CFR part 741 as being applicable to federally insured, state-chartered credit unions.

Investments and Deposits

One commenter suggested NCUA permit credit unions, if necessary on a pilot basis, to purchase mortgage servicing rights from other lenders, including other credit unions. The commenter argued that this would help smaller credit unions that originate mortgages but are not able to hold them in portfolio. The commenter also advocated an expanded use of the pilot program option, with a view toward greater innovation and better alignment with what is permissible under the Federal Credit Union Act. The commenter believes this will encourage development of safe, innovative investment products that will ultimately be beneficial to the members. One commenter noted that references in 12 CFR part 703 to the National Association of Securities Dealers, or NASD, should be changed to the Financial Industry Regulatory Authority, or FINRA.

Supervisory Committee Audits

One commenter advocated amending the applicability threshold of the rule from $10 million to $100 million, to align with recent changes to the definition of ''small credit union'' in other rules. Another commenter identified a need for clarification as to which aspects of 12 CFR part 715 are made applicable to federally insured, state-chartered credit unions through 12 CFR part 741. The commenter noted that the rule (as well as elsewhere), would benefit from inclusion in part 741, rather than a cross reference as in the current rule.

CyberSecurity Programs and Related Issues

Three commenters urged NCUA to encourage action by FinCEN to reduce burden by liberalizing its rules concerning reporting and related obligations under the Bank Secrecy Act, such as to increase the reporting threshold for wire transfers, currency transactions, and suspicious activity reports. Two commenters sought clarification under appendix B to 12 CFR part 748 as to what the obligation of a credit union is, if any, in the case of a breach affecting sensitive member information that occurs at a third party, such as a merchant, and not at the credit union itself. Three commenters requested that NCUA clarify and confirm that use by credit unions of the cyber assessment tool recently developed by the Federal Financial Institutions Examination Council is voluntary, not mandatory. Along this line, two commenters urged that NCUA not make the tool a benchmark in IT exams.

Recordkeeping

Three commenters noted burdens associated with the requirement in 12 CFR part 749 that certain records be maintained indefinitely. These commenters assert the costs associated with this requirement significantly outweighs any benefit. For example, keeping member statements indefinitely serves no real purpose, particularly after any applicable statute of limitations has expired. Instead, these commenters urge that NCUA revise the rule so that retention periods are consistent with applicable statutes of limitations or other guidelines, such as the five-year retention requirement described in appendix P of the FFIEC's ''Bank Secrecy Act Examination Manual.'' One commenter noted that the retention obligation for member statements should conform to that which governs canceled checks (characterized by the commenter as being seven years). These commenters noted that there are real costs associated with compliance with the current rule, despite the ability to convert records to electronic format. One commenter also requested clarification in the rule as to what each listed record must include.

Examinations

Three commenters expressed general concern about examiners and the exam process.[41] One noted that, on some occasions, examiners may become overly defensive and insistent that guidance is actually mandatory. Three commenters urged NCUA to place greater reliance on state examinations and reports of examination in connection with federally insured, state-chartered credit unions, such that federal examiners need not participate in every exam. Another suggestion was to have annual exams alternate between state and federal, with the state's one year and NCUA's the next. One commenter noted that, within the last five years, the addition of the CFPB as a regulatory authority has added a degree of urgency to reducing burdens in this area.

Two commenters also requested that NCUA conduct exams less frequently; one of these urged NCUA to move to an 18-month exam cycle, especially for smaller credit unions and those with a low risk profile. Such an approach, according to these commenters, would provide NCUA with greater flexibility in balancing staff and resources and would result in significant burden reduction for credit unions. One commenter urged that NCUA implement this move before the effective date of the risk-based capital rule. One commenter offered support for revisions to the Call Report for non-complex credit unions, as well as updates and improvements to the protocol for the Automated Integrated Regulatory Examination System, or AIRES, with one likely result being less time spent on-site by examiners.

Appraisals

One commenter proposed that NCUA revise its rule in the appraisal area to conform to that which applies to banks by eliminating the requirement of an appraisal for business loans under $1 million for which repayment is not dependent on sales of real estate parcels or income generated by the property.[42] The same commenter encouraged NCUA to include a waiver process in the rule for business loans that exceed this threshold. Another commenter noted that the federal bank regulatory agencies may be considering raising the threshold (currently $250,000) at which loans must include an appraisal by a licensed or certified appraiser. The commenter recommended that NCUA follow suit if the bank regulators decide to raise the threshold.

Liquidity and Contingency Funding

One commenter proposed that NCUA consider liberalizing its current rule by raising the threshold for applicability of the rule from $50 million in assets to $100 million.[43] Another commenter proposed periodic review and revision as appropriate to the asset size category in the rule of between $50 million and $250 million. One commenter additionally questioned the need to add an ''S'' for market sensitivity to the CAMEL rating system, noting that credit unions differ significantly from banks and that NCUA may not need to add the separate market sensitivity indicator to its exam protocol. One commenter, noting that interpretation of the rule had become rigid and complicated, urged NCUA to provide more flexibility in the rule to enable credit union management to take a greater role in managing their own risk.

Regulations Codified Elsewhere

One commenter urged NCUA to conduct a thorough review and revision of 12 CFR part 741, to minimize potential confusion for credit unions in determining which aspects of rules pertain to them. For example, 12 CFR part 741 includes a cross reference to 12 CFR part 715, pertaining to supervisory committee audits, but does not specify what sections of part 715 are applicable. Similar issues exist, according to this commenter, with NCUA rules on appraisals, bond requirements, and loan participations.

This commenter recommended a reorganization of part 741 so that all regulations or portions thereof that are applicable to federally insured, state-chartered credit unions are set out in one place, rather than simply cross-referenced. This commenter also suggests a clarification in 12 CFR 741.204 to provide that NCUA is allowed to act regarding a low-income designation for a federally insured, state-chartered credit union when state law does not provide express authority to the state regulator to act. Similarly, according to this commenter, 12 CFR 741.206 should make allowance for corporate credit unions to be chartered at the state level, and 12 CFR 741.208 should be amended to specify that state law should govern the conversion of a federally insured, state-chartered credit union to non-federal insurance. Finally,

[41] 12 CFR 741.1.

[42] Appraisals, 12 CFR part 722.

[43] Liquidity and contingency funding, 12 CFR 741.12.

according to this commenter, 12 CFR 741.214 should be amended to reflect that, in cases where the board of directors meets every other month, notice to the board of security incidents on that same basis will be considered sufficiently prompt for compliance purposes.

Total Comments Received, by Type

In response to its four published notices soliciting comment on its 10 categories of rules, NCUA received a total of 25 comments. Of these, eight were generated by national trade associations, four by a national association representing state credit union regulators, six by regional trade associations, two by state trade associations, and five by credit unions.

Following the conclusion of the comment solicitation process, EGRPRA calls for the agencies to review and evaluate the comments and to eliminate unnecessary regulations to the extent that such action is appropriate. The process concludes with a report to Congress. As discussed more fully below, the NCUA Board has already taken steps to consider and reduce when possible and appropriate, credit unions' regulatory burdens.

IV. Significant Issues; Agency Response

The NCUA Board's efforts to identify credit union compliance burdens and adapt policies and regulations to address those burdens have never been a higher priority than they are now. To that end, the Board's EGRPRA review and its rolling three-year assessment of all NCUA regulations combine with other initiatives to help achieve the Board's objectives for greater supervisory efficiencies while providing fair yet effective oversight that will mitigate compliance costs for well-run credit unions. At their core, the Board's regulatory relief actions today and into the future must rest on a strong and reinforced safety and soundness foundation.

The issues covered in these initiatives were often addressed by commenters in response to one or more of the **Federal Register** notices issued by the Board consistent with EGRPRA. The agency's principal regulatory relief actions, categorized by broad subject matter, are discussed in greater detail below.

Field of Membership

Credit unions are limited to providing service to individuals and entities that share a common bond, which defines their field of membership. The NCUA Board diligently implements the Federal Credit Union Act's directives regarding credit union membership.

In October 2016, the NCUA Board modified and updated its field of membership rule addressing issues such as:

- the definition of a local community, rural district, and underserved area;
- multiple common-bond credit unions and members' proximity to them;
- single common-bond credit unions based on a trade, industry, or profession; and
- the process for applying to charter or expand a federal credit union.

At the same time it approved the final rule, the Board issued a new proposed rule covering several additional issues pertaining to chartering and field of membership to seek further public comment. Included among the enhancements that are being considered for adoption by the agency is a procedure under which persons or entities wishing to register public comments regarding a proposed community-based field of membership application may do so prior to definitive action by the agency.

Plans are also being implemented to upgrade the NCUA's technology platform to allow credit unions seeking a field of membership expansion to track the status of their applications online throughout the application and approval process. The NCUA Boards intends that the updated system will be operational by April 2017.

Member Business Lending

Congress has empowered the Board to implement the provisions in the Federal Credit Union Act that address member business loans.

A final rule adopted by the NCUA Board in February 2016 was challenged by the Independent Community Bankers of America, but was affirmed by the District Court for the Eastern District of Virginia in January 2017. The final rule, approved unanimously by the Board, is wholly consistent with the Act as the Court reinforced and contains regulatory provisions which:

- give credit union loan officers the ability, under certain circumstances, to no longer require a personal guarantee;
- replace explicit loan-to-value limits with the principle of appropriate collateral and eliminating the need for a waiver;
- lift limits on construction and development loans;
- exempt credit unions with assets under $250 million and small commercial loan portfolios from certain requirements; and
- affirm that non-member loan participations, which are authorized under the Federal Credit Union Act, do not count against the statutory member business lending cap.

Federal Credit Union Ownership of Fixed Assets

In April 2016, the NCUA Board issued a proposed rule that would eliminate the requirement that federal credit unions must have a plan by which they will achieve full occupancy of premises within some explicit timeframe. The proposal would allow for federal credit unions to plan for and manage their use of office space and related premises in accordance with their own strategic plans and risk-management policies. The proposal, which remains pending, would also clarify that, under the rule, ''partial occupancy'' means occupation of 50 percent of the relevant space.

Expansion of National Credit Union Share Insurance Coverage

With the enactment by Congress of the Credit Union Share Insurance Fund Parity Act in December 2014, NCUA was expressly authorized to extend federal share insurance coverage on a pass-through basis to funds held on deposit at federally insured credit unions and maintained by attorneys in trust for their clients without regard to the membership status of the clients.[44]

Many industry advocates, including some EGRPRA commenters, urged NCUA to consider ways to expand this type of pass-through treatment to other types of escrow and trust accounts maintained by other professionals on behalf of their clients. The NCUA Board issued a proposed rule in April 2015, inviting comment on ways in which the principles articulated in the Parity Act might be expanded into other areas and types of account relationships.

Reviewing the numerous comments received in response to this invitation, the agency undertook extensive research and analysis and concluded that some expansion of this concept into other areas was warranted and legally permissible. Accordingly, in December 2015, the NCUA Board unanimously approved the issuance of a final rule by which expanded share insurance coverage on a pass-through basis would be provided under which a licensed professional or other fiduciary holds funds for the benefit of a client or principal as part of a transaction or business relationship. As noted in the preamble to the final rule, examples of such accounts include, but are not limited to, real estate escrow accounts and prepaid funeral accounts.

Improvements for Small Credit Unions

The credit union system is characterized by a significant number of small, minority, and women owned credit unions. NCUA is acutely aware that the compliance burden on these institutions can become overwhelming, leading to significant expense of staff time and money, strain on earnings, and, ultimately, consolidation within the industry as smaller institutions are unable to maintain their separate existence.[45] While this is a difficult, multi-faceted problem, NCUA is committed to finding creative ways to ease that burden without unduly sacrificing the goal of safety and soundness throughout the credit union system.

The agency has approached this problem from several different angles. Among the adjustments and improvements implemented within the more recent past are the following:

- Responding to requests from commenters and other representatives of credit unions, NCUA considered whether to raise the asset threshold for defining a small credit union under the Regulatory Flexibility Act. In February 2015, the NCUA Board unanimously approved a proposed rule that would raise the definitional threshold from $50 million to $100 million. Doing so, the Board determined, would lay the groundwork for potential regulatory relief for three-fourths of all credit unions in future rulemakings. The Board adopted the rule in September 2015. At the time, the change made an additional 733 federally insured credit unions eligible for special consideration of regulatory relief in future rulemakings, and these institutions are

[44] Public Law 113–252.

[45] Along these lines, the agency is considering whether enhanced disclosure requirements in the merger context are appropriate, particularly in relation to payments made to merging credit union officials in connection with the change of control.

eligible to receive assistance from NCUA's Office of Small Credit Union Initiatives, including training and consulting. With this latest adjustment, the asset ceiling for small credit unions is now 10 times higher than what it was in 2009.

• Responding to requests to facilitate access to and use of secondary capital by low-income credit unions (of which a significant percentage are also small), the agency has developed a more flexible policy. Investors can now call for early redemption of portions of secondary capital that low-income credit unions may no longer need. These changes also were designed to provide investors greater clarity and confidence.[46]

• The process by which credit unions may claim the low-income designation has also been streamlined and improved. Now, following an NCUA examination, credit unions that are eligible for the designation are informed by NCUA of their eligibility and provided with a straightforward opt-in procedure through which they may claim the low-income designation. During the five-year period ending December 31, 2015, the number of low-income credit unions increased from 1,110 to 2,297, reflecting an increase over that time frame of 107 percent, with more than a third of credit unions receiving the low-income designation. Together, low-income credit unions had 32.5 million members and more than $324.7 billion in assets at year-end 2015, compared to 5.8 million members and more than $40 billion in assets at the end of 2010.

• Explicit regulatory relief: Small credit unions have been expressly exempted from the NCUA's risk-based capital requirements. Small credit unions have also recently received a reprieve from compliance with NCUA's rule pertaining to access to sources of emergency liquidity.

• Expedited exam process: NCUA has created an expedited exam process for well-managed credit unions with CAMEL ratings of 1, 2, or 3 and assets of up to $50 million. These expedited exams require less time by examiners on site, and focus on issues most likely to pose threats to the smallest credit unions.

• CDFI enhancements: NCUA signed an agreement in January 2016 with the Department of the Treasury's Community Development Financial Institutions Fund to double the number of credit unions certified as Community Development Financial Institutions within one year. NCUA is leveraging data it routinely collects from credit unions to provide a pre-analysis and to assist in the streamlining of the CDFI application process. In addition, NCUA recently adopted several technical amendments to its rule governing the Community Development Revolving Loan Fund. The amendments update the rule and make it more succinct, improving its transparency, organization, and ease of use by credit unions.

[46] See *https://www.ncua.gov/newsroom/Pages/NW20150406NSPMSecondaryCapital.aspx* for more information about the low-income credit union secondary capital announcement.

Expanded Powers for Credit Unions

Enhanced powers for regulated institutions, consistent with statutory requirements, can have a significant beneficial effect that is similar in some ways to the impact of reducing compliance burden. The NCUA has taken several recent steps to provide federal credit unions with broader powers. These enhancements, as discussed below, have positioned credit unions to take better advantage of the activities Congress has authorized to strengthen their balance sheets.

• In January 2014, the NCUA Board amended its rule governing permissible investments to allow federal credit unions to invest in certain types of safe and legal derivatives for hedging purposes. This authority enables federal credit unions to use simple ''plain vanilla'' derivative investments as a hedge against interest rate risk inherent in their balance sheet.

• In February 2013, the NCUA Board amended its investment rule to add Treasury Inflation Protected Securities to the list of permissible investments for federal credit unions. These securities provide credit unions with an additional investment portfolio risk-management tool that can be useful in an inflationary economic environment.

• At its open meeting in March 2016, the NCUA Board further amended its investments rule to eliminate language that unduly restricted federal credit unions from investing in bank notes with maturities in excess of five years. With the change, credit unions are now able to invest in such instruments regardless of the original maturity, so long as the remaining maturity at the time of purchase is less than five years. This amendment broadens the range of permissible investments and provides greater flexibility to credit unions consistent with the Federal Credit Union Act.

• In December 2013, the NCUA Board approved a rule change to clarify that federal credit unions are authorized to create and fund charitable donation accounts, styled as a hybrid charitable and investment vehicle, as an incidental power, subject to certain specified regulatory conditions to ensure safety and soundness.

Consumer Complaint Processing

Responding to comments received by interested parties, NCUA conducted a thorough review of the way in which it deals with complaints members may have against their credit union. In June 2015, the agency announced a new process, as set out more fully in Letter to Credit Unions 15–CU–04. The new process refers consumer complaints that involve federal financial consumer protection laws or regulations for which NCUA is the primary regulator to the credit union, which will have 60 days to resolve the issue with its member before NCUA's Office of Consumer Financial Protection and Access considers whether to initiate a formal investigation of the matter. Results of the new process have been excellent, with the majority of complaints resolved at the level closest to the consumer and with minimal NCUA footprint.

Interagency Task Force on Appraisals

Twelve CFR part 722 of NCUA's rules establishes thresholds for certain types of lending and requires that loans above the thresholds must be supported by an appraisal performed by a state certified or licensed appraiser. The rule is consistent with an essentially uniform rule that was adopted by the banking agencies after the enactment of FIRREA. The rule covers both residential and commercial lending.[47]

In response to comments received through the EGRPRA process, NCUA joined with the banking agencies to establish an interagency task force to consider whether changes in the appraisal thresholds are warranted. Work by the task force is underway, including the development of a proposal to increase the threshold related to commercial real estate loans from $250,000 to $400,000. Any other recommendation developed by the task force will receive due consideration by NCUA.

V. Other Agency Initiatives

The foregoing discussion reflects actions already taken by NCUA to address credit unions compliance and regulatory costs and to update and improve to its regulations. Several additional, related initiatives are under active consideration by the NCUA Board and are likely to be implemented within the relatively near term. Each of these proposed program or regulatory changes is discussed below.

Possible Temporary Corporate Credit Union Stabilization Fund Proposal for Early Termination

Congress authorized the creation of the Temporary Corporate Credit Union Stabilization Fund in 2009.[48] The availability of this Fund allowed the agency to respond to the insolvency and failure of five large corporate credit unions without immediate depletion of the share insurance fund, which protects the deposits and savings of credit union members. This Fund also enabled the agency to fund massive liquidation expenses and guarantees on notes sold to investors backed by the distressed assets of the five failed corporate credit unions. Current projections are that the distressed assets underlying the notes will perform better than initially expected. In addition to improved asset performance, significant recoveries on legal claims have created a surplus that may eventually be returned to insured credit unions. NCUA intends to explore ways to speed up this process, principally by closing

[47] In contrast to the agencies, NCUA's rule contains no distinction, with respect to the appraisal requirement, between commercial loans for which either sales of real estate parcels or rental income derived from the property is the primary basis for repayment of the loan, and loans for which income generated by the business itself is the primary repayment source. Under 12 CFR part 722, the dollar threshold for either type of commercial loan is $250,000; loans above that amount must be supported by an appraisal performed by a state certified appraiser. By contrast, the banking agencies' rule creates a separate category for the latter type of commercial loan and establishes a threshold of $1 million; loans in this category but below that threshold do not require an appraisal.

[48] Public Law 111–22 (May 20, 2009), section 204(f).

the Fund and transferring its remaining assets to the share insurance fund more quickly than initially anticipated. Doing so would bolster the equity ratio of the share insurance fund, leading eventually to a potential distribution of funds in excess of the insurance fund's established equity ratio to the credit union industry.

Call Report Enhancements

NCUA intends to conduct a comprehensive review of the process by which it conducts its off-site monitoring of credit unions, namely through the Form 5300 Call Report and Profile. As the data reflected in these reports affect virtually all of NCUA's major systems, the agency's exploration of changes in the content of the Call Report and Profile will be on the front end of NCUA's recently announced Enterprise Solutions Modernization initiative, which will be a multi-year process taking place in stages. As started in the summer of 2016, this effort is comprehensive, ranging from the content of the Call Report and Profile to the systems that collect and use these data such as CU Online and the Automated Integrated Regulatory Examination System, or AIRES. Throughout the process, we will seek input from external stakeholders to ensure our overarching goals are met.

The imperative driving this modernization effort is, quite simply, that credit unions—like other depository institutions—are growing larger and more complex every day. At the same time, smaller credit unions face significant competitive challenges. In such an environment, it is incumbent on NCUA to ensure its reporting and data systems produce the information needed to properly monitor and supervise risk at federally insured credit unions while leveraging the latest technology to ease the burden of examinations and reporting on supervised institutions. For these reasons, three of the other FFIEC agencies—the FDIC, OCC, and Federal Reserve—are currently reviewing their Call Report forms with an eye to reducing reporting burden.

NCUA's goals in reviewing its data collection are:

- enhancing the value of data collected in pre-exam planning and off-site monitoring;
- improving the experience of users;
- protecting the security of the data collected; and
- minimizing the reporting burden for credit unions.

NCUA will review all aspects of data collection for federally insured credit unions. This review will go beyond reviewing the content of the Call Report and Profile, to look at the systems credit unions use to submit data to NCUA—namely CU Online.

The agency has already conducted a broad canvassing of internal and external stakeholders to obtain their feedback on potential improvements in the Call Report and Profile. We have attempted to engage all these stakeholders through a variety of methods, including a request for information published in the **Federal Register** with a 60-day comment period.[49] The comment period was intended to provide all interested parties an opportunity to provide input very early in the process. We also developed a structured focus group process to aid in assessing ideas (to complement internal NCUA and state regulatory agency input), and we have created data-collection systems that can be used to activate the focus group.

Supplemental Capital

NCUA plans to explore ways to permit credit unions that do not have a low-income designation to issue subordinated debt instruments to investors that would count as capital against the credit union's risk-based net worth requirements. At present, only credit unions having a low-income designation are allowed to issue secondary capital instruments that count against their mandatory leverage ratios. For credit unions that are not so designated by NCUA, only retained earnings may be used to meet the leverage requirements in the Federal Credit Union Act.[50] Consistent with its regulatory review objectives, NCUA issued an advance notice of proposed rulemaking to inform possible rulemaking that will describe certain constraints that, if applied to subordinated debt instruments issued by the credit union, will enable the credit union to count those instruments as capital for purposes of the risk-based capital rule.

Risk Based Capital

NCUA intends to revisit its recently finalized risk-based capital rule[51] in its entirety and to consider whether significant revision or repeal of the rule is warranted.

Examination Flexibility

In response to the financial crisis and the Great Recession that ensued thereafter, NCUA determined in 2009 to shorten its examination cycle to 12 months.[52] The agency also hired dozens of new examiners at that time. Since then, the agency policy has been that every federal credit union, and every state-chartered, federally insured credit union with assets over $250 million, should undergo an examination at least once per calendar year.

In an effort to implement regulatory relief and to address some inefficiencies associated with the current program, the agency has undertaken a comprehensive review of all issues associated with examiner time spent onsite at credit unions, including both frequency and duration of examinations. The relatively strong health of the credit union industry at present supports addressing exam efficiencies. A working group within the agency was established, and it solicited input from the various stakeholders with interests in this issue, including from within the agency, state regulatory authorities, and credit union representatives. The working group issued recommendations, which the Board incorporated into the agency's upcoming 2017–18 budget. These included the recommendation that the agency provide greater flexibility in scheduling exams of well-managed and well-capitalized credit unions, consistent with the practices of other federal financial regulators and the agency's responsibility to protect the safety and soundness of the share insurance fund. Other objectives for consideration include evaluating the feasibility of incorporating a virtual examination approach, as well as improvements to examiner training and a movement away from undue reliance on ''best practices'' that are unsupported by statute or regulation. In addition, the agency intends to revisit its recently enacted rule on stress testing for the largest credit unions to consider whether it is properly calibrated, and also to explore whether to move this important function in-house and out of the realm of expensive third-party contractors. The ultimate goal of NCUA's examination review and other initiatives has been and remains that safety and soundness will be assured with minimal disruptive impact on the well managed credit unions subject to examination.

Enterprise Solutions Modernization

NCUA's Enterprise Solutions Modernization program is a multi-year effort to introduce emerging and secure technology that supports the agency's examination, data collection and reporting efforts in a cost effective and efficient way. The changes in our technology and other systems will improve the efficiency of the examination process and lessen, where possible, examination burdens on credit unions, including cost and other concerns identified during our EGRPRA review.

Over the course of the next few years, the program will deploy new systems and technology in the following areas:

- *Examination and Supervision*—Replace the existing legacy examination system and related supporting systems, like the Automated Integrated Regulatory Examination System or AIRES, with modernized tools allowing examiners and supervisors to be more efficient, consistent, and effective.
- *Data Collection and Sharing*—Define requirements for a common platform to securely collect and share financial and non-financial data including the Call Report, Credit Union Profile data, field of membership, charter, diversity and inclusion levels, loan and share data, and secure file transfer portal.
- *Enterprise Data Reporting*—Implement business intelligence tools and establish a data warehouse to enhance our analytics and provide more robust data reporting.

Additionally, NCUA envisions introducing new or improved processes and technology to improve its workflow management, resource and time management, data integration and analytics, document management, and customer relationship management. Consistent with this vision, NCUA intends to consider ways to more transparently streamline its budget and align its priorities with its budget expenditures.

[49] 81 FR 36,600 (June 7, 2016).

[50] 12 U.S.C. 1790d(o)(2); see Legislative Recommendations, *infra*, for additional discussion about this requirement and NCUA's support for amending this provision.

[51] 12 CFR part 702, subpart A.

[52] Although the exam cycle immediately prior to 2009 had been in the 18-month range, for most of its history NCUA has followed an exam cycle of approximately one year.

Outreach and Coordination with Other Government Offices

Credit unions are affected by regulations and guidance issued by entities other than NCUA, at both the state and the federal level. In some cases, an appreciation of the unique aspects of credit unions, including their cooperative structure and not-for-profit orientation, may be lacking. NCUA can and should work with such entities to help assure that these unique aspects are not overlooked, both in the development and the application of rules and policies. At the state level in particular, NCUA intends to work more closely with state credit union regulators to enhance and preserve the dual chartering system, which has served the industry well for many years. Efficiencies in the joint examination process can also be improved.

Additional Areas of Focus

Several other areas present opportunities for NCUA to focus on improving and enhancing its body of regulations and its oversight of the industry it oversees. These include:

- *Appeals procedures.* At present, the procedures by which a credit union or other entity aggrieved by a determination by an examiner or other agency office may seek redress at the level of the NCUA Board are inconsistent and poorly understood. The agency intends to develop uniform rules to govern this area, both with respect to material supervisory determinations and other significant issues warranting the review by the Board.
- *Corporate rule (Part 704).* Reform and stringent control over the corporate credit union sector was necessary during the financial crisis that began in 2008. Nine years later, a reconsideration of the corporate rule and an evaluation of whether restrictions therein may be loosened is altogether appropriate.
- *Credit Union Advisory Council.* Development of such a Council would enable the agency to listen to and learn from industry representatives more directly, enhancing our efforts to identify and eliminate unnecessarily burdensome, expensive, or outdated regulations.

VI. Legislative Recommendations

NCUA is very appreciative of the efforts in Congress during recent years to provide regulatory relief by passing such laws as the Credit Union Share Insurance Fund Parity Act and the American Savings Promotion Act in the 113th Congress. The agency also appreciates recent efforts to enact into law provisions modifying the annual consumer privacy notifications found in the Gramm-Leach-Bliley Act.

In terms of issues that are ripe for congressional review and consideration, NCUA's most recent testimony before the Senate Banking and House Financial Services committees included recommendations regarding regulatory flexibility, raising statutory limits on member business lending for federally insured credit unions, providing supplemental capital authority for leverage ratio purposes to credit unions without the low-income designation, and revisiting field-of-membership requirements for federal credit unions. Each topic is discussed more fully below.

Regulatory Flexibility

Today, there is considerable diversity in scale and business models among financial institutions. Many credit unions are very small and operate on extremely thin margins. They are challenged by unregulated or less-regulated competitors, as well as limited economies of scale. They often provide services to their members out of a commitment to offer a specific product or service, rather than a focus on any incremental financial gain.

The Federal Credit Union Act contains a number of provisions that limit NCUA's ability to revise regulations and provide relief to such credit unions. Examples include limitations on the eligibility for credit unions to obtain supplemental capital, field-of-membership restrictions, curbs on investments in asset-backed securities, and the 15-year loan maturity limit, among others. To that end, NCUA encourages Congress to consider, consistent with maintaining safety and soundness, providing regulators like NCUA with flexibility to write rules to address the needs of smaller credit unions that pose little risk, rather than imposing rigid requirements on them. Such flexibility would allow the agency to effectively limit additional regulatory burdens, consistent with safety and soundness.

NCUA continues to modernize existing regulations with an eye toward balancing requirements appropriately with the relatively lower levels of risk smaller credit unions pose to the credit union system. By allowing NCUA discretion to scale and time the implementing of new requirements, we could mitigate the cost and administrative burdens of these smaller institutions while balancing consumer and prudential priorities.

We also would like to work with Congress so that all our rules going forward could be tailored to fit the risk presented and even the largest credit unions could achieve regulatory relief if their operations are well managed, consistent with legal requirements.

Member Business Lending

NCUA reiterates the agency's long-standing support for legislation to adjust the member business lending cap, such as H.R. 1188, the Credit Union Small Business Jobs Creation Act, introduced by Congressmen Royce and Meeks, or the Senate companion bill, S. 2028, the Small Business Lending Enhancement Act, introduced by Senators Paul, Whitehouse, and Reed. As introduced in the 114th Congress, these bipartisan bills contain appropriate safeguards to ensure NCUA can protect safety and soundness as qualified credit unions gradually increase member business lending.

For federally insured credit unions, the Federal Credit Union Act currently limits member business loans to the lesser of 1.75 times the level of net worth required to be well-capitalized or 1.75 times actual net worth, unless the credit union qualifies for a statutory exemption.[53] For smaller credit unions with the membership demand and the desire to serve the business segments of their fields of membership, the restriction makes it very difficult or impossible to successfully build a sound member business lending program. As a result, many credit unions are unable to deliver business lending services cost effectively, which denies small businesses in their communities access to an affordable source of credit and working capital.

These credit unions miss an opportunity to support the small business community and to provide a service alternative to the small business borrower. Small businesses are an important contributor to the local economy as providers of employment, and as users and producers of goods and services. NCUA believes credit union members that are small business owners should have full access to financial resources in the community, including credit unions, but this is often inhibited by the statutory cap on member business loans.

NCUA additionally supports H.R. 1422, the Credit Union Residential Loan Parity Act, introduced by Congressman Royce and the Senate companion bill, S. 1440, which Senator Wyden introduced. As introduced in the 114th Congress, these bills address a statutory disparity in the treatment of certain residential loans made by credit unions and banks. When a bank makes a loan to purchase a 1- to 4-unit, non-owner-occupied residential dwelling, the loan is classified as a residential real estate loan. If a credit union were to make the same loan, it is classified as a member business loan; therefore, it is subject to the member business lending cap. To provide parity between credit unions and banks for this product, H.R. 1422 and S. 1440 would exclude such loans from the member business loan cap. The legislation also contains appropriate safeguards to ensure NCUA will apply strict underwriting and servicing standards for these loans.

Supplemental Capital

A third area in which congressional action is warranted involves legislation that would allow more credit unions to access supplemental capital, such as H.R. 989, the Capital Access for Small Businesses and Jobs Act. Introduced by Congressmen King and Sherman in the House in the 114th Congress, this bipartisan bill would allow healthy and well-managed credit unions to issue supplemental capital that will count as net worth, to meet statutory requirements. This legislation would result in a new layer of capital, in addition to retained earnings, to absorb losses at credit unions.

The high-quality capital that underpins the credit union system is a bulwark of its strength and key to its resiliency during the recent financial crisis. However, most federal credit unions only have one way to raise capital—through retained earnings, which can grow only as quickly as earnings. Thus, fast-growing, financially strong, well-capitalized credit unions may be discouraged from allowing healthy growth out of concern it will dilute their net worth ratios and could trigger mandatory prompt corrective action-related supervisory actions.

A credit union's inability to raise capital outside of retained earnings limits its ability

[53] 12 U.S.C. 1757a.

to grow its field of membership and to offer greater options to eligible consumers and small businesses. In light of these concerns, NCUA encourages Congress to authorize healthy and well-managed credit unions to issue supplemental capital that will count as net worth under conditions determined by the NCUA Board. Enactment of H.R. 989 would lead to a stronger capital base for credit unions and greater protection for taxpayers.

Field-of-Membership Requirements

The Federal Credit Union Act currently permits only federal credit unions with multiple common-bond charters to add underserved areas to their fields of membership. We recommend Congress modify the Federal Credit Union Act to give NCUA the authority to streamline field-of-membership changes and permit all federal credit unions to grow their membership by adding underserved areas. H.R. 5541, the Financial Services for the Underserved Act, introduced in the House during the 114th Congress by Congressman Ryan of Ohio, would accomplish this objective.

Allowing federal credit unions with a community or single common-bond charter the opportunity to add underserved areas would open up access for many more unbanked and underbanked households to credit union membership. This legislative change also could eventually enable more credit unions to participate in the programs offered through the congressionally established Community Development Financial Institutions Fund, thus increasing the availability of credit and savings options in distressed areas.

Congress also may want to consider other field-of-membership statutory reforms. For example, Congress could allow federal credit unions to serve underserved areas without also requiring those areas to be local communities. Additionally, Congress could simplify the ''facilities'' test for determining if an area is underserved.[54] Other possible legislative enhancements could include elimination of the provision presently contained in the Federal Credit Union Act that requires a multiple common bond credit union to be within ''reasonable proximity'' to the location of a group in order to provide services to members of that group.[55] Another legislative enhancement that recognizes the way in which people share common bonds today would be to provide for explicit authority for web-based virtual communities as a basis for a credit union charter. NCUA stands ready to work with Congress on these ideas, as well as other options to provide consumers more access to affordable financial services through credit unions.

VII. Conclusion

Going forward, NCUA will continue its efforts to provide regulatory relief to credit unions through processes like the EGRPRA review and other methods available to it. As the financial services industry and credit union risk landscape evolves, it is important that NCUA smartly adapt. The agency must commensurately and continually improve its current processes to operate efficiently and effectively.

As the government-backed insurer for the credit union system and the regulator of federally chartered credit unions, the agency faces a number of challenges similar to the ones credit unions wrestle with, such as the need to:

- improve our operations and processes to become more responsive to credit union (member) requests, while keeping costs down;
- optimize our use of existing and new technology as a tool, enabling us to do our jobs better; and
- conduct future credit union exams in ways that minimize any disruptive operational impacts on the credit unions we visit.

As discussed above, revising the data NCUA collects by the Call Report and Profile is only the first concrete step in a much broader and longer-term retooling of how NCUA approaches its role in the credit union system. NCUA has an opportunity now to lay the foundation for a transformation of how the agency conducts business going forward, especially in terms of the Enterprise Solutions Modernization initiative and the continuous quality improvement work group the agency will be using for the examination process.

Such efforts should lead to improvements in NCUA's effectiveness, efficiency gains for NCUA and credit unions, and a better experience for credit unions in interacting with NCUA. As NCUA works to implement reforms to the agency's processes and procedures, we will continue efforts to provide regulatory relief to credit unions, consistent with safety and soundness and the requirements of the Federal Credit Union Act.

Ultimately, our goal remains to be a responsive agency that strikes the correct balance between prudential safety-and-soundness oversight and right-sized regulations that address problems appropriately while enabling the credit unions we regulate to provide important financial choices to meet the growing and evolving financial needs of consumers, small businesses and communities as vibrant components of the U. S. financial sector.

VIII. Appendices

1. Chart of Agency Regulations by Category
2. Notices Requesting Public EGRPRA Comment on Agency Rules
3. Regulatory Relief Initiative—Summary Chart

APPENDIX 1—CHART OF AGENCY REGULATIONS BY CATEGORY

Category	Subject	Regulation cite
1. Applications and Reporting	Change in official or senior executive officer in credit unions that are newly chartered or in troubled condition.	12 CFR 701.14.
	Field of membership/chartering	12 CFR 701.1; IRPS 03–1, as amended.
	Federal Credit Union Bylaws	12 CFR 701.2; Appendix A to Part 701.
	Fees paid by federal credit unions	12 CFR 701.6.
	Conversion of insured credit unions to mutual savings banks	12 CFR part 708a.
	Mergers of federally insured credit unions; voluntary termination or conversion of insured status.	12 CFR part 708b.
	Applications for insurance	12 CFR 741.0; 741.3; 741.4.
	Financial, statistical and other reports	12 CFR 741.6.
	Conversion to a state-chartered credit union	12 CFR 741.7.
	Purchase of assets and assumption of liabilities	12 CFR 741.8.
2. Powers and Activities:		
a. Lending, Leasing and Borrowing	Loans to members and lines of credit to members	12 CFR 701.21.
	Participation loans	12 CFR 701.22.
	Borrowed funds from natural persons	12 CFR 701.38.
	Statutory lien	12 CFR 701.39.
	Leasing	12 CFR part 714.
	Member business loans	12 CFR part 723.
	Maximum borrowing	12 CFR 741.2.
b. Investment and Deposits	Investment and deposit activities	12 CFR part 703.
	Fixed assets	12 CFR 701.36.

[54] The Federal Credit Union Act presently requires an area to be underserved by other depository institutions, based on data collected by NCUA or federal banking agencies. NCUA has implemented this provision by requiring a facilities test to determine the relative availability of insured depository institutions within a certain area. Congress could instead allow NCUA to use alternative methods to evaluate whether an area is underserved to show that although a financial institution may have a presence in a community, it is not qualitatively meeting the needs of an economically distressed population.

[55] *See* 12 U.S.C. 1759(f)(1).

APPENDIX 1—CHART OF AGENCY REGULATIONS BY CATEGORY—Continued

Category	Subject	Regulation cite
	Credit union service organizations (CUSOs)	12 CFR part 712.
	Payment on shares by public units and nonmembers	12 CFR 701.32.
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34.
	Share, share draft, and share certificate accounts	12 CFR 701.35.
	Treasury tax and loan depositories; depositories and financial agents of the government.	12 CFR 701.37.
	Refund of interest	12 CFR 701.24.
	Trustee or custodian, tax-advantaged plans	12 CFR part 724.
c. Miscellaneous Activities	Incidental powers	12 CFR part 721.
	Charitable contributions and donations, including charitable donation accounts	12 CFR 721.3(b).
	Credit union service contracts	12 CFR 701.26.
	Purchase, sale, and pledge of eligible obligations	12 CFR 701.23.
	Services for nonmembers within the field of membership	12 CFR 701.30.
	Suretyship and guaranty	12 CFR 701.20.
	Foreign branching	12 CFR 741.11.
3. Agency Programs	Community Development Revolving Loan Program	12 CFR part 705.
	Central liquidity facility	12 CFR part 725.
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34.
4. Capital	Prompt corrective action	12 CFR part 702.
	Adequacy of reserves	12 CFR 741.3(a).
5. Consumer Protection	Nondiscrimination requirement (Fair Housing)	12 CFR 701.31.
	Truth in Savings (TIS)	12 CFR part 707.
	Appraisals for higher priced mortgage loans	12 CFR 722.3(f).
	Loans in areas having special flood hazards	12 CFR part 760.
	Fair Credit Reporting—identity theft red flags	12 CFR part 717, Subpart J.
	Fair Credit Reporting—disposal of consumer information	12 CFR 717.83.
	Fair Credit Reporting—duties regarding address discrepancies	12 CFR 717.82.
	Share insurance	12 CFR part 745.
	Advertising	12 CFR part 740.
	Disclosure of share insurance	12 CFR 741.10.
	Notice of termination of excess insurance coverage	12 CFR 741.5.
	Uninsured membership shares	12 CFR 741.9.
	Member inspection of credit union books, records, and minutes	12 CFR 701.3.
6. Corporate Credit Unions	Corporate credit unions	12 CFR part 704.
7. Directors, Officers, and Employees	Loans and lines of credit to officials	12 CFR 701.21(d).
	Reimbursement, insurance, and indemnification of officials and employees	12 CFR 701.33
	Retirement benefits for employees	12 CFR 701.19.
	Management officials interlock	12 CFR part 711.
	Fidelity bond and insurance coverage	12 CFR part 713.
	General authorities and duties of federal credit union directors	12 CFR 701.4.
	Golden parachutes and indemnification payments	12 CFR part 750.
8. Money Laundering	Report of crimes or suspected crimes	12 CFR 748.1.
	Bank Secrecy Act	12 CFR 748.2.
9. Rules of Procedure	Liquidation (involuntary and voluntary)	12 CFR parts 709 and 710.
	Uniform rules of practice and procedure	12 CFR part 747, subpart A.
	Local rules of practice and procedure	12 CFR part 747, subparts B through J.
	Inflation adjustment of civil money penalties	12 CFR part 747, subpart K.
	Issuance, review and enforcement of orders imposing prompt corrective action	12 CFR part 747, subparts L and M.
10. Safety and Soundness	Lending	12 CFR 701.21.
	Investments	12 CFR part 703.
	Supervisory committee audit	12 CFR part 715.
	Security programs	12 CFR 748.0.
	Guidelines for safeguarding member information and responding to unauthorized access to member information.	12 CFR part 748, Appendices A and B.
	Records preservation program and record retention appendix	12 CFR part 749.
	Appraisals	12 CFR part 722.
	Examination	12 CFR 741.1.
	Liquidity and contingency funding plans	12 CFR 741.12.
	Regulations codified elsewhere in NCUA's regulations as applying to federal credit unions that also apply to federally insured state-chartered credit unions.	12 CFR part 741, subpart B.

Appendix 2: Notices Requesting Public EGRPRA Comment on Agency Rules (four)

NATIONAL CREDIT UNION ADMINISTRATION

(1) 79 FR 32191 (June 4, 2014) [1]
Notice of regulatory review; request for comments.

(2) 79 FR 75763 (December 19, 2014) [2]
Notice of regulatory review; request for comments.

(3) 80 FR 36252 (June 24, 2015) [3]
Notice of regulatory review; request for comments.

(4) 80 FR 79953 (December 23, 2015) [4]
Notice of regulatory review; request for comments.

[1] See, *https://www.gpo.gov/fdsys/pkg/FR-2014-06-04/pdf/2014-12739.pdf.*

[2] See, *https://www.gpo.gov/fdsys/pkg/FR-2014-12-19/pdf/2014-29629.pdf.*

[3] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-06-24/pdf/2015-15472.pdf.*

[4] See, *https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-32167.pdf.*

APPENDIX 3—REGULATORY RELIEF INITIATIVE

[Results 2011–2016]

Improved rules	Benefits
Expanded Regulatory Relief Eligibility for Small and Non-Complex Credit Unions.	• Expanded NCUA's regulatory exemptions for credit unions with assets of less than $100 million *(up from $10 million in 2012).* • Eased compliance requirements for small credit unions to access emergency liquidity. • More than doubled the number of small credit unions eligible for regulatory relief in future NCUA rulemakings *(4,500 out of 6,000 credit unions).* • Exempted non-complex credit unions *(75 percent of all credit unions)* from risk-based capital requirements.
Eliminated Fixed Assets Cap	• Eliminated federal credit unions' 5 percent cap on fixed assets. • Removed the need to apply for regulatory waivers. • Empowering federal credit unions to make their own business decisions on purchases of land, buildings, office equipment and technology.
Pre-Approved Associational Common Bonds	• Pre-approved 12 categories of associations that federal credit unions may automatically add to their fields of membership.
Expanding Fields of Membership	• Proposed a modernized field of membership rule to: ○ Designate each Congressional District as a well-defined local community. ○ Serve Combined Statistical Areas with populations up to 2.5 million. ○ Raise potential membership to 1 million for federal credit unions in rural areas. ○ Extend membership eligibility to honorary discharged veterans, contractors and businesses in industrial parks. ○ Recognize full-service websites and electronic applications as service facilities for select employee groups. ○ Modernize the definition of ''underserved area''.
Modernized Member Business Lending	• Finalized a principles-based rule on member business lending to: ○ Remove non-statutory limits on member business loans. ○ Empower each credit union to write their own business loan policy and set their own limits under the law. ○ Eliminate the requirement for all business owners to pledge personal guarantees. ○ Remove unnecessary barriers on business loan participations, which help credit unions diversify risks.
Eased Troubled Debt Restructuring	• Facilitated credit union loan modifications. • Ended manual reporting of modified loans. • Prevented unnecessary foreclosures. • Kept more credit union members in their homes throughout the housing crisis.
Authorized ''Plain Vanilla'' Derivatives	• Permits qualified federal credit unions to use ''plain vanilla'' derivatives to reduce interest rate risks. • Protects the credit union system from interest rate risks at large credit unions by providing an additional interest rate risk mitigation tool. • Allows approved federal credit unions to maintain appropriate levels of mortgage loans in portfolios.
Approved Treasury Inflation-Protected Securities	• Offers federal credit unions an additional investment backed by the full faith and credit of the United States with zero credit risk.
Established Charitable Donation Accounts	• Empowers federal credit unions to safely pool investments designed to primarily benefit national, state, or local charities.
Eliminating Full Occupancy Requirement	• Proposed eliminating a requirement that federal credit unions must plan for and eventually reach full occupancy of acquired premises.
Streamlined processes	**Benefits**
''Opt-In'' Low-Income Credit Union Designation	• Implemented an ''opt-in'' notification process whereby eligible credit unions can simply reply ''Yes'' to receive their low-income designation. • Doubled the number of low-income designations in three years, reaching 2,300 credit unions serving 30 million members.
Enhanced Attractiveness of Secondary Capital	• Provided policy flexibility for Low-Income Credit Unions to redeem secondary capital when investors request.
Expedited Examinations for Smallest Credit Unions	• Created an expedited exam process for well-managed credit unions with CAMEL ratings of 1, 2 or 3 and assets up to $50 million. • Focused expedited exams on issues most likely to pose risks to the smallest credit unions.
Referring Member Complaints	• Referring member complaints directly to federal credit unions. • Providing supervisory committees with 60 days to resolve each complaint before NCUA intervenes.

APPENDIX 3—REGULATORY RELIEF INITIATIVE—Continued

[Results 2011–2016]

Streamlined processes	Benefits
Approving Fields of Membership	• Provided a 5-page template for community charter applications rather than requiring hundreds of pages of community documentation. • Upgraded NCUA's technology platform to allow credit unions applying to expand their fields of membership to track the status of their applications online throughout the approval process.
Certifying Credit Unions as Community Development Financial Institutions.	• Signed agreement with US Treasury to double the number of credit unions certified as Community Development Financial Institutions by January 2017. • Automating existing NCUA data to pre-qualify low-income credit unions as certified CDFIs eligible for multi-million-dollar grants from Treasury's CDFI Fund.
Cutting Reporting Burdens	• Beginning with the September 30, 2016 Call Report, credit unions will only be required to submit aggregate loan and investment information about credit union service organizations.
Clarified Legal Opinions	**Benefits**
Authorized Network Credit Union Model	• Creates a cooperative structure where small credit unions can merge without losing their identity or member services flexibility.
Extended Loan Maturities	• Permits loan maturities up to 40 years after loan modifications. • Significantly reduces monthly payments for borrowers in need.
Permitted Indirect Loan Participations	• Allows credit unions to sell portions of indirect loans to raise liquidity. • Provides buyers another option to diversify loan portfolios.
Expanded Vehicle Fleets	• Expanded ''fleets'' from two to five vehicles for member business loans. • Increases access to credit for small businesses and startups.
Modernized Service Facilities	• Includes full-service video tellers in the definition of federal credit union ''service facilities''. • Empowers federal credit unions to expand services in underserved areas.
Changing Charters in Mergers	• Permits credit unions to change charters to facilitate voluntary mergers. • Enhances credit union services for members of merging credit unions.

Federal Financial Institutions Examination Council.

Judith E. Dupre,

FFIEC Executive Secretary.

[FR Doc. 2017–06131 Filed 3–29–17; 8:45 am]

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H.J. Res. 37/P.L. 115–11
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H.J. Res. 44/P.L. 115–12
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H.J. Res. 57/P.L. 115–13
Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to accountability and State plans under the Elementary and Secondary Education Act of 1965. (Mar. 27, 2017; 131 Stat. 77)

H.J. Res. 58/P.L. 115–14
Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to teacher preparation issues. (Mar. 27, 2017; 131 Stat. 78)

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