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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–13–0003]

RIN 0563–AC42

Common Crop Insurance Regulations; Pear Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Pear Crop Insurance Provisions. The intended effect of this action is to improve coverage available to pear producers, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. Changes are also proposed to the Optional Coverage for Pear Quality Adjustment Endorsement to broaden coverage available to producers to manage their risk more effectively. The proposed changes will be effective for the 2015 and succeeding crop years.

DATES: This rule is effective August 27, 2014.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action

against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR Part 457), Pear Crop Insurance Provisions that were published by FCIC on April 11, 2014, as a notice of proposed rulemaking in the **Federal Register** at 79 FR 20110–20114. The public was afforded 30 days to submit comments after the regulation was published in the **Federal Register**.

A total of 107 comments were received from 4 commenters. The commenters were insurance providers and an insurance service organization.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A commenter stated that a number of the proposed changes appear to provide additional flexibility, as requested by the growers (according to the background in the proposed rule) and which appears to be part of a general trend (separate units, coverage levels and price election percentages by practice/type). The commenter stated that while such flexibility can be beneficial in many ways, they are concerned with the potential impact on loss ratios if the premium rates do not reflect the potential risk being added.

Response: FCIC is required by the Federal Crop Insurance Act to take actions, including the establishment of adequate premiums, as are necessary, to assure the actuarial soundness of the Federal crop insurance program. To maintain actuarial soundness in accordance with the Federal Crop Insurance Act, FCIC will adjust premium rates to reflect any additional risk associated with changes to the Pear Crop Provisions.

Comment: A few commenters stated that FCIC has made several changes to the Pear Crop Provisions that are similar to changes that have previously been made as a part of the 2011 Apple Crop Provisions. However, the commenters stated that some of the changes in the 2011 Apple Crop Provisions were not carried over and should be considered as well, as indicated in other specific comments provided. The commenters also asked that FCIC consider making some additional changes to other parts of the Pear Crop Provisions that were not published in order to minimize the number of problems or issues that could arise with implementing the proposed changes.

Response: FCIC believes the pear policy is distinctly different from the apple policy primarily because of the inherent differences in the industry. Therefore, not all of the provisions from the Apple Crop Provisions were proposed to be included in the Pear Crop Provisions. FCIC cannot make changes that were not proposed unless a flaw or vulnerability is identified. FCIC has made several changes in the final rule due to the suggestions of commenters.

Section 1—Definitions

Comment: A few commenters stated that the definition of ''marketable'' needs to be clarified. The commenters questioned exactly what it means to be ''acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.'' The commenters stated that a definition is needed that is simple, so that agents and growers can understand. The commenters stated the apple policy makes it clear that U.S. No. 1 processing grade is the standard for the basic policy and for actual production history (APH) purposes. A similar simple definition is needed for pears so it is clear exactly what to count for claim purposes as well as for APH purposes. A few commenters stated the grade standards for Summer and Fall, and Winter types have the lowest grade as U.S. No. 2. The only other grade these standards address is unclassified. Unclassified pears are defined as pears which have not been classified in accordance with any of the grades. The term unclassified is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot. The standards for grades of pears for processing includes a definition for culls and defines them as pears which do not meet the requirements of the grades. The commenters stated that from all of this language it is unclear exactly what we would count as production for APH or for loss adjustment. The commenters asked if growers delivered all of their production to a packing shed, and the packing shed did not pay them for their culls, would the culls still be counted as production since they were accepted, but not paid for. The commenter asked if the grower did not harvest, whether graders would grade the pears U.S. No. 2 grade since that is the lowest level addressed as marketable in the standards or would all pears be counted since everything makes cull grade according to the processing pear grade standards. The commenters stated it would appear that for pears the insurance providers should count all pears that meet the standard of U.S. No. 2 processing grade or any production sold for human consumption even if such production fails to meet the U.S. No. 2 processing grade. A few commenters stated that without a clear definition of ''marketable,'' insurance providers will not know how they are expected to handle the situations where growers deliver all of their production to a packing shed, and the packing shed discards, rather than pays for their culls. The commenters stated that without a specific definition of ''marketable'' the insurance providers will not have language to use to defend their determination of production to count in instances where growers do not harvest their crop.

Response: FCIC agrees that without specifying a grade standard in the definition of marketable, it is unclear what pears would be acceptable for processing or human consumption. FCIC also agrees that U.S. No. 2 processing is the lowest grade that would be acceptable for human consumption. While the definition of ''marketable'' was not included in proposed rule, the commenter has identified a vulnerability that needs to be addressed because without a clear definition of ''marketable'' there is the potential for producers to be treated disparately. FCIC has revised the definition of ''marketable'' to state that it means pear production that grades U.S. No. 2 processing or better, unless otherwise provided in the Special Provisions, or that is sold (even if failing to meet any U.S. or applicable state grading standard). This definition clearly identifies what pears are acceptable for human consumption, while also considering anything that is sold as marketable, even if the sold pears are not graded or fail to meet the specified grade. This change is consistent with the intent of the current policy and clarification should prevent confusion about what pears should be considered production to count. This change is also similar to the Apple Crop Provisions because a minimum grade used to determine production to count will be specified.

Comment: A few commenters stated the proposed rule does not include a definition of the term ''type.'' The commenters stated that perhaps it is sufficiently understood as used in the

Crop Provisions and Special Provisions (actuarial documents), but perhaps there should be a definition such as the one in the Apple Crop Provisions: ''A category of pears as designated in the Special Provisions.''

Response: A definition of type was not proposed because insurable types are specified in the actuarial documents. No change has been made in the final rule.

Comment: A few commenters asked if the new ''types'' will be the same as the existing ''varietal groups'' (Bartlett, and others, depending on the county/state).

Response: Insurable types will be specified in the actuarial documents. In most regions there will be a type for Summer and Fall pears and a type for Winter pears. However, some regions may have additional types depending on prices and data availability. The varieties that belong to the current types will be reorganized into the new types based on their maturity dates. The Special Provisions will identify which varieties will be included in each type. There will no longer be an ''all other'' type, so varieties that were previously insured as ''all other'' will now fall under either Summer and Fall or Winter.

Section 2—Unit Division

Comment: The proposed rule background states that ''FCIC proposes to revise section 2 to allow optional units by irrigated and non-irrigated practices'' and ''Optional units will also be available by type if specified in the Special Provisions'' However, a few commenters stated the proposed language in section 2 also suggests another change is being made since the possibility of optional units by non-contiguous land or by type is ''In addition to the provisions in section 34 of the Basic Provisions.'' The current 2011 policy language allows for optional units by non-contiguous land only ''instead of'' the applicable optional unit provisions in section 34 of the Basic Provisions (section, section equivalent, or FSA farm number). Optional units by varietal group are ''In addition to, or instead of'' the other optional unit provisions so that is unchanged. The commenters stated that if this change is intended, it should be identified as such and that it could result in pear producers having a large number of optional units because of the combinations of legal description, non-contiguous land, and type, which could lead to complications in administration and loss adjustment. The commenters asked if this change is made, will the premium rates be reviewed for possible adjustment.

Response: FCIC did not intend to allow additional unit structure options with the exception of irrigated/non-irrigated and the change from varietal group to type. Section 2(b) in the current Pear Crop Provisions allows the producer to choose optional units by non-contiguous land instead of optional units by section, section equivalent, or FSA Farm Serial Number. The proposed language would eliminate this choice and allow optional units by non-contiguous land in addition to optional units by section, section equivalent, or FSA Farm Serial Number. FCIC agrees that the proposed change could result in pear producers having a large number of optional units, which could lead to complications in administration and loss adjustment. Therefore, FCIC has revised this section to clarify optional units may be established either: (1) In accordance with section 34(c) of the Basic Provisions (by section/section equivalent/FSA Farm Serial Number, irrigated/non-irrigated practices, and organic farming practices); or (2) by non-contiguous land. In addition, FCIC has revised the section to clarify that optional units are also available by type. As with any policy change, FCIC will evaluate such changes to determine whether they will have an impact on premium rates and make such adjustments as required.

Comment: According to the proposed rule background, ''FCIC proposed to remove the definition of ''varietal group'' and replace it with the term ''type,'' the unit structure will be by type as specified in the Special Provisions.'' A few commenters stated that the last phrase regarding unit structure is not as clear as the statement in the proposed rule background that states ''Optional units will also be available by type if specified in the Special Provisions.''

Response: FCIC agrees the phrase ''unit structure will be by type'' could be misleading if taken out of context. FCIC did not intend to imply that the policyholder's unit structure options are limited to optional units by type. Unit structure is determined by the policyholder in accordance with the Basic Provisions, Crop Provisions and Special Provisions. FCIC has revised section 2 to allow the policyholder to elect optional units by type if allowed by the Special Provisions.

Comment: A few commenters stated that although the proposed language in section 2 makes it clear that separate optional units are now available by type, this language does not address situations where the types are interplanted on the same acreage. The commenters stated that this needs to be clarified, especially in light of allowing different coverage levels and percent of prices for different types. The Bartlett type is often interplanted with other types of pears, and if we cannot provide optional units by type in this situation, we could end up having to combine existing units resulting in different percent of prices and different coverage levels within a single unit. The commenters asked if it is the intent of FCIC to allow separate optional units by type if a Bartlett type is interplanted with another type on the same acreage.

Response: FCIC agrees that the issue with interplanted acreage needs to be addressed. Therefore, FCIC has retained the provision that nullifies section 34(b)(1) of the Basic Provisions. However, FCIC has reworded to specifically state that the requirements of section 34 of the Basic Provisions that require the crop to be planted in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit are not applicable for optional units by type. This will allow separate optional units for types that do not have a clear and discernable planting pattern, such as situations where types are interplanted. However, it is important to note that separate records of production must still be maintained for each optional unit in accordance with section 11(a) of the Pear Crop Provisions.

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: FCIC is proposing to revise section 3(a) to allow different coverage levels and price election percentages by type. The proposed rule states that risks may not be the same for each type of pear, so this gives the producer an opportunity to tailor the coverage to the specific risks associated with each type. The commenters asked if this change is made in the Pear policy, has the FCIC considered the potential increased risk of adverse selection involved in allowing producers to vary the coverage levels and prices by type rather than by crop/county. A commenter asked, if current rates are not currently established to recognize these differences in risk, will they be revised accordingly.

Response: FCIC agrees that allowing different coverage levels and price election percentages by type may increase risk. As with any policy change, FCIC will evaluate such changes to determine whether they will have an impact on premium rates and make such adjustments as required.

Comment: A few commenters stated they are concerned with how allowing

different coverage levels and price percentages by type, which may or may not be set up as separate optional units, will work. The commenters asked if it is determined that the different types do not qualify as separate optional units, what happens to the different coverage levels and prices. The comments asked if the provisions are intended to allow different coverage levels and prices within the same basic unit. The commenters asked whether it is intended to allow producers to elect basic units, but still choose different coverage levels and prices by type within a basic unit. The commenters also asked how FCIC plans to administer this provision when multiple types are interplanted on the same acreage.

Response: Many policies allow more than one type to be selected under a unit. When there is more than one type in a unit the guarantee is calculated separately for each type within the unit and then the guarantee for each type is added together to determine the guarantee for the unit. Therefore, allowing separate coverage levels and price election percentages to be selected for each type will simply require different values for coverage level and price election percentage to be used in the guarantee calculation. When production records contain comingled production, FCIC plans to develop procedures for determining how production will be allocated to each type within unit. The procedures will be similar to procedures for other APH crops that allow multiple types to be selected within a unit in that comingled production will be prorated using a method similar to the comingled production worksheet contained in the Crop Insurance Handbook. Even if it is determined that the policyholder does not qualify for separate optional units by type because they do not have separate production records for establishing their APH guarantee or the producer does not choose optional units by type, because the damaged crop must be appraised, it will still be possible to settle the claim with separate coverage levels and price elections by type.

Comment: A few commenters suggested revising the first sentence of section 3(a) to state, ''You may select different coverage levels and percent of price elections for each type in the county as specified in the Special Provisions except if you elect Catastrophic Risk Protection (CAT) on any individual type.''

Response: FCIC agrees the phrase in section 3(a) should be revised to provide an exception if CAT is elected. The CAT Endorsement supersedes the Crop Provisions in order of precedence and, therefore, the Crop Provisions cannot override the CAT Endorsement. The CAT Endorsement applies to the entire crop in the county. FCIC has revised section 3(a) consistent with the commenter's recommendation.

Comment: A few commenters stated they acknowledge similar changes were made in the 2011 Apple Crop Provisions (allowing different coverage levels) and 2013 Peach Crop Provisions (different coverage levels and price percentages), but prior to these Crop Provisions being changed the general rule has been that only one coverage level and price percentage could be elected for all the acreage of the crop in the county unless separate types were treated as if they were separate ''crops'' (grapes in California, for example), in which case the insured also could choose whether to insure all or just some of those types (which is not proposed in this draft, and was not changed for Apples or Peaches).

Response: FCIC agrees that the general rule in section 3(b)(2) of the Basic Provisions allows the insured to select different coverage levels and price elections if the Crop Provisions allow the insured to separately insure an individual type, in which case these types are treated like separate crops and charged separate administrative fees. However, under the Pear policy, the types are not considered separate crops so they are not subject to the provision in section 3(b)(2) of the Basic Provisions.

Comment: A few commenters questioned using the word ''bearing'' in section 3(b)(2). The commenters stated that producers are required to report their uninsurable acres, and when trees are first planted, they will be non-bearing. The commenters asked if it is really the intent for producers to report zero trees on their uninsurable acres. The commenters stated that if the block consists of older trees and younger interplanted trees of the same variety, and only bearing trees are counted, then there will be inconsistencies with the acres, the tree spacing, and the density. If growers remove many older trees and replace them with younger trees, they will need to report them on the Producer's Pre-Acceptance Worksheet (PAW) as they have performed cultural practices that will reduce the yield from previous levels. Growers should be required to report all trees and this number should remain constant until they remove trees or plant new trees. The commenters concluded it should not be a requirement to track only the trees that are bearing and to revise this figure each year.

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not given an opportunity to provide comments. No change has been made to the final rule. However, in response to the concerns raised, the information that must be submitted in accordance with section 3(b) is required to establish the producer's APH approved yield and the amount of their coverage. While section 3(b)(2) only requires the bearing trees on insurable and uninsurable acreage to be reported, the number of bearing and non-bearing trees on insurable and uninsurable acreage must be reported on the producers pre-acceptance worksheet (PAW). Perennial crop policies contain provisions for ''bearing trees'' to identify such trees that meet the eligibility requirements for insurance coverage. Because premium and indemnity payments are based on the number of trees that meet eligibility requirements, insurance providers are required to track bearing trees as outlined in the Crop Provisions and the Crop Insurance Handbook (CIH). Requiring all trees be reported under section 3(b)(2) would create confusion regarding insurability and could result in the overstatement of premium and liability.

Comment: A commenter questioned the need to know the planting pattern as required in section 3(b)(3). The commenter stated that tree spacing and tree count is already captured and this is what is needed to determine if there have been tree removals or acreage reductions.

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not given an opportunity to provide comments. No change has been made to the final rule. However, with respect to the concerns expressed by the commenter, the planting pattern consists of tree spacing and arrangement. FCIC requires the producer to report the planting pattern so the insurance provider can use this information to determine if there is adequate tree spacing for the producer to carry out recommended good orchard management practices and to determine the number of trees per acre.

Comment: A few commenters questioned if it is possible to rewrite section 3(c) so the phrase ''yield used to establish your production guarantee'' does not have to be repeated seven times in this section.

Response: Section 3(c) contains three subparagraphs (1) through (3) to describe different scenarios during the insurance period. While the phrase is repetitive, it is necessary for the provision. This is standard language that has been added to most of the perennial APH Crop Provisions and to maintain consistency with other perennial APH policies, no change has been made in the final rule.

Comment: A few commenters stated that the proposed rule background refers to the addition of ''subparagraphs (1) through (4)'' but there are only three subparagraphs in section 3(c). The commenters stated that presumably this is a typo in the background, rather than the fourth subparagraph being left out.

Response: FCIC agrees with the commenters that the proposed rule background should have referenced paragraphs 3(c)(1) through (3). A subparagraph (4) was neither proposed nor intended to be included in the proposed rule.

Comment: The proposed rule states in section 3(c) that we will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(b)(1) through (b)(4). A few commenters asked how 3(b)(2) through (4) impacts yield as it relates to 3(c)(1) and (2). The commenters stated that they are using the information reported by the production reporting date in 3(b)(2) through (4) to establish the approved yield/guarantee. Only damage as referenced in (b)(1) would have a relationship to insured or uninsured causes. Removal of trees might affect both the insured acres and yield/guarantee depending on the trees removed. If old, poorly producing trees are removed, the yield/guarantee could actually increase. The commenters stated the relationship to insured and uninsured damage is unclear. A few commenters asked how the reductions in the proposed paragraphs 3(c)(2) and (3) are being coordinated with the loss adjustment procedure. The commenters stated that these provisions will be difficult to enforce (i.e. you may never know and if an insurable event occurs later in the season or at harvest, any prior uninsurable damage will be masked). The commenters stated that after insurance attaches, this all seems like a loss adjustment issue and not yield adjustment.

Response: Sections 3(b)(2) through (4) involve the reporting requirements that are necessary to track whether there are changes in the unit that could affect the guarantee. Sections 3(b)(2) through (4) refer to the number of bearing trees, the age of the trees, and interplanted trees. The number of trees can affect the yield because fewer trees will likely result in fewer pears per acre, although this is not always true, such as the case of overcrowded orchards. The age of trees also affects yield because the productive capacity of trees generally follow a bell shaped curve over the life of the tree. Interplanted acreage affects the production per acre because there are fewer trees per acre of a given crop to produce fruit. All of these variables have the potential to affect the productive capacity of the tree and can be caused by insured or uninsured causes. FCIC agrees that the damage occurring after insurance has attached appears to be a loss adjustment issue but these are the types of damage that are expected to affect the production capacity of the unit in the following year so for this reason the guarantee is adjusted to reflect the expected production capacity in the current year but only if the losses are result of uninsured causes. This will have the same effect as assigning production for uninsured causes for the year in which the damage occurred so there is no double counting, but the adjusted guarantee will be effective for the subsequent crop year. For insured causes of loss, the guarantee remains the same for the existing crop year and the losses measured. For the subsequent crop year, the procedures in section 3(c)(1) are applicable to adjust the guarantee to reflect the expected production capacity of the unit. Although FCIC agrees these variables can and often will be handled through acreage adjustments in accordance with FCIC approved procedures, the proposed provision allows for the possibility of adjusting the yield ''as necessary.'' FCIC will revise the Pear Loss Adjustment Handbook to ensure it is clear how to address situations that require an adjustment at the time of loss. No change has been made in the final rule.

Comment: A few commenters stated the Pear Crop Provisions provide continuous coverage for a carryover policyholder and, therefore, damage due to an insured cause that would have occurred within the prior crop year and should be reflected in current year actual production history and also in the number of insured acres in a situation where trees were damaged/destroyed. Example: For the 2014 crop year a policyholder has a one acre block composed of 109 trees. Lightning sparks a fire, destroying 22 trees and the production on the trees. Based on harvested records each tree (remaining) produced an average of 100 lbs., with a total loss of production for 22 trees equal to 2,200 lbs. This reduction in yield of 1.1 ton/acre will directly impact the APH for the 2015 crop year. Additionally, because of the destroyed trees, the percent of stand will reduce the insurable acres from 1.0 to 0.8. The commenter states this subsection implies the insurance provider would further reduce the APH yield by 1.1 tons/acre. This would appear to subject the insured to double reduction of his/her APH yield.

A few commenters stated that sections 3(c)(2) and (3) differ in the fact that in (2) the insured provides notice of a situation occurring after the beginning of the insurance period by the production reporting date, whereas in (3) the insured fails to provide notice of a situation during the same time period. If the same example above occurred during the 2015 crop year and the cause of loss was a small aircraft crashing and destroying the trees, then provisions imply the impact would be as such: In accordance with (c)(2) the APH yield would be reduced by 1.1 ton/acre and only 0.8 acres would be insurable; in accordance with (c)(3) for the 2015 crop year, the production guarantee would be assessed for the acreage for any indemnity claim (result: No indemnity paid) and the acreage would be reduced to 0.8 acres; and in accordance with the last sentence of section (c)(3) for the 2016 crop year, the APH yield would be reduced by 1.1 ton/acre. If these results are correct, the commenters ask if this is FCIC's intent with these provisions.

Response: FCIC disagrees with the commenters. A policyholder's APH is based on at least 4 years of yields building to 10 years. Therefore, a single years loss will have some effect of the APH, but would not have the same effect as if a situation arises that affects the future production capacity of the unit, such as the loss of trees. Section 3(c) is required to address this latter situation where instead of using the historical production to establish the guarantee, the guarantee is reset based on the best estimate of the effect of the loss on the production capacity of the unit. Therefore, there is no double counting because the adjustment effectively overrides the normal APH process. Further, the provisions in section 3(c) are not cumulative. Each is applicable depending on the timing of the notice of one of the conditions in section 3(b)(2) through (4). No change has been made in the final rule.

Comment: In section 3(c)(3), the last sentence states ''We will reduce the yield used to establish your production guarantee for the subsequent crop year.'' A few commenters asked what if the

event that occurred was something that only affects the crop for the year in question and has no carryover effect on the yield into the next crop year. The commenters stated the word ''will'' should be changed to ''may'' to provide the flexibility to either reduce or not reduce the yield for the subsequent year depending on whether the effect of the damage will carry over to that year. This language needs to be revised to allow the insurance providers to have some flexibility in determining how much, if any, the approved APH yield should be reduced for the subsequent year. The commenter stated that FCIC responded to similar comments to the Peach proposed rule by saying that insurance providers already have that flexibility according to the opening statement in section 3(c) of the Pear Crop Provisions that refers to reducing the yield ''as necessary, based on our estimate of the effect.'' However, the commenters stated they still have a concern with this language as proposed. The specifics in subsection (1) refer to reducing the yield ''any time we become aware'', and in (2) to ''only if the potential reduction . . . is due to an uninsured cause,'' so when (3) states flatly that ''We will reduce the yield . . . for the subsequent crop year'' with no qualifiers, it could be taken as not being subject to any determination of necessity.

Response: The stem in section 3(c) states that it is only applicable if the conditions in sections 3(b)(2) through (4) exist and the insurance provider determines that an adjustment is necessary. If the insurance provider determines that an adjustment is necessary because the yield capacity of the unit has been affected then the application of the adjustment must be required, otherwise there may be disparate treatment between policyholders and insurance providers.

Comment: Section 3(d) states ''You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.'' A few commenters stated that this is a difficult provision to administer and we would recommend that it be removed from the policy. The Producer's Pre-acceptance Worksheet (PAW) contains the following question: ''Has damage (i.e. disease, hail, freeze) occurred to Trees/Vines/Bushes/Bog or have cultural practices been performed that will reduce the insured crop's production from previous levels?'' If damage has occurred, and the question has been answered ''Yes'', the approved APH yield will be adjusted accordingly to reflect the reduced potential production. This question on the PAW appears to address the issues that this section is intending to handle. In addition, the sales closing dates are generally established based on the precept that any applications taken by that date will not be subject to adverse selection. If the decision is made to retain this provision, we have the following comments: Might help to clarify what time frame is meant by ''if a cause of loss . . . is evident prior to the time that you request the increase.'' A cause of loss that occurred the previous crop year would be ''prior to the time that you request the increase.'' The commenters ask FCIC to consider rewriting something like: ''Your request to increase the coverage level or price election percentage will not be accepted if a cause of loss that could or would reduce the yield of the insured crop is evident when your request is made.''

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not given an opportunity to provide comments. No change has been made to the final rule. However, with respect to the inquiry, the provision in section 3(d) already contains a timeframe that is identified by when the cause of loss occurred relative to when the insured requests the increase. According to the provision, if a cause of loss that could or would reduce the yield has occurred prior to the time the insured requests the increase, the policyholder is prohibited from increasing their coverage level or the ratio of the price election to the maximum price election. Therefore, even if the cause of loss occurred during the prior crop year, if the cause of loss could or would reduce the yield for the crop year in which the request is made, no increase is allowed.

Section 6—Insured Crop

Comment: A few commenters asked if the 5-ton minimum requirement in section 6(c) is appropriate for all types. A commenter asked if production varies by type, would it be more appropriate to provide the minimum production by type in the Special Provisions as opposed to providing a minimum in section 6(c). The commenter stated that if 5 tons covers most all types, then perhaps that is why the policy only need to provide for the exceptions.

Response: The 5-ton minimum is appropriate for most types of pears. The language in section 6(c) is drafted so as to provide an exception through the Special Provisions if the 5-ton minimum is determined to be inappropriate in certain areas or for certain varieties.

Comment: A commenter asked if approval in writing as referenced in section 6(c) infers a written agreement and if so, why not state ''if allowed by written agreement.'' A few commenters stated that the proposed rule background is clear that ''This change is proposed to allow the approval of the level of production to be made without a written agreement,'' but not so clear in the proposed policy language. It will need to be clearly stated in the underwriting procedures to avoid any confusion. The phrase ''approval in writing'' sounds similar to ''agreement in writing,'' which has sometimes been used to refer to written agreements. A few commenters asked if the intent of section 6(c) is to allow these situations to go through the RMA Regional Office determined yield process rather than the written agreement process. A few commenters stated that section 6(c) is a proposed change to allow insurance providers to accept coverage for production levels less than what the Crop Provisions require. The commenters state this language is vague without instruction provided. The commenters asked what the parameters are for such an agreement. The commenters stated that instruction should at least be referenced in the proposed rule in order for an insured to know if they are being treated equitably. A commenter asked if the determination of whether or not to allow a lower production level becomes the responsibility of the insurance provider instead of the RMA Regional Office, will this mean a change in which policy provisions regarding arbitration, mediation, etc, apply if the insured disagrees with that determination (if the insurance provider refused to allow the lower production level, for example).

Response: Although the current provision allows for an exception to the minimum production requirement through a written agreement, the written agreement handbook instructs the insurance provider to instead request a determined yield from the Risk Management Agency Regional Office. The proposed change in the Pear Crop Provisions from the term ''written agreement'' to ''approval in writing'' was intended to direct the insurance provider to the written agreement handbook without giving the impression that a written agreement was required. However, due to the number and nature of comments received it appears that this change will create more confusion than clarity. Therefore, no changes to

section 6 have been made in the final rule.

Comment: A few commenters asked if there will be impacts to T-Yields and rates when an insurance provider elects to insure a lower production level than what is allowed under section 6(c) of the Crop Provisions. A commenter asked how many policy exceptions written agreements for producers who did not meet the minimum production requirement were requested in previous years, and how many of those requests were approved. Did any of them involve a different premium rate than what would apply if the AIP approves the lower production level? If so, the commenter stated this is another resulting change since AIPs would not have that authority.

Response: As stated in response to the previous comment, FCIC has retained the original language from the 2011 Pear Crop Provisions and does not intend to change current procedure. Because these exceptions are handled through determined yields, T-Yields and rates are not changed on a case by case basis. Because no change has been made, this provision will continue to affect county T-Yields and rates in the same manner that it has in the past. Because of the small number of producers that have historically been allowed to insure pears in this manner, this provision is expected to continue to have minimal effect on county T-Yields and rates.

Section 8—Insurance Period

Comment: A few commenters stated the language in section 8(a)(2) has been added to most, if not all, of the perennial Crop Provisions several years ago. The commenters stated they are in agreement with the concept of continuous coverage applying for renewal policyholders, but do have some concerns with language as it currently reads. The present language indicates that for each subsequent crop year the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. The commenters asked about damage that occurs to next year's buds prior to this year's end of the insurance period. The comments asks whether this is the damage that is intended to be covered by this language. For example, assume a grower is insured and a severe hail storm occurs in July. This damage may injure this year's crop as well as the buds that will produce next year's crop. However, this damage would be outside the current insurance period based on the current language. If the intent is to cover this damage for renewal policyholders, the language should be revised to something along the lines of the language in the Adjusted Gross Revenue handbook that states that the policy covers damage that occurred due to insurable causes during the previous crop year. The commenters stated they feel that it will be difficult to assess such damage and that it should be covered under the policy. If this is not the intent, it should be stated very clearly that the policy will not cover damage that occurs the previous crop year if such damage occurs prior to the end of the previous year's end of insurance period.

Response: Section 8 simply describes the period of insurance and clarifies that the pear policy is now a 12 month policy. Section 9 covers insurable causes of loss and makes it clear that to receive an indemnity any damage must result from an insurable cause of loss occurring within the insurance period. Therefore, no additional language is required and FCIC does not want to create any potential ambiguity by referencing insurable causes of loss and when they must occur to be indemnified in section 8. This means that the Pear Crop Provisions do not provide coverage for damage to fruit if the damage occurs outside of the insurance period and, in reference to the example provided, the policy does not cover any reduction in production that was caused by damage to the buds in a prior crop year. FCIC cannot consider the recommended change to the Pear Crop Provisions to provide coverage for damage that occurs outside of the insurance period because this change was not proposed, the comment does not address a conflict or vulnerability, and the public has not been given an opportunity to provide comments. No change has been made to the final rule.

Comment: A few commenters asked FCIC to consider removing the phrase ''after an inspection'' from section 8(b)(1). If damage has not generally occurred in the area, it should be up to the insurance provider's discretion as to whether or not an inspection is needed for them to ''consider the acreage acceptable.'' Because the acreage and production reporting dates are after insurance attaches, the insurance provider might not know if the acreage was acquired after coverage began, but before the acreage reporting date. The commenters stated the insurance providers should be able to inspect if they decide it is necessary, but it should not be a requirement. The commenters also asked FCIC to consider adding language to allow insurance providers the opportunity to inspect and insure any additional acreage acquired after the acreage reporting date if they wish to do so (similar to what is currently allowed for acreage that is not reported per section 6(f) of the Basic Provisions).

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule. However, with respect to acreage acquired after the acreage report, section 6(f) of the Basic Provisions, which allows the insurance provider to determine by unit the insurable crop acreage, share, type and practice, or to deny liability if the producer fails to report all units, would apply. FCIC approved procedures allow the insurance provider to revise an acreage report to increase liability if the crop is inspected and the appraisal indicates the crop will produce at least 90 percent of the yield used to determine the guarantee or amount of insurance for the unit.

Section 9—Causes of Loss

Comment: A commenter recommended the insured cause of loss be clarified as ''Fire, due to natural causes, unless weeds . . .'' (or ''Fire, if caused by lightning, unless weeds . . .'').

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule. However, section 12 of the Basic Provisions already states all insured causes of loss must be due to a naturally occurring event. In addition, the Federal Crop Insurance Act is clear that only natural causes can be covered under the policy.

Section 11—Settlement of Claim

Comment: The proposed rule states that 11(c)(3)(iii)(A) would be revised to size 165. A commenter asks if the revised section needs to be shown [in the settlement of claims example] or is listing in the section 11 revisions sufficient.

Response: FCIC did not include the adjustments that are applicable only to California in the example because it is intended to show the basic process for settling a claim as outlined in section 11(b). FCIC has added a phrase to indicate the example is for a state other than California.

Section 13—Fresh Pear Quality Adjustment Endorsement

Comment: A few commenters suggested adding the term ''Fresh'' in the heading prior to the phrase ''Pear Quality Adjustment Endorsement.'' A commenter stated that otherwise producers could make the case that this endorsement applies to both fresh and processing and this change would clarify that this is not true. A few commenters stated there are growers in the Northwest U.S. who generally grow pears for the fresh market. However, some of these growers may grow some Bartletts for the cannery and some Bartletts for fresh market usage. These Bartletts may be in the same optional unit, and attempting to break out fresh verses processing as separate type designations will not be possible administratively. The commenters asked how FCIC proposes that these situations be addressed for purposes of coverage under the Quality Adjustment Endorsement.

Response: Although the Pear policyholders are not currently required to report fresh and processing intended uses, the Pear Quality Adjustment Endorsement only applies to fresh pear acreage. Section 13(b) states, ''If the fresh pear production is damaged by an insured cause of loss.'' Accordingly, if production practices necessary to produce fresh pears are not applied to the entire unit, the unit will not qualify for the endorsement. To provide further clarification, FCIC has revised the heading of section 13 by adding the term ''Fresh'' and added language to clarify that the endorsement is only applicable to a unit if all trees in the unit are managed for the production of fresh market pears.

Comment: The proposed rule states that premium rating for the changes in the Pear Quality Adjustment Endorsement in section 13 will be reviewed to establish appropriate premium rates to maintain actuarial soundness. FCIC is proposing to revise the minimum size requirement in section 11(c)(3)(iii)(A) from 180 to 165 or smaller for California pear quality adjustment. A commenter stated that it appears any cull count back has also been eliminated. A few other commenters stated that the proposed rule proposes to cover damage due to all covered causes of loss in place of hail only; and the grade to meet has increased to U.S. No. 1 from U.S. No. 2 and, therefore, it would be reasonable to expect a significant rate increase for coverage under the Endorsement. The commenters asked if these changes are being considered in the new rating.

Response: FCIC agrees with the commenter that changing the minimum size for California pears should have an impact on indemnities. FCIC also agrees that eliminating the cull count back, expanding the causes of loss, and increasing the grade to U.S. No. 1 should affect frequency and severity of losses under the Quality Adjustment Endorsement. FCIC will revise premium rate factors for the Quality Adjustment Endorsement accordingly to cover the additional expected losses.

Comment: A few commenters stated that as this endorsement is in concept very similar to the Apple Quality Adjustment Endorsement, it would appear the likelihood exists that an insured could receive a greater indemnity under the base policy than under the endorsement in situations where damage caused a small percentage of the pears to meet the grade standard set in the endorsement. As such, the commenters stated that a statement such as found in section 14(a) of the Apple Crop Provisions should be added: ''Insureds who select this option cannot receive less than the indemnity due under section 12.''

Response: Because policyholders will be charged a higher premium, it would not be appropriate if the policyholder received a smaller indemnity under the Quality Adjustment Endorsement than they would have received under the base policy. Therefore, FCIC has revised section 13 by adding a provision that clarifies that the policyholder cannot receive an indemnity less than due under section 11.

Comment: A few commenters stated that the Quality Adjustment Endorsement appears to now be available to pear producers in California. Under section 11(c)(3)(iii), California production may be reduced if a percentage of the pears are of a specific size or smaller. The commenters stated that because the Pear Quality Adjustment Endorsement provides for no such reduction, size is not a consideration for pear production under the endorsement.

Response: The Quality Adjustment Endorsement under 13(a)(1) states it is available in the states where coverage is provided for in the actuarial documents and for which there is a designated premium rate for the endorsement. A premium rate will be provided for only those states where the quality adjustment applies. There are no plans to include California under the Quality Adjustment Endorsement and, therefore, no premium rate will be provided for the endorsement in the actuarial documents for California. With respect to size requirements under the Quality Adjustment Endorsement, size is only a consideration to the extent that it is specified in the applicable grade standards.

Comment: A few commenters stated that it would seem prudent due to the similarities between the two crop endorsements to add the following statement from the Apple Crop Provisions: ''Any pear production not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler will not be considered damaged pear production and will be considered production to count under this option.''

Response: FCIC agrees with the commenter that a statement such as the one included in the Apple Crop Provisions is needed to avoid a policy vulnerability. Because insurance ends at harvest, it is necessary to appraise the crop before it leaves the field. It could be difficult or impossible to determine if damage occurred before or after the pears were placed into storage or delivered to the packer or processer. Additionally, production could become comingled making it difficult or impossible to make an accurate determination of what unit the production came from. To avoid a potential vulnerability, FCIC has added a provision in section 11 stating that any pear production not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler will not be considered damaged pear production and will be considered production to count. This provision is applicable to both the Quality Adjustment Endorsement and the underlying policy.

Comment: A few commenters recommended FCIC reconsider the damage thresholds and triggers for coverage under this endorsement. The commenters stated this proposed rule has changed the grade trigger from U.S. No. 2 to U.S. No. 1, as well as allowed this coverage to apply due to damage from all perils rather than just hail, but yet the damage chart has remained the same. The commenters stated that based on their field knowledge and experience, they are concerned that keeping the damage trigger at 11 percent may be cost prohibitive for many growers. The commenters recommended FCIC consider having the damage chart trigger at 21 percent rather than 11 percent as a compromise between the rate impact and increased quality standards that are now being proposed. In addition, the commenters pointed out that the apple damage chart uses 65 percent as the point at which there is

zero production to count while the pear chart uses 60 percent. The commenters recommended FCIC consider changing the 60 percent level for pears to 65 percent to be consistent with what is used for apples. The commenters stated this would also be more cost effective for the growers to use 65 percent for pears as well.

Response: No changes were proposed to this provision and the comment does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended changes because the public was not given an opportunity to comment. No change has been made to the final rule. However, some of the changes to the Quality Adjustment Endorsement such as the elimination of the cull add-back and change in the grade trigger were requested by producers and industry personnel because of the diminished value of low quality pears. These changes will more accurately adjust production to count to represent the value of low quality pears. While FCIC agrees these changes are likely to result in increased premium rate factors for the Quality Adjustment Endorsement, it remains to be seen whether the cost for the coverage changes requested will be considered cost prohibitive by producers. FCIC will monitor and evaluate the performance of the Quality Adjustment Endorsement and consider potential changes that may be needed the next time the Pear Crop Provisions are revised.

Comment: Section 13(b)(3) states, ''if you sell any of your fresh pear production as U.S. No. 1 or better.'' A commenter stated that this language suggests that a less than No. 1 pear is being mis-graded as a No. 1 and sold as such. A few commenters asked if FCIC is trying to say that the pears are sold for the same price applicable to a No. 1 or better. A few commenters asked what it is sold for and why. The commenters asked if it would it be clearer if the disposition was specified.

Response: A different number of pears being sold as U.S. No. 1 or better than what was appraised does not necessarily mean the pears were mis-graded when appraised. The appraisal only utilizes a representative sample to extrapolate the estimated number of pears that meet the U.S. No. 1 grade. Because this is an estimate, there is a degree of error, which means the actual number of fruit that meet the U.S. No. 1 grade is likely to be somewhat more or less than what is determined in the appraisal. The provision is also intended to include any sold pears that receive a price greater than or equal to the value of a U.S. No. 1, regardless of grade. Additionally, pears on the ground during an appraisal would be considered unmarketable, but if these pears are later sold as U.S. No. 1 or better, they should be included as production to count.

Comment: A commenter stated that the language ''all such sold production will be included as production to count'' proposed to be included in section 13(b)(3) is very confusing and misleading. The apple handbook had to include an exhibit to show how to address this language. It would be so much more clear if the wording was rewritten to say ''If you sell any of your fresh pear production as U.S. No. 1 or better, your production to count will be the greater of the production you sold as U.S. No. 1 or better, or your production determined under sections 13 (b)(1) and (2).''

Response: FCIC agrees that the proposed wording of this provision could be misleading because it is not clear if the pear production sold as U.S. No. 1 is included as production to count in addition to the quantity determined in the appraisal or instead of the quantity determined in the appraisal. FCIC has revised this provision to clarify that the quantity of pears sold as U.S. No. 1 or better that exceed the quantity of pears determined to grade U.S. No. 1 in the appraisal will be included as production to count.

Comment: A few commenters stated that the provision in 13(b)(3) has been in the Apple Crop Provisions for a number of years and has caused a significant amount of concern. If the provision is retained in the final rule, it is important that pear insureds, agents, insurance providers, etc., understand that losses under the endorsement cannot be finalized until the actual amount of production that was sold as U.S. No. 1 or better is known. The commenter stated that perhaps as an alternative, in situations where damage is such that 60 percent or more of the pears fail to meet grade (100 percent resultant damage) and the insured will be selling some production, the 15 percent cull add-back be utilized.

Response: FCIC agrees with the commenters that it is necessary to wait until the final deposition of the crop is known to settle a claim. However, the provision is necessary to allow FCIC to account for sold production. Not including the pears sold as U.S. No. 1 as production to count when the quantity of such pears exceeds the quantity determined in the appraisal could lead to a vulnerability. Section 13(b)(3) has been retained in the final rule, but revised for clarity as stated in response to the previous comment.

Comment: A few commenters stated it was very beneficial to have language in the policy that stated pears knocked to the ground by wind are not considered marketable production. The commenters recommended this language from section 13(c) be retained or the definition of harvest be revised to match that of apples in order to address this item. The commenters stated they often have growers who are not in a loss situation, but want their acreage appraised for APH purposes. The commenters stated it is very helpful to have a statement or definition to point to that clearly shows pears on the ground are not counted as a part of production for APH purposes.

Response: FCIC agrees with the commenters that pears on the ground should not be appraised as production to count. As stated in response to a previous comment, FCIC has made revisions to clarify the lowest grade standards that will be considered as production to count. The grade standards for U.S. No. 2 Pears require these pears to be ''hand-picked'' which means they cannot show any evidence of being on the ground. Therefore, pears on the ground during an appraisal clearly should not be counted as production to count. However, if the pears on the ground are picked up and sold they, should be counted against their guarantee. Therefore, FCIC has included pears that are sold (even if failing to meet any U.S. or applicable state grading standard) in the definition of ''marketable.''

Comment: FCIC is proposing to add a new section 13(d) stating production to count under the Quality Adjustment Endorsement will not apply in determining the producer's APH. The proposed rule states that the APH will be based on all harvested and appraised marketable production from insurable acreage. The proposed rule also states this change is proposed in order to maintain consistency in APH reporting, as coverage is optional for the Quality Adjustment Endorsement and can be cancelled in writing on or before the cancellation date. Therefore, the APH can vary significantly from year to year. A commenter stated this would then suggest that the rate for the option would not be yield dependent relative the actual/approved APH yield.

Response: Premium is set to cover expected losses and a reasonable reserve. The premium rate factor for the Quality Adjustment Endorsement will be calculated using historical loss data under the endorsement adjusted for increased frequency and severity of losses due to the changes to the Quality Adjustment Endorsement.

Comment: A few commenters asked, if in fact 150 tons were graded No. 1 or better as stated in the Optional Coverage for Pear Quality Adjustment Example in section 13, then why weren't they sold as No. 1 and why should the graded No. 1 production be reduced for quality. The commenters asked if FCIC is suggesting that based on a sample grade, 75 percent of the 200 tons (i.e. 150 tons) would have graded No. 1 and that the No. 1s could not be separated, thus the entire 200 tons could not be marketed as fresh No. 1 pears and, therefore, the entire 200 tons is subject to quality adjustment.

Response: The production to count under the Quality Adjustment Endorsement is reduced because in theory, the cost to harvest the undamaged production increases exponentially as the percent of damage increases until you reach a point where it is no longer economically feasible to harvest the undamaged production. The Quality Adjustment Endorsement has a threshold set when 60 percent of the pears fail to grade U.S. No. 1, then it is considered uneconomical to harvest and at that point the entire crop would be eligible for quality adjustment. In the example, the amount of production that graded less than U.S. No. 1 did not meet this 60 percent threshold and, therefore, the entire crop is not eligible for quality adjustment.

In addition to the changes described above, FCIC has made minor editorial changes.

List of Subjects in 7 CFR Part 457

Crop insurance, Pear, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2015 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.111 as follows:
■ a. In the introductory text by removing ''2011'' and adding ''2015'' in its place;
■ b. In section 1 by:
■ i. Revising the definition of ''marketable''; and
■ ii. Removing the definition of ''varietal group'';
■ c. Revise section 2;
■ d. In section 3 by:
■ i. Removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' in the introductory text;
■ ii. Revising paragraph (a);
■ iii. In paragraph (b) introductory text by: removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)''; and removing ''varietal group'' and adding the term ''type'' in its place;
■ iv. Revising paragraph 3(b)(4)(iii);
■ v. Redesignating paragraph (c) as (d); and
■ vi. Adding new paragraph (c);
■ e. In section 4 by removing the phrase ''(Contract Changes)'';
■ f. In section 5 by removing the phrase ''(Life of Policy, Cancellation, and Termination)'' in the introductory text;
■ g. In section 6 by removing the phrase ''(Insured Crop)'' in the introductory text;
■ h. In section 7 by removing the phrase ''(Insurable Acreage)'' in the introductory text;
■ i. In section 8 by:
■ i. Revising paragraphs (a) introductory text and (a)(1);
■ ii. Redesignating paragraph (a)(2) as paragraph (a)(3) and revising newly redesignated paragraph (a)(3);
■ iii. Redesignating paragraph (c) as paragraph (a)(2) and revising newly redesignated paragraph (a)(2);
■ iv. Redesignating paragraph (d) as paragraph (a)(4); and
■ v. Removing the phrase ''(Insurance Period)'' in paragraph (b) introductory text;
■ j. In section 9 by:
■ i. Removing the phrase ''(Cause of Loss)'' in paragraph (a) introductory text;
■ ii. Removing the term ''or'' at the end of paragraph (a)(4);
■ iii. Removing the period at the end of paragraph (a)(5) and adding a semicolon in its place;
■ iv. Adding new paragraphs (a)(6) and (7);
■ v. Removing the phrase ''(Causes of Loss)'' in paragraph (b) introductory text;
■ vi. Removing paragraph (b)(1); and
■ vii. Redesignating paragraphs (b)(2) and (3) as (b)(1) and (2) respectively;
■ k. In section 10 by:
■ i. Redesignating paragraphs (a), (b), and (c) as paragraphs (b)(1), (2), and (3) respectively;
■ ii. Designating the introductory text of the section as the introductory text of paragraph (b) and removing the phrase ''(Duties in the Event of Damage or Loss)'' in newly redesignated paragraph (b);
■ iii. Adding a new paragraph (a);
■ l. In section 11 by:
■ i. Removing the term ''varietal group'' in paragraph (b)(1) and adding the term ''type'' in its place;
■ ii. Revising paragraph (b)(2);
■ iii Revising paragraph (b)(4);
■ iv. Removing the word ''this'' in paragraph (b)(6) and adding the word ''the'' in its place;
■ v. Revising paragraph (b)(7);
■ vi. In paragraph (c)(3)(iii)(A) by removing the number ''180'' and adding the number ''165'' in its place;
■ vii. Removing the phrase ''varietal group'' in paragraph (c)(3)(iii)(B) and adding in its place the term ''type''; and
■ viii. Adding a new paragraph (d);
■ m. Revise section 13.

The revisions and additions read as follows:

§ 457.111 Pear crop insurance provisions.

* * * * *

1. * * *

* * * * *

Marketable—Pear production that grades U.S. Number 2 processing or better, unless otherwise provided in the Special Provisions, or that is sold (even if failing to meet any U.S. or applicable state grading standard).

* * * * *

2. Unit Division

(a) Optional units may either be established in accordance with section 34(c) of the Basic Provisions or by non-contiguous land, but not both.

(b) In addition to establishing optional units in accordance with section 2(a), optional units may be established by type if allowed by the Special Provisions. The requirements of section 34 of the Basic Provisions that require the crop to be planted in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit are not applicable for optional units by type.

3. * * *

(a) You may select different coverage levels and percent of price elections for each type in the county as specified in the Special Provisions, unless you elect Catastrophic Risk Protection (CAT) on any type.

(1) For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. However, if you elect the CAT level of coverage for any pear type, the CAT level of coverage will be applicable to all insured pear acreage for all types in the county.

(2) Notwithstanding section 3(b)(2) of the Basic Provisions, pear types will not be considered as separate crops and will

not be subject to separate administrative fees.

(b) * * *

(4) * * *

(iii) Any other information that we request in order to establish your approved yield.

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(b)(1) through (b)(4). If the situation occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss (If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance);

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 11(c)(1)(ii)). We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

* * * * *

8. * * *

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins:

(i) In California, on February 1, except that if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements (You must provide any information that we require for the crop or to determine the condition of the orchard); or

(ii) In all other states, on November 21, except that if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements (You must provide any information that we require for the crop or to determine the condition of the orchard).

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period for each crop year is:

(i) September 15 for all types of summer or fall pears;

(ii) October 15 for all types of winter pears; or

(iii) As otherwise provided for specific types in the Special Provisions.

* * * * *

9. * * *

(a) * * *

(6) Insects, but not damage due to insufficient or improper application of pest control measures; or

(7) Plant disease, but not damage due to insufficient or improper application of disease control measures.

* * * * *

10. * * *

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

* * * * *

11. * * *

* * * * *

(b) * * *

(2) Multiplying the results of section 11(b)(1) by your price election for each type, if applicable;

* * * * *

(4) Multiplying the total production to be counted of each type, if applicable, by your price election;

* * * * *

(7) Multiplying the result of section 11(b)(6) by your share.

Basic Coverage Example:

You have a 100 percent share of a 20-acre pear orchard located in a state other than California. You elect 100 percent of the $500/ton price election. You have a production guarantee of 15 tons/acre; you are only able to produce 10 tons of pears per acre. Your indemnity will be calculated as follows:

(1) 20 acres × 15 tons/acre = 300-ton production guarantee;

(2) $500/ton (100 percent of the price election) × 300-ton production guarantee;

(3) = $150,000 value of production guarantee;

(4) 20 acres × 10 tons = 200-ton production to count;

(5) $500/ton (100 percent of the price election) × 200-ton production to count = $100,000 value of production to count;

(6) $150,000 value of production guarantee—$100,000 value of production to count = $50,000 loss; and

(7) $50,000 × 100 percent share = $50,000 indemnity payment.

[END OF EXAMPLE]

* * * * *

(d) Any pear production not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler will not be considered damaged pear production and will be considered production to count.

* * * * *

13. Fresh Pear Quality Adjustment Endorsement

In the event of a conflict between the Pear Crop Insurance Provisions and this option, this option will control. Insured who select this option cannot receive less than the indemnity due under section 11.

(a) This endorsement applies to any crop year, provided:

(1) The insured pears are located in a State designated for such coverage on the actuarial documents and for which there is designated a premium rate for this endorsement;

(2) All the pear trees in the unit are managed for the production of fresh market pears (Units that are not managed for the production of fresh market pears do not qualify for this endorsement);

(3) You have not elected to insure your pears under the CAT Endorsement;

(4) You elect it on your application or other form approved by us, and did so on or before the sales closing date for the initial crop year for which you wish it to be effective (By doing so, you agree to pay the additional premium designated in the actuarial documents for this optional coverage); and

(5) You or we do not cancel it in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation of this endorsement by you.

(b) If the fresh pear production is damaged by an insured cause of loss, and if eleven percent (11%) or more of the harvested and appraised production does not grade at least U.S. Number 1 in accordance with the United States Standards for Grades of Summer and Fall Pears or the United States Standards for Grades of Winter Pears, as applicable, the amount of production to count will be reduced as follows:

(1) By two percent (2%) for each full one percent (1%) in excess of ten percent (10%), when eleven percent (11%) through sixty percent (60%) of the pears fail the grade standard; or

(2) By one hundred percent (100%) when more than sixty percent (60%) of the pears fail the grade standard.

(3) If you sell more of your fresh pear production as U.S. Number 1 or better than the quantity of pears determined to grade U.S. Number 1 or better in the appraisal, the quantity of such sold production exceeding the amount determined to grade U.S. Number 1 or better in the appraisal will be included as production to count under this option.

(c) Marketable production that grades less than U.S. Number 1 due to uninsurable causes not covered by this endorsement will not be reduced.

(d) Any adjustments that reduce your production to count under this option will not be applicable when determining production to count for Actual Production History purposes.

Fresh Pear Quality Adjustment Example:

You have a 100 percent share of a 20-acre pear orchard. You have a production guarantee of 15 tons/acre. You elect 100 percent of the $500/ton price election. You are only able to produce 10 tons/acre and only 7.5 tons/acre grade U.S. Number 1 or better (7.5 × 20 = 150 tons). Your indemnity would be calculated as follows:

(1) 20 acres × 15 tons per acre = 300 tons production guarantee;

(2) 300 tons production guarantee × $500/ton = $150,000 value of production guarantee;

(3) The value of fresh pear production to count is determined as follows:

(i) 200 tons harvested production minus 150 tons that graded U.S. Number 1 or better = 50 tons failing to make grade;

(ii) 50 tons failing grade/200 tons of production = 25 percent of production failing to grade U.S. Number 1;

(iii) 25 percent minus 10 percent = 15 percent in excess of 10 percent allowance failing to make grade;

(iv) 15 percent × 2 = 30 percent total quality adjustment for pears failing to grade U.S. Number 1;

(v) 200 tons production × 30 percent quality adjustment = 60 tons of pears failing to make grade;

(vi) 200 tons production minus 60 tons failing to make grade = 140 tons of quality adjusted fresh pear production to count;

(vii) 140 tons of quality adjusted fresh pear production to count × $500/ton price election = $70,000 value of fresh pear production to count;

(4) $150,000 value of production guarantee minus $70,000 value of fresh pear production to count = $80,000 value of loss;

(5) $80,000 value of loss × 100 percent share = $80,000 indemnity payment.

Signed in Washington, DC, on July 18, 2014.

Brandon Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2014–17491 Filed 7–25–14; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0007; Directorate Identifier 2012–NM–038–AD; Amendment 39–17889; AD 2014–13–13]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This AD was prompted by reports that the bracket of the rod in the carbon fiber reinforced plastic (CFRP) main landing gear (MLG) outboard door had detached. In addition, we received reports of broken recessed heads on titanium attachment bolts of the operating rod brackets on the modified CFRP MLG outboard doors. This AD requires a detailed inspection of the CFRP MLG outboard door for play or cracks in the recessed countersunk heads of the operating rod bracket attachment bolts; replacement of the bolt if necessary; and, for certain airplanes, modification of the CFRP MLG outboard doors and attachment to the MLG. We are issuing this AD to detect and correct the affected MLG from moving to the down and locked position, which could result in MLG collapse during landing or roll-out, and consequent damage to the airplane and injury to passengers.

DATES: This AD becomes effective September 2, 2014.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in this AD as of September 2, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0007;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on February 3, 2014 (79 FR 6109).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2012–0023, dated February 6, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The MCAI states:

> In 2005, several occurrences were reported where the bracket of the rod in the Carbon Fibre Reinforced Plastic (CFRP) MLG outboard door had detached, preventing the MLG to lock properly when selected down. Prompted by these reports, CAA–NL [Civil

Aviation Authority-Netherlands] issued AD NL–2006–001 *[http://ad.easa.europa.eu/blob/easa_ad_2006_0002_NL2006001.pdf/AD_NL-2006-001_1]* (EASA approval 2006–0002) to require the inspection and modification of the attachment of the operating rod bracket as detailed in Fokker Service Bulletin (SB) SBF100–52–080.

After that [EASA] AD was issued, several operators reported broken recessed heads of titanium attachment bolts of the operating rod bracket on modified (i.e. post-SBF100–52–080) CFRP MLG outboard doors. In such a situation, the remaining bolt shafts can get pulled through the external repair patch and the carbon fibre door outer skin, causing the operating rod, with the detached bracket, to get stuck between the MLG main fitting and wing lower skin. The primary factor to the cause of breaking bolt heads has been determined to be incorrect adjustment of the MLG outboard door.

This condition, if not detected and corrected, would prevent the affected MLG from moving to the down and locked position, possibly resulting in MLG collapse during landing or roll-out and consequent damage to the aeroplane and/or injury to the occupants.

To address this potential unsafe condition, Fokker Services has published SBF100–52–090, providing modification instructions to install an improved attachment of the MLG outboard door operating rod.

For the reasons described above, this new [EASA] AD requires a one-time detailed inspection for play or cracks in the recessed bolt heads and, depending on findings, applicable corrective actions, modification of the operating rod bracket attachment to the CFRP MLG outboard door, and introduction of a weaker (aluminum) bolt in the attachment of the MLG outboard door operating rod.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0007-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 6109, February 3, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 6109, February 3, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 6109, February 3, 2014) about these proposed changes. However, a comment was provided for another NPRM, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA DOA. Where necessary throughout this AD, we also replaced any reference to approvals of corrective actions with a reference to the Contacting the Manufacturer paragraph.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM discussed previously, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a

requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate. We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH in the Contacting the Manufacturer paragraph of this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 6109, February 3, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 6109, February 3, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry.

We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $10,000 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $44,080, or $11,020 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0007*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–13–13 Fokker Services B.V.: Amendment 39–17889. Docket No. FAA–2014–0007; Directorate Identifier 2012–NM–038–AD.

(a) Effective Date

This AD becomes effective September 2, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports that the bracket of the rod in the carbon fiber reinforced plastic (CFRP) main landing gear (MLG) outboard door had detached. In addition, we received reports of broken recessed heads on titanium attachment bolts of the operating rod brackets on the modified CFRP MLG outboard doors. We are issuing this AD to detect and correct the affected MLG from moving to the down and locked position, which could result in MLG collapse during landing or roll-out, and consequent damage to the airplane and injury to passengers.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

Within 9 months after the effective date of this AD, do a detailed inspection of the CFRP MLG outboard door for play and cracks in the recessed countersunk heads of the operating rod bracket attachment bolts, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011, as revised by Fokker Service Bulletin Change Notification SBF100–52–090/01, dated January 24, 2012.

(h) Corrective Action

If, during the inspection required by paragraph (g) of this AD, any play or crack is found in any countersunk bolt head, and the configuration deviation list (CDL) item 52–07 cannot be applied: Before further flight, replace the bolt with a new bolt, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011, as revised by Fokker Service Bulletin Change Notification SBF100–52–090/01, dated January 24, 2012.

(i) Modification Prior to CFRP Door Installation

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Modify the CFRP MLG outboard doors and attachment to the MLG, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011, as revised by Fokker Service Bulletin Change Notification SBF100–52–090/01, dated January 24, 2012. Accomplishing the modification in this paragraph terminates the inspection required by paragraph (g) of this AD.

(1) For airplanes on which a CFRP MLG outboard door is installed as of the effective date of this AD: Do the modification within 24 months after the effective date of this AD.

(2) For airplanes on which an aluminum door is installed as of the effective date of this AD: Do the modification prior to the installation of the CFRP MLG outboard door.

Note 1 to paragraph (i) of this AD: The aluminum MLG outboard doors and the CFRP MLG outboard doors are two-way interchangeable.

(j) Parts Installation Prohibition

As of the effective date of this AD, do not install on any airplane an MLG outboard door having part number (P/N) D13310–401 through –418, or any MLG outboard door assembly having P/N D13312–401 through –410.

Note 2 to paragraph (j) of this AD: Civil Aviation Authority-Netherlands (CAA–NL) AD NL–2006–001, dated January 5, 2006 (European Aviation Safety Agency (EASA) approval 2006–002), contains guidance for modifying spare MLG outboard door assemblies having P/N D13312–401 through –410, to P/N D13312–7XX standard, as specified in the Accomplishment Instructions of Fokker Component Service Bulletin D13312–52–09, December 12, 2005, which is not incorporated by reference in this AD.

(k) Parts Installation Limitation

As of the effective date of this AD, do not install on any airplane a P/N D13310–701 through –708 MLG outboard door, or a P/N D13312–702 through –711 MLG outboard door assembly, unless the part has been inspected for cracks in the recessed bolt heads, all applicable corrective actions have been done, and the CFRP MLG outboard door has been modified, in accordance with the Accomplishment Instructions of Fokker Component Service Bulletin D13312–52–015, dated November 17, 2011.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information EASA Airworthiness Directive 2012–0023, dated February 6, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0007-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) Material Incorporated by Reference

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

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

(i) Fokker Component Service Bulletin D13312–52–015, dated November 17, 2011.

(ii) Fokker Service Bulletin SBF100–52–090, dated November 17, 2011, including Fokker Manual Change Notification F100–147, dated October 28, 2011.

(iii) Fokker Service Bulletin Change Notification SBF100–52–090/01, dated January 24, 2012. The page number shown on the first page of this document should read ''Page 1 of 2.''

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on June 25, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17297 Filed 7–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1024; Directorate Identifier 2013–NM–140–AD; Amendment 39–17909; AD 2014–15–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This AD was prompted by reports of a fractured wing-to-fuselage strut attachment joint bolt. This AD requires a torque check of all wing-to-fuselage strut attachment joint bolts, and repair or replacement if necessary. For certain airplanes, this AD also requires a detailed inspection for corrosion, damage, and wear of each wing-to-fuselage strut attachment joint bolt and associated hardware, and replacement if necessary; and a borescope inspection for corrosion and damage of the bore hole and barrel nut threads, and repair or replacement if necessary. We are issuing this AD to detect and correct fractured strut attachment joint bolts, which could result in reduced structural integrity of the wing-to-fuselage strut attachment joint and subsequent loss of the wing.

DATES: This AD becomes effective September 2, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 2, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-1024-*

0002 or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Jeffrey Zimmer, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The NPRM published in the **Federal Register** on December 6, 2013 (78 FR 73462).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–17R1, dated June 27, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The MCAI states:

> There have been two in-service reports of a wing-to-fuselage strut attachment joint bolt found fractured during routine maintenance. Laboratory examination of one fractured bolt revealed that the fracture was attributed to stress corrosion cracking.
>
> Failure of the bolts could compromise the structural integrity of the wing-to-fuselage strut attachment joint and could lead to a subsequent loss of the wing.
>
> This [Canadian] AD mandates the inspection and rectification, as required, of the wing-to-fuselage strut attachment joint bolts and associated hardware.
>
> * * * * *
>
> Required actions include a torque check of wing-to-fuselage strut attachment joint bolts, and repair or replacement if necessary. For certain airplanes, required actions include a detailed inspection for corrosion, damage (including but not limited to scratching, cracking, pitting, cross threads), and wear of each wing-to-fuselage strut attachment joint bolt and associated hardware, and replacement if necessary; and a borescope inspection for corrosion and damage of the bore hole and barrel nut threads, and repair or replacement if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-1024-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (78 FR 73462, December 6, 2013) and the FAA's response to each comment.

Request To Extend Compliance Time

An anonymous commenter requested that we extend the compliance times from 2,000 flight cycles or 12 months, to 4,000 flight cycles or 24 months, after the effective date of the AD, in order to coincide with their scheduled ''C'' checks.

We do not agree with the commenter's request to extend the compliance time. We have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the modification is done. We have not changed this AD in this regard.

Request To Give Credit for Previous Compliance

An anonymous commenter requested that we allow credit for actions accomplished using deHavilland Dash 8 Series 100 Task Card Number 5730/04B, dated February 6, 2012, if the actions were done before the date the final rule becomes effective.

We agree with the request. We have redesignated paragraph (j) of the proposed AD (78 FR 73462, December 6, 2013) as paragraph (j)(1) of this AD, and have added new paragraph (j)(2) to this AD to allow credit for actions accomplished prior to the effective date of this AD using deHavilland Dash 8 Series 100 Task Card Number 5730/04B, dated February 6, 2012.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (78 FR 73462, December 6, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the NPRM.

No comments were provided to the NPRM (78 FR 73462, December 6, 2013) about these proposed changes. However, a comment was provided for an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements.

However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, TCCA, or Bombardier's TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized signature approval are not TCCA-approved, unless TCCA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate. We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 73462, December 6, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 73462, December 6, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 94 airplanes of U.S. registry. We estimate the following costs to comply with this AD.

We also estimate that it would take about 107 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $5,476 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,369,674, or $14,571 per product.

We have received no definitive data that would enable us to provide a cost estimate for the repairs or replacements specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-1024;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–07 Bombardier, Inc.: Amendment 39–17909. Docket No. FAA–2013–1024; Directorate Identifier 2013–NM–140–AD.

(a) Effective Date

This AD becomes effective September 2, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of a fractured wing-to-fuselage strut attachment joint bolt. We are issuing this AD to detect and correct fractured strut attachment joint bolts, which could result in reduced structural integrity of the wing-to-fuselage strut attachment joint and subsequent loss of the wing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Torque Check

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do a torque check of the wing-to-fuselage strut attachment joint bolts, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–47, Revision A, dated May 29, 2013.

(1) For airplanes that have accumulated fewer than 40,000 total flight cycles, and have less than 15 years in service since new, as of the effective date of this AD: Do the torque check before the accumulation of 42,000 total flight cycles, or within 16 years in service since new, whichever occurs first.

(2) For airplanes that have accumulated 40,000 total flight cycles or more, or have 15 years or more in service since new, as of the effective date of this AD: Do the torque check within 2,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.

(h) Inspection and Corrective Actions

(1) If only one bolt fails the torque check required by paragraph (g) of this AD, before further flight, replace the bolt, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–47, Revision A, dated May 29, 2013; and before further flight do the actions specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD.

(2) If more than one bolt fails the torque check required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(3) If all bolts pass the torque check required by paragraph (g) of this AD, before further flight, do the actions specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD, as applicable.

(i) Do a detailed inspection for corrosion, damage (including but not limited to scratching, cracking, pitting, and cross threads, etc.), and wear, of each wing-to-fuselage strut attachment joint bolt and associated hardware, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–47, Revision A, dated May 29, 2013. If any bolt or hardware has corrosion, damage, or wear, before further flight, replace the affected part, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–47, Revision A, dated May 29, 2013.

(ii) Do a borescope inspection for corrosion and damage (including but not limited to scratching, cracking, pitting, and cross threads, etc.) of the bore hole and barrel nut threads, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–47, Revision A, dated May 29, 2013, except as provided by paragraph (i) of this AD.

(A) If any corrosion or damage is found in the barrel nut threads, before further flight, replace the barrel nut, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–47, Revision A, dated May 29, 2013, except as provided by paragraph (i) of this AD.

(B) If any corrosion or damage is found in the bore of the hole, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Exception to Service Information

Where Bombardier Service Bulletin 8–57–47, Revision A, dated May 29, 2013, specifies to contact the manufacturer for repair information, this AD requires repairing before further flight using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO; and, if approved by the DAO, the approval must include the DAO-authorized signature.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–57–47, dated March 16, 2012, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD if those actions were performed before the effective date of this AD using de Havilland Inc. Dash 8 Series 100 Maintenance Task Card Number 5730/04B, dated February 6, 2012, which is not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–17R1, dated June 27, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-1024-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 8–57–47, Revision A, dated May 29, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 15, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17316 Filed 7–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0253; Directorate Identifier 2013–NM–257–AD; Amendment 39–17908; AD 2014–15–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100B SUD, 747–200B, 747–300, 747–400, and 747–400D series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the upper deck tension ties are subject to widespread fatigue damage (WFD). This AD requires repetitive inspections for cracking in the upper deck tension ties, and related investigative and corrective actions if necessary; tension tie replacement; and post-replacement repetitive inspections for cracking in the upper deck tension ties, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct fatigue cracking of the upper deck tension ties. Severed or disconnected tension ties at multiple locations could result in rapid decompression and loss of structural integrity of the airplane.

DATES: This AD is effective September 2, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 2, 2014.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0253; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D series airplanes. The NPRM published in the **Federal Register** on April 23, 2014 (79 FR 22596). The NPRM was prompted by an evaluation by the DAH indicating that the upper deck tension ties are subject to WFD. The NPRM proposed to require repetitive inspections for cracking in the upper deck tension ties, and related investigative and corrective actions if necessary; tension tie replacement; and post-replacement repetitive inspections for cracking in the upper deck tension ties, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct fatigue cracking of the upper deck tension ties. Severed or disconnected tension ties at multiple locations could result in rapid decompression and loss of structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The Boeing Company supported the NPRM (79 FR 22596, April 23, 2014).

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 22596, April 23, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 22596, April 23, 2014).

Costs of Compliance

We estimate that this AD affects 76 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections (pre-modification and post-modification).	Up to 164 work-hours × $85 per hour = $13,940 per inspection cycle.	$0	Up to $13,940 per inspection cycle.	Up to $1,059,440 per inspection cycle.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	366 work-hours × $85 per hour = $31,110.	0	$31,110	$2,364,360.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–06 The Boeing Company: Amendment 39–17908; Docket No. FAA–2014–0253; Directorate Identifier 2013–NM–257–AD.

(a) Effective Date

This AD is effective September 2, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100B SUD, 747–200B, 747–300, 747–400, and 747–400D series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the upper deck tension ties are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking of the upper deck tension ties. Severed or disconnected tension ties at multiple locations could result in rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections, Related Investigative Actions, and Corrective Actions

For airplanes identified as Group 1, Configuration 2; and Group 2; in Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013: Before the accumulation of 10,000 flight cycles after conversion to special freighter or Boeing converted freighter configuration, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013, except as provided by paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the forward and aft tension tie channels thereafter at the applicable time and intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013.

(1) At each tension tie station from 880 to 1100: Do a detailed inspection for cracks in the forward and aft tension tie channels.

(2) At each tension tie station from 880 to 1100: Do a detailed inspection for cracks in the forward and aft tension tie channels, and do a surface high frequency eddy current (HFEC) inspection for cracks around fasteners in the tension tie channels.

(h) Exceptions to Service Information Specifications

If, during accomplishment of the related investigative action or inspections required by this AD, any cracking is found, and Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013, specifies to contact Boeing for repair instructions: Before further flight, do the repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(i) Tension Tie Replacement

After the accumulation of 13,000 total flight cycles; but before the accumulation of 22,000 flight cycles after conversion to special freighter or Boeing converted freighter configuration, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later: Do the tension tie replacement, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013, except as provided by paragraph (h) of this AD. Accomplishment of the actions required by this paragraph terminates the inspection requirements of paragraph (g) of this AD.

(j) Post-tension Tie Replacement Inspections, Related Investigative Actions, and Corrective Actions

After accomplishing the actions required by paragraph (i) of this AD: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013, do the actions specified in paragraph (j)(1) or (j)(2) of this AD; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment

Instructions of Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013, except as provided by paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection of the forward and aft tension tie channels thereafter at the applicable time and intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013.

(1) At each tension tie station from 880 to 1100: Do a detailed inspection for cracks in the forward and aft tension tie channels.

(2) At each tension tie station from 880 to 1100: Do a detailed inspection for cracks in the forward and aft tension tie channels, and do a surface HFEC inspection for cracks around fasteners in the tension tie channels.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(l) Related Information

For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 747–53A2866, dated December 4, 2013,

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 13, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17312 Filed 7–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0055; Directorate Identifier 2013–NM–167–AD; Amendment 39–17907; AD 2014–15–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A310–304, –322, –324, and –325 airplanes. This AD was prompted by reports of insufficient clearance between the fuel quantity indicator (FQI) probes and the adjacent structure and metallic components in the wing fuel tanks. This AD requires a one-time detailed visual inspection for sufficient clearance between FQI probes on both the left-hand side and right-hand side of the trim horizontal stabilizer and the adjacent structure and metallic components in the fuel tanks, and modification if necessary. We are issuing this AD to detect and correct insufficient clearance, which could lead to electrical arcing in a fuel tank during a lightning strike, which could result in ignition and consequent fire or explosion in the fuel tank.

DATES: This AD becomes effective September 2, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 2, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0055*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A310–304, –322, –324, and –325 airplanes. The NPRM published in the **Federal Register** on February 25, 2014 (79 FR 10431).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0188, dated August 19, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information to correct an unsafe condition on certain Airbus

Model A310–304, –322, –324, and –325 airplanes. The MCAI states:

> Airbus investigations on A300 aeroplanes revealed insufficient clearance between the Fuel Quantity Indicator (FQI) probes and adjacent structure or metallic components in the wing fuel tanks. A300–600 and A310 aeroplanes are also affected as they are identical in design.
>
> This condition, if not detected and corrected, could lead to electric arcing in a fuel tank in case of lightning strike, which could result in ignition and consequent fire or explosion in the fuel tank.
>
> To address this potential unsafe condition, Airbus issued Service Bulletin (SB) A300–28–0080, SB A300–28–6065 and SB A310–28–2145 and DGAC [Direction Générale de l'Aviation Civil] France issued [an] AD * * * to cover A300 aeroplanes and [an] AD * * * to cover A300–600 and A310 aeroplanes (both EASA ADs were later revised). [Both EASA ADs correspond to FAA AD 2004–05–05, Amendment 39–13499 (69 FR 10319, dated March 5, 2004)].
>
> Since those [EASA] ADs were issued, further analysis showed that they do not cover all potentially affected aeroplanes: A310 aeroplanes with optional Mod. no. 12248 embodied were excluded from the applicability of [a] DGAC France AD * * * but are potentially affected, and therefore addressed through this [EASA] AD.
>
> For the reasons described above, this [EASA] AD requires a one-time [detailed visual] inspection of the affected aeroplanes for sufficient clearance between FQI probes [on both the left-hand (LH) side and right-hand (RH) side of the trim horizontal stabilizer] and adjacent structure/metallic parts and, depending on findings, modification of the FQI probes.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0055-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 10431, February 25, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 10431, February 25, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 10431, February 25, 2014) about these proposed changes. However, a comment was provided for another NPRM, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), in which the commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM discussed previously, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the

unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate. We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH in the Contacting the Manufacturer paragraph of this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 10431, February 25, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 10431, February 25, 2014).

Costs of Compliance

We estimate that this AD affects 2 airplanes of U.S. registry.

We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,360, or $680 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0055*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–05 Airbus: Amendment 39–17907. Docket No. FAA–2014–0055; Directorate Identifier 2013–NM–167–AD.

(a) Effective Date

This AD becomes effective September 2, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A310–304, –322, –324, and –325 airplanes, certificated in any category, on which Airbus Modification Number 12248 has been embodied.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of insufficient clearance between the fuel quantity indicator (FQI) probes and the adjacent structure and metallic components in the wing fuel tanks. We are issuing this AD to detect and correct insufficient clearance, which could lead to electrical arcing in a fuel tank during a lightning strike, which could result in ignition and consequent fire or explosion in the fuel tank.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Modification

Within 30 months after the effective date of this AD, do a one-time detailed visual inspection for clearance between the FQI probes located in the trimmable horizontal stabilizer tank and the adjacent structure and metallic components, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2145, Revision 01, dated March 4, 2003.

(1) If the clearance of an FQI probe is found to be 3.0 millimeters (mm) (0.118 inch) or more: No further action is required by paragraph (g) of this AD.

(2) If the clearance of an FQI probe is found to be 2.5 mm (0.98 inch) or more, and less than 3.0 mm (0.118 inch): Before further flight, loosen the probe screws and move the probe up and down to get the required minimum gap of 3.0 mm (0.118 inch), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2145, Revision 01, dated March 4, 2003.

(3) If the clearance of an FQI probe is found to be less than 2.5 mm (0.118 inch): Before further flight, modify each affected FQI probe by installing new FQI probe supports, in accordance with Step 3.C., ''Repair,'' of the Accomplishment Instructions of Airbus Service Bulletin A310–28–2145, Revision 01, dated March 4, 2003.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A310–28–2145, dated August 21, 2001, which is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0188, dated August 19, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0055-0002*.

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A310–28–2145, Revision 01, dated March 4, 2003.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 13, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17313 Filed 7–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0177; Directorate Identifier 2013–NM–189–AD; Amendment 39–17912; AD 2014–15–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by a report of a crew alerting system message caused by an inversion of the wiring in the slats control manifold (SCM). This AD requires an operational test of the SCM, and replacing the affected SCM with a serviceable SCM if necessary. We are issuing this AD to detect and correct inversion of the wiring in the SCM, which could lead to a commanded retraction of the median and outboard slats in flight, and result in reduced controllability of the airplane.

DATES: This AD becomes effective September 2, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 2, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0177*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model FALCON 7X airplanes. The NPRM published in the **Federal Register** on April 4, 2014 (79 FR 18846).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0195, dated August 27, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X airplanes. The MCAI states:

> During a ferry flight, the crew of a Falcon 7X aeroplane reported a Crew Alerting System Message ''FCS—SLATS INB EXTEND FAIL'' with associated fault code and root cause: ''FCS SEC FCS fault/SFCI3 fault''. The crew applied the applicable Aircraft Flight Manual procedure and the aeroplane landed uneventfully.
>
> The results of the manufacturer technical investigations concluded that the cause of this event was an inversion of the wiring in the slats control manifold (SCM).
>
> This condition, if not detected and corrected, could lead to un-commanded retraction of the median and outboard slats in flight, resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Dassault Aviation issued Service Bulletin (SB) F7X–244, with instructions for an operational test of the SCM.
>
> For the reasons described above, this [EASA] AD requires an operational test of the SCM and, depending on findings, accomplishment of the applicable corrective actions [replacing the affected SCM with a serviceable SCM if necessary].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0177-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We

received no comments on the NPRM (79 FR 18846, April 4, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Dassault Aviation's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 18846, April 4, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 18846, April 4, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 42 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Operational test of the slats control manifold	1 work-hour × $85 per hour = $85	$0	$85	$3,570

We estimate the following costs to do any necessary replacement that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	13 work-hours × $85 per hour = $1,105	$0	$1,105

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0177;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–10 Dassault Aviation: Amendment 39–17912. Docket No. FAA–2014–0177; Directorate Identifier 2013–NM–189–AD.

(a) Effective Date

This AD becomes effective September 2, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, manufacturer serial numbers 2 through 101 inclusive; 105, 106, 108 through 140 inclusive; 142 through 148 inclusive; 150 through 153 inclusive; 155, 156, 158, 162 through 164 inclusive; and 167, 169, and 173.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by report of a crew alerting system message caused by an inversion of the wiring in the slats control manifold (SCM). We are issuing this AD to detect and correct inversion of the wiring in the SCM, which could lead to a commanded retraction of the median and outboard slats in flight, and result in reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Operational Test

Within 600 flight hours or 9 months after the effective date of this AD, whichever occurs first: Do an operational test of the slats control manifold (SCM), in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin 7X–244, Revision 1, also referred to as 244–R1, dated July 8, 2013. If the operational test of the SCM fails, before further flight, replace the affected SCM with a serviceable SCM, in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin 7X–244, Revision 1, also referred to as 244–R1, dated July 8, 2013.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Dassault Aviation Service Bulletin 7X–244, dated February 14, 2013, which is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0195, dated August 27, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0177-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Dassault Aviation Service Bulletin 7X–244, Revision 1, also referred to as 244–R1, dated July 8, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 17, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17465 Filed 7–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No.: FAA–2014–0502; Amdt. No. 135–131]

RIN 2120–AK49

Departing IFR/VFR When Weather Reporting Is Not Available

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will permit the pilot in command of a helicopter air ambulance to assess the weather at a departure point where current weather observations are not available and allow the pilot to depart if the observed ceiling and visibility is greater than certain weather minimums. This action will allow a pilot to utilize the minimum takeoff visibilities depicted in a published obstacle departure procedure, or in the absence of such a procedure, when the pilot observed ceiling and visibility is greater than the minimum ceiling and visibility limitations required by specific helicopter air ambulance rules. This change to the current regulation will permit helicopter air ambulance flights to enter the National Airspace System under Instrument Flight Rules when visibilities and ceilings are below Visual Flight Rules, thus increasing the safety of the flight.

DATES: Effective April 22, 2015.

Submit comments on or before September 26, 2014. If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the **Federal Register** withdrawing the direct final rule before the effective date of the final rule.

ADDRESSES: You may send comments identified by docket number FAA–2010–0982 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *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 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 this action, contact Andrew C. Pierce, Air Transportation Division, 135 Air Carrier Operations Branch, AFS–250, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8238; email *andy.pierce@faa.gov.*

For legal questions concerning this action, contact Nancy Sanchez, AGC–220, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–7280 (office); email *nancy.sanchez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the general authority described in 49 U.S.C. 106(f) and 44701(a), and the specific authority set forth in section 306, Safety of Air Ambulance Operations, of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95), which is now codified at 49 U.S.C. 44730.

The Direct Final Rule Procedure

The FAA is adopting this direct final rule without prior notice and prior public comment as a direct final rule because this rule is not controversial, is not expected to result in the receipt of an adverse comment, and a notice of proposed rulemaking is not necessary. This change to the regulation provides greater opportunity for Helicopter Air Ambulance (HAA) operations to enter the National Airspace System (NAS) under Instrument Flight Rules (IFR) than previously permitted. Without this amendment, helicopter air ambulances will be unable to depart under IFR from landing sites lacking weather reporting, until Visual Flight Rules (VFR) appropriate to the class of airspace above prevail. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule.

A direct final rule will take effect on a specified date unless the FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue. We consider the comment adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the **Federal Register** before the effective date of the final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

If we do not receive an adverse comment or notice of intent to file an adverse comment, we will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the rule.

See the ''Additional Information'' section for information on how to comment on this direct final rule and

how the FAA will handle comments received. The ''Additional Information'' section also contains related information about the docket, privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

I. Overview of the Direct Final Rule

This direct final rule will permit the pilot in command of a helicopter air ambulance to assess the weather at a departure point where current weather observations are not available and to depart if the pilot's observed ceiling and visibility is greater than certain weather minimums. Applicable weather minimums include minimums found in a published Obstacle Departure Procedure (ODP), or in the absence of such a procedure, when the pilot observed ceiling and visibility is greater than the minimum ceiling and visibility limitations required by specific HAA rules. This change to the current regulation will permit helicopter air ambulance flights to enter the NAS under IFR when visibilities and ceilings are below VFR based on pilot weather observations, thus increasing the safety of the flight. Without this action, helicopter air ambulances will be unable to depart under IFR from landing sites lacking weather reporting, until VFR appropriate to the class of airspace above prevail.

II. Discussion of the Direct Final Rule

A. Background

On February 21, 2014, the FAA published a final rule on Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations. 79 FR 9932 (Feb. 21, 2014). It contained a new provision, § 135.611, that allows HAA operators to conduct IFR operations at airports and heliports without a weather reporting facility if they can obtain weather reports from an approved weather reporting facility located within 15 nautical miles of the destination landing area and meet other pilot and equipment requirements.

B. Statement of the Problem

The recently published final rule did not provide a means for HAA flights with IFR clearances to depart from airports not served with current weather observation reports. The current language in the rule would not allow a pilot to utilize the minimum takeoff visibilities depicted in published ODP when these are available. As a result, IFR capable departing flights are not able to gain direct access into the IFR system when weather conditions are worse than the Class G VFR minimums published in § 135.609, but are better than or equal to the published ODP takeoff minimums when the ODP depicts a ''proceed visually'' transition to the Initial Departure Fix (IDF).

The departing flight must be on an IFR Air Traffic Control (ATC) Clearance, which in accordance with the published ODP, contains takeoff minimums, and has a ''proceed visually'' segment between the takeoff location and the initial departure fix. When an ODP is not available or is not contained in the clearance, or the ODP depicts a ''proceed VFR'' segment instead of a ''proceed visually'' segment, the minimum visibility and ceiling reverts to that which is appropriate for the class of airspace involved. This revision to the rule text recognizes the improved safety margins and technologies available with ODPs and is consistent with the original intent of the rule, which is to encourage safe entry into the IFR System.

III. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

The FAA is amending IFR operations at locations without weather reporting, in order to permit the pilot in command of a helicopter air ambulance to assess the weather at a departure point where current weather observations are not available and allow the pilot to depart if the observed ceiling and visibility is greater than certain weather minimums. This change to the regulation provides greater opportunity for HAA operations to enter the NAS under IFR than previously permitted. Without this action, helicopter air ambulances will be unable to depart under IFR from landing sites lacking weather reporting, until VFR minimums appropriate to the class of airspace above prevail.

This requirement will increase the use of IFR flight by HAA operators, which will result in more aircraft operating in a positively controlled environment and within the existing infrastructure resulting in unquantified net benefit gains, and a full regulatory evaluation was not prepared

The FAA has, therefore, determined that this direct final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If

the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This direct final rule does not impose any additional costs on helicopter air ambulance operators. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

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 standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes 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. The FAA has assessed the potential effect of this direct final rule and determined that it will have only a domestic impact and therefore no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151 million in lieu of $100 million. This direct final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

F. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the rulemaking action in this document. The most helpful comments reference a specific portion of the rulemaking action, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Before acting on this rulemaking action, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this rulemaking action in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 135

Air transportation, Aircraft, and Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 2. Revise § 135.611(a)(3) to read as follows:

§ 135.611 IFR operations at locations without weather reporting.

(a) * * *

(3) In Class G airspace, IFR departures with visual transitions are authorized only after the pilot in command determines that the weather conditions at the departure point are at or above takeoff minimums depicted in the published Obstacle Departure Procedure or VFR minimum ceilings and visibilities in accordance with § 135.609.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44730 in Washington, DC, on July 17, 2014.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–17729 Filed 7–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9683]

RIN 1545–BM23

Rules Regarding the Health Insurance Premium Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the Medicare and Medicaid Extenders Act of 2010, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, and the Department of Defense and Full-Year Continuing Appropriations Act of 2011 and the 3% Withholding Repeal and Job Creation Act. These regulations affect individuals who enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges) and claim the premium tax credit, and Exchanges that make qualified health plans available to individuals. The text of the temporary regulations in this document also serves as the text of proposed regulations set forth in a notice of proposed rulemaking (REG–104579–13) on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 28, 2014.

Applicability Date: For applicability dates, see §§ 1.36B–2T(d), 1.36B–3T(m), 1.36B–4T(c), and 1.162(l)–1T(c).

FOR FURTHER INFORMATION CONTACT: Arvind Ravichandran or Shareen Pflanz, (202) 317–4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final and temporary regulations that amend the Income Tax Regulations (26 CFR part 1) under section 36B relating to the premium tax credit and under section 162(l) relating to the deduction for health insurance costs for self-employed individuals. Section 36B was enacted by the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act). Section 36B provides a refundable premium tax credit to help individuals and families afford health insurance purchased through an Exchange.

To be eligible for a premium tax credit under section 36B, an individual must be an applicable taxpayer. Section 36B(c)(1) provides that an applicable taxpayer is a taxpayer (1) with household income for the taxable year between 100 percent and 400 percent of the federal poverty line for the taxpayer's family size, (2) who may not be claimed as a dependent by another taxpayer, and (3) who files a joint return if married (within the meaning of section 7703).

Section 7703(b) allows certain married individuals to be considered not married for purposes of the Internal Revenue Code. Under section 7703(b), a married taxpayer who lives apart from the taxpayer's spouse for the last six months of the taxable year is considered unmarried if he or she files a separate return, maintains as the taxpayer's home a household that is also the principal place of abode of a dependent child for more than half the year, and furnishes over half the cost of the household during the taxable year.

Section 36B(b)(2) provides that a taxpayer's premium tax credit is the lesser of the premiums for the plan or plans in which the taxpayer and the taxpayer's family enroll or the excess of the premiums for the second lowest cost silver plan covering the taxpayer's family (the benchmark plan) over the taxpayer's contribution amount. A taxpayer's contribution amount is the product of the taxpayer's household income and an applicable percentage that increases as the taxpayer's household income increases.

Under section 1412 of the Affordable Care Act, eligible taxpayers may receive advance payments of the premium tax credit (advance credit payments). Section 36B(f) provides that taxpayers must reconcile any differences between the taxpayer's advance credit payments for a taxable year and the taxpayer's premium tax credit for the year. If the taxpayer's advance credit payments exceed the allowed premium tax credit, the taxpayer owes the excess as a tax liability, subject to a repayment limitation in section 36B(f)(2)(B).

Under section 162(l), a taxpayer who is an employee within the meaning of section 401(c)(1)—generally, a self-employed individual—is allowed a deduction for all or a portion of the taxpayer's premiums paid during the taxable year for health insurance for the taxpayer, the taxpayer's spouse, the taxpayer's dependents, and any child of the taxpayer under the age of 27. The deduction allowed under section 162(l) is limited to the taxpayer's earned income from the trade or business with respect to which the health insurance plan is established. In addition, section 280C(g) provides that no deduction is allowed under section 162(l) for the portion of premiums for a qualified health plan equal to the amount of the premium tax credit determined under section 36B(a) with respect to those premiums.

Explanation of Provisions

1. Circumstances in Which a Married Taxpayer May Claim a Premium Tax Credit on a Separate Return

Final regulations under section 36B (TD 9590) were published on May 23, 2012 (77 FR 30377). The final regulations provide that married taxpayers must file a joint return to claim the premium tax credit. However, the preamble to those regulations provided that Treasury and the IRS would propose additional regulations addressing domestic abuse, abandonment, or similar circumstances that create obstacles to filing a joint return. The preamble also requested comments on how to structure a rule to address these situations.

Several comments were received urging that such a rule be provided. Commenters suggested that the rule draw on the existing regime for innocent spouse relief. Commenters also suggested that relief should be allowed for up to three years.

Notice 2014–23, 2014–16 IRB. 942 (March 26, 2014), allows married victims of domestic abuse to claim a premium tax credit without filing a joint return in 2014. Under Notice 2014–23, for calendar year 2014, a married taxpayer will satisfy the joint filing requirement of section 36B(c)(1)(C) if the taxpayer files a 2014 tax return using a filing status of married filing separately and the taxpayer (i) is living apart from the individual's spouse at the time the taxpayer files his or her tax return, (ii) is unable to file a joint return because the taxpayer is a victim of domestic abuse, and (iii) indicates on his or her 2014 income tax return in accordance with the relevant instructions that the taxpayer meets the criteria under (i) and (ii). Notice 2014–23 also provides that the IRS and Treasury intend to propose regulations incorporating this rule.

Accordingly, the temporary regulations incorporate the rule in Notice 2014–23 for 2014 and subsequent taxable years to provide relief from the joint filing requirement for victims of domestic abuse. The temporary regulations also provide relief to victims of spousal abandonment. Consistent with the comments received, taxpayers may not qualify for relief from the joint filing requirement for a period that exceeds three consecutive years.

The temporary regulations define domestic abuse using a definition that is closely based on the definition of spousal abuse in Rev. Proc. 2013–34, 2013–2 CB 397, for innocent spouse relief. In particular, domestic abuse includes physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate, or to undermine the victim's ability to reason independently and that all facts and circumstances are considered in determining whether an individual is abused. A taxpayer qualifies as a victim of spousal abandonment for a taxable year if the taxpayer is abandoned by his or her spouse and, taking into account all facts and circumstances, the taxpayer is unable to locate his or her spouse after reasonable diligence. It is expected that the instructions for the tax form taxpayers will use to compute the premium tax credit will provide further guidance on claiming this relief, including that a taxpayer must certify that the taxpayer meets the criteria for the relief.

On March 31, 2014, the Department of Health and Human Services (HHS) issued guidance on the application of Notice 2014–23 to advance credit payments and cost-sharing reductions. In accordance with the temporary regulations included here, it is anticipated HHS will extend its guidance beyond 2014 and to include victims of spousal abandonment.

Comments are requested on the appropriateness of the relief provided in the temporary regulations, and the appropriateness of the scope of relief, including the circumstances that would make a taxpayer eligible for relief.

2. Indexing

To compute the premium tax credit, a taxpayer determines his or her contribution amount by multiplying an applicable percentage by the taxpayer's household income. The taxpayer uses the percentage table in section 36B(b)(3)(A)(i) to compute his or her applicable percentage. Section 36B(b)(3)(A)(ii) provides that, beginning in 2015, the percentages in the table are adjusted to reflect the excess of the rate of premium growth over the rate of income growth for the preceding calendar year. Similarly, section 36B(c)(2)(C)(iv) provides that the affordability percentage provided in section 36B(c)(2)(C)(i)(II) is updated in the same manner for plan years beginning in calendar years after 2014. The affordability percentage is used to determine whether an employer's offer of coverage to an employee is affordable to the employee. Under section 36B(c)(2)(C)(i), a taxpayer who is not offered affordable employer coverage may be eligible for a premium tax credit.

Section 36B(b)(3)(A)(ii) does not specify what measures should be used for premium growth and income growth. The temporary regulations provide that premium growth and income growth will be determined in accordance with further published guidance, see § 601.601(d)(2) of this chapter. Rev. Proc. 2014–37, which is being released simultaneously with these temporary regulations, provides further details on the measures to be used for premium growth and income growth. In particular, consistent with the factors used by HHS to define premium growth in indexing the required contribution percentage in section 5000A, Rev. Proc. 2014–37 provides that premium growth for the preceding calendar year is the projected per enrollee spending for employer-sponsored private health insurance for the preceding calendar year, divided by the projected per enrollee spending for employer-sponsored private health insurance for the calendar year two years prior. Income growth for the preceding calendar year will be the projected GDP per capita for the preceding calendar year divided by the projected GDP per capita for the calendar year two years prior. Projected per enrollee spending for employer-sponsored private health insurance and projected GDP per capita are published by the Office of the Actuary at the Centers for Medicare and Medicaid Services.

Section 36B(b)(3)(A)(ii) also does not make clear what it means to adjust the applicable percentages to ''reflect the excess'' of one rate ''over'' the other. Rates of growth are commonly compared by taking their ratio. In addition, the applicable percentages in section 36B(b)(3)(A)(i) and the affordability percentage in section 36B(c)(2)(C)(i)(II) represent shares of income that a taxpayer is expected to spend on health care premiums. The indexing of these measures in section 36B(b)(3)(A)(ii) appears designed to adjust these fractions to reflect changes in the observed share of overall income that is spent on health care premiums. Preserving this relationship requires that the applicable percentages be adjusted based on the ratio of the rate of premium growth to the rate of income growth. Accordingly, the temporary regulations provide that, for taxable years beginning after December 31, 2014, the applicable percentages in the table will be adjusted by the ratio of premium growth to income growth for the preceding calendar year.

In addition, the temporary regulations provide that adjustments may be made to reflect updates to the data used to compute this ratio for the 2014 calendar year or to reflect updates to data sources used to compute the ratio of premium growth to income growth. Such an

adjustment may be necessary to avoid error propagation when making updates. In particular, in computing this ratio for a given calendar year, the computations rely on projected data for the prior year and the 2013 calendar year. To the extent that the final data for the prior calendar year prove different from the projected data, the projected data used in later years will automatically adjust for those differences. However, if the final data for the 2013 calendar year proves different from the projected data, projected data in later years will not adjust for these differences, so an additional adjustment will be needed. Similarly, if alternative data sources are used to compute the ratio in later years, an additional adjustment may be needed to avoid error that could result from transitioning from the prior data sources to the new ones. These adjustments will be made as part of the procedure by which the applicable percentages and affordability percentage are updated by the ratio of premium growth to income growth and will apply prospectively only. For example, if data for the 2013 calendar year data is finalized in early 2016, the additional adjustment will be made in determining the applicable percentages and affordability percentage in effect for the 2017 calendar year.

With respect to the affordability percentage, the final regulations under section 36B inadvertently refer to taxable years rather than plan years beginning after 2014. Consistent with the language in section 36B(c)(2)(C)(iv), the temporary regulations provide that, for plan years beginning in a calendar year after 2014, the affordability percentage will be adjusted by the same method used to adjust the applicable percentages.

The indexing methodology provided for in the temporary regulations is based on the same data sources as the methodology adopted by HHS for adjusting the required contribution percentage in section 5000A, which is used to determine eligibility for an exemption from the shared responsibility payment, and it will result in adjustments to the applicable percentages and affordability percentage that are consistent with the adjustments made by HHS to the required contribution percentage in section 5000A. *See* 79 FR 30240 (May 27, 2014).

Comments are requested on the methodology for indexing. In particular, comments are requested on whether this approach properly captures the rate of premium growth relative to the rate of income growth and whether alternative indices or data sources should be used.

3. Allocations for Reconciliation of Advance Credit Payments and the Premium Tax Credit

The final regulations under section 36B provide that a taxpayer must reconcile all advance credit payments for coverage of any member of the taxpayer's family. A taxpayer's family includes the taxpayer, the taxpayer's spouse and the taxpayer's dependents. The final regulations, however, do not address how a taxpayer computes the premium tax credit and reconciles advance credit payments for coverage of a family member if the family member was enrolled in a qualified health plan by another taxpayer, especially in situations in which the family member is enrolled with others who are not in the taxpayer's family. For example, suppose Adult 1 enrolls herself and her three children in a qualified health plan and, based on a good faith assertion that she will claim the children as dependents, is approved for advance credit payments for coverage of the family. One of the children (Child), however, is not claimed by Adult 1 and instead is properly claimed by Adult 2 as a dependent for the taxable year. In this circumstance, the final regulations neither address how much of the premium for the plan purchased by Adult 1 each taxpayer should take into account in determining his or her premium tax credit, nor the amount of advance credit payments for Adult 1's plan that Adult 2 must reconcile for Child's coverage. In addition, the final regulations under section 36B require Adult 1 and Adult 2 to determine their adjusted monthly premium for the applicable benchmark plan (benchmark plan premium) in this circumstance using the rules that apply to taxpayers who do not have family members enrolled by another taxpayer.

The temporary regulations provide rules to address how taxpayers determine their premium tax credit and reconcile advance credit payments in cases in which an individual is enrolled by one taxpayer but another taxpayer claims a personal exemption deduction for the individual. In particular, the temporary regulations provide that if a taxpayer (the enrolling taxpayer) enrolls an individual in a qualified health plan, but another taxpayer (the claiming taxpayer) claims a personal exemption deduction for the enrollee (the shifting enrollee), then for purposes of computing each taxpayer's premium tax credit and reconciling any advance credit payments, the premiums and any advance credit payments for the plan in which the shifting enrollee was enrolled are allocated between the enrolling taxpayer and the claiming taxpayer using an allocation percentage. In addition, the temporary regulations provide an alternate calculation that is used to determine each taxpayer's benchmark plan premium when advance credit payments are allocated, using the same allocation percentage.

The enrolling taxpayer and claiming taxpayer may generally agree on any allocation percentage between zero and one hundred percent. For instance, Adult 1 and Adult 2 may determine that the premium attributable to Child is 20 percent of the total premium for Adult 1's family plan, and agree on an allocation percentage of 20 percent. If the claiming taxpayer and enrolling taxpayer do not agree on a percentage, the allocation percentage is equal to the number of shifting enrollees divided by the total number of individuals enrolled by the enrolling taxpayer in the same qualified health plan as the shifting enrollees. In the example above, if Adult 1 and Adult 2 did not agree on an allocation percentage, the allocation percentage would be 25 percent (one, the number of shifting enrollees, divided by four, the total number of individuals enrolled by Adult 1 in the same plan as the shifting enrollee).

In computing the premium tax credit, the claiming taxpayer is allocated a portion of the premiums for the plan in which the enrollee was enrolled equal to the premiums times the allocation percentage. The enrolling taxpayer is allocated the remainder of the premiums. Similarly, in reconciling advance credit payments, the claiming taxpayer is allocated a portion of the advance credit payments for the plan in which the shifting enrollee was enrolled equal to the advance credit payments times the allocation percentage. The enrolling taxpayer is allocated the remainder of these amounts. Advance credit payments are allocated to the claiming taxpayer only if advance credit payments are made for coverage of the shifting enrollee.

Finally, if advance credit payments are allocated under the rules above, the taxpayers, in computing their premium tax credit, must use an alternative calculation to determine their benchmark plan premium. The benchmark plan premium is generally the premium an issuer would charge for the applicable benchmark plan to cover all members of the taxpayer's coverage family, adjusted only for the age of each member of the coverage family. Under the alternative calculation, each taxpayer will first determine the allocable portion of the enrolling taxpayer's benchmark plan premium (allocable portion). The allocable

portion is equal to the product of (1) the allocation percentage and (2) the benchmark plan premium for the enrolling taxpayer's coverage family had the enrolling taxpayer claimed a personal exemption deduction for the shifting enrollee or enrollees for the taxable year. If the enrolling taxpayer's coverage family is enrolled in more than one qualified health plan, the allocable portion is determined as if the enrolling taxpayer's coverage family includes only the family members who enrolled in the same plan as the shifting enrollee or enrollees. The benchmark plan premium for the claiming taxpayer is equal to this allocable portion plus the benchmark plan premium for the claiming taxpayer's coverage family excluding the shifting enrollee or enrollees. The enrolling taxpayer's benchmark plan premium is equal to the benchmark plan premium for the enrolling taxpayer's coverage family had the enrolling taxpayer claimed a personal exemption deduction for the shifting enrollee or enrollees, minus the allocable portion.

4. Reconciliation for Divorced and Separated Taxpayers

The temporary regulations clarify how taxpayers who legally separate or divorce allocate the benchmark plan premium, the premium for the plan in which the taxpayers or their dependents enroll, and the advance credit payments to compute their respective premium tax credit and excess advance credit payments. The final section 36B regulations provide that if just one of the taxpayers is enrolled in the qualified health plan for the married months, all of the items are allocated to that taxpayer, even if the taxpayer's former spouse had one or more dependents also enrolled in the same plan. The temporary regulations expand the circumstances in which the items are allocated between the former spouses to include dependent situations and limit the instances in which all of the items are allocated to just one of the spouses.

Under the temporary regulations, taxpayers who are married (within the meaning of section 7703) to each other during a taxable year but are not married to each other on the last day of the taxable year, and who are enrolled in the same qualified health plan, must allocate the benchmark plan premium, the premium for the plan in which the taxpayers and their dependents enroll, and the advance credit payments for the period the taxpayers are married during the taxable year. In addition, these items must be allocated for periods in which just one of the former spouses is enrolled if one or more dependents of the other former spouse is also enrolled in the plan. The taxpayers may allocate these items to each former spouse in any proportion but must allocate all items in the same proportion. If the taxpayers do not agree on an allocation that is reported to the IRS in accordance with the relevant forms and instructions, 50 percent of each item is allocated to each taxpayer. If a plan covers for a time period only one of the taxpayers and no dependents, only one of the taxpayers and one or more dependents of that same taxpayer, or only one or more dependents of just one of the taxpayers, then the benchmark plan premium, the premium for the plan in which the taxpayers or their dependents enroll, and the advance credit payments for that period are allocated entirely to that taxpayer.

5. Reconciliation for Married Taxpayers Who File Separately

The temporary regulations also amend the reconciliation rules for taxpayers who are married and file separate returns. The final regulations under section 36B provide that a married taxpayer who receives advance credit payments and files an income tax return as married filing separately has received excess advance payments. Under the temporary regulations, a taxpayer who uses a filing status of married filing separately may be allowed a premium tax credit if the taxpayer is a victim of spousal abuse or abandonment. Consequently, in these limited circumstances, a married taxpayer who receives advance credit payments and uses a married filing separately filing status will not have excess advance payments by reason of his or her filing status. The temporary regulations also clarify the manner in which taxpayers reconcile advance credit payments in situations in which the taxpayers indicate that they are married when applying for advance credit payments, but one or both file their tax return using the head of household filing status. Taxpayers who qualify to use the head of household filing status may be eligible for a premium tax credit. In particular, the temporary regulations provide that, in such cases, 50 percent of the advance credit payments for a period of coverage in a qualified health plan are allocated to each taxpayer. However, all of the advance credit payments are allocated to only one of the taxpayers for a period in which a qualified health plan covers only that taxpayer, only that taxpayer and one or more dependents of that taxpayer, or only one or more dependents of that taxpayer. Premiums for the plan in which the taxpayers or their dependents are enrolled are allocated in the same manner whether or not the taxpayers receive advance credit payments. These rules result in the advance credit payments and premiums being allocated in the same proportion to the two taxpayers.

6. Deduction for Health Insurance Costs of Self-Employed Individuals

Under section 162(l), a taxpayer who is an employee within the meaning of section 401(c)(1) (generally, a self-employed individual) is allowed a deduction for all or a portion of the taxpayer's premiums paid during the taxable year for health insurance for the taxpayer, the taxpayer's spouse, the taxpayer's dependents, and any child of the taxpayer under the age of 27. The section 162(l) deduction is allowed in computing adjusted gross income. The deduction allowed under section 162(l) may not exceed the taxpayer's earned income from the trade or business with respect to which the health insurance plan is established. In addition, section 280C(g) provides that no deduction is allowed under section 162(l) for the portion of premiums for a qualified health plan equal to the amount of the premium tax credit determined under section 36B(a) with respect to those premiums.

The temporary regulations provide rules for the interaction between the section 162(l) deduction and both the premium tax credit and the limitation on additional tax under section 36B(f)(2)(B). The temporary regulations provide that a taxpayer is allowed a deduction under section 162(l) for specified premiums not to exceed the lesser of (1) the specified premiums less the premium tax credit attributable to the specified premiums; and (2) the sum of the specified premiums not paid through advance credit payments and the additional tax imposed (if any) under section 36B(f)(2)(A) with respect to the specified premiums after applying the limitation in section 36B(f)(2)(B). Specified premiums means premiums for a specified qualified health plan or plans for which the taxpayer may otherwise claim a deduction under section 162(l). A specified qualified health plan is a qualified health plan, as defined in § 1.36B–1(c), covering the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer (enrolled family member) for a month that is a coverage month within the meaning of § 1.36B–3(c) for the enrolled family member. If a specified qualified health plan covers one or more individuals other than enrolled family members, the specified premiums include only the portion of the premiums for the

specified qualified health plan that is allocable to the enrolled family members under rules similar to § 1.36B–3(h), which provides rules for determining the amount under § 1.36B–3(d)(1) when two families are enrolled in the same qualified health plan.

Although a taxpayer's section 162(l) deduction is limited under section 280C(g) only to the extent of the taxpayer's premium tax credit, some taxpayers with advance payments in excess of their premium tax credit will not have to repay the entire excess because of the limitation on additional tax in section 36B(f)(2)(B). Because the taxpayer does not bear the cost of any portion of the premium that is paid through advance credit payments and that is not subject to repayment due to the limitations, any such amount is treated as an amount of premium tax credit for purposes of section 280C(g).

As a computational matter, the premium tax credit and the limitation on additional tax bear a circular relationship to the section 162(l) deduction that may create challenges for taxpayers. Specifically, the amount of the section 162(l) deduction affects a taxpayer's adjusted gross income, which affects both the premium tax credit and the limitation on additional tax. Conversely, both the premium tax credit and the limitation on additional tax affect the amount a taxpayer spends on health insurance premiums, which in turn affects the taxpayer's section 162(l) deduction.

A taxpayer may resolve the circularity between the section 162(l) deduction and the premium tax credit by taking any position that satisfies the requirements of section 36B, section 162(l) and other applicable tax law and the regulations issued under those sections, including the temporary regulations in this rulemaking.

To address the circularity between the section 162(l) deduction and the limitation on additional tax under section 36B(f)(2)(B) (limitation amount), the temporary regulations provide rules for determining which limitation amount, if any, a taxpayer may use. Taxpayers make this determination before calculating their section 162(l) deduction and premium tax credit. To determine the limitation amount, a taxpayer tests his or her eligibility for each of the limitation amounts that may apply, starting with the lowest, until the taxpayer either determines that he or she qualifies for one of the limitation amounts or exhausts them without qualifying for one. For each limitation amount, the taxpayer qualifies to use that limitation amount if the taxpayer's household income as a percentage of the Federal poverty line, determined by using a section 162(l) deduction equal to the sum of (1) specified premiums, as defined above, not paid through advance credit payments, (2) the limitation amount, and (3) premiums other than specified premiums for which the taxpayer may claim a section 162(l) deduction, is equal to or less than the maximum household income as a percentage of the Federal poverty line for which that limitation amount is available. For example, if a taxpayer's 2014 household income, using a section 162(l) deduction equal to the sum of the specified premiums not paid through advance credit payments and the $600 limitation amount, is less than 200 percent of the Federal poverty line, the taxpayer uses the $600 limitation amount in determining additional tax under section 36B(f)(2)(B). If a taxpayer is unable to qualify for any limitation amount under this rule, the limitation on additional tax under section 36B(f)(2)(B) does not apply to the taxpayer.

A taxpayer who deducts specified premiums under section 162(l) must use the limitation amount determined under this rule notwithstanding that household income as a percentage of the Federal poverty line would, but for this rule, result in a different limitation amount. After a taxpayer determines his or her limitation amount, if any, under this rule, the taxpayer then determines the section 162(l) deduction and premium tax credit under the other rules described above, except using the limitation amount determined under these rules when necessary. These rules apply only for purposes of determining the limitation amount; they do not affect eligibility for the premium tax credit. Thus, it is possible that a taxpayer with household income under 400 percent of the Federal poverty line for the taxpayer's family size may properly claim a premium tax credit but not qualify for a limitation on additional tax.

The temporary regulations further provide that Treasury and IRS may issue additional published guidance to address potential complexities arising from the interaction of the section 36B premium tax credit and the section 162(l) deduction. To provide additional assistance to taxpayers with addressing the circularity between the section 162(l) deduction and the premium tax credit, Rev. Proc. 2014–41 provides calculation methods that a taxpayer may use to determine amounts of the section 162(l) deduction and the premium tax credit. The IRS and Treasury request comments on other methods for simplifying these calculations.

Effective/Applicability Date

For applicability dates, see §§ 1.36B–2T(d), 1.36B–3T(m), 1.36B–4T(c), and 1.162(l)–1T(c). The applicability of these regulations expires on or before July 24, 2017.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Arvind Ravichandran, Shareen Pflanz and Steve Toomey of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.36B–2 is amended by:

■ 1. Revising paragraphs (b)(2) and (c)(3)(v)(C).

■ 2. Adding paragraph (d).

The revisions and additions read as follows:

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(b) * * *

(2) [Reserved]. For further guidance, see § 1.36B–2T(b)(2).

* * * * *

(c) * * *
(3) * * *
(v) * * *
(C) [Reserved]. For further guidance, see § 1.36B–2T(c)(3)(v)(C).
* * * * *
(d) [Reserved]. For further guidance, see § 1.36B–2T(d).

■ **Par. 3.** Section 1.36B–2T is added to read as follows:

§ 1.36B–2T Eligibility for premium tax credit (temporary).

(a) through (b)(1) [Reserved]. For further guidance, see § 1.36B–2(a) through (b)(1).

(2) *Married taxpayers must file joint return*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, a taxpayer who is married (within the meaning of section 7703) at the close of the taxable year is an applicable taxpayer only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(ii) *Victims of domestic abuse and abandonment.* Except as provided in paragraph (b)(2)(v) of this section, a married taxpayer satisfies the joint filing requirement of paragraph (b)(2)(i) of this section if the taxpayer files a tax return using a filing status of married filing separately and the taxpayer—

(A) Is living apart from the taxpayer's spouse at the time the taxpayer files the tax return;

(B) Is unable to file a joint return because the taxpayer is a victim of domestic abuse, as described in paragraph (b)(2)(iii) of this section, or spousal abandonment, as described in paragraph (b)(2)(iv) of this section; and

(C) Certifies on the return, in accordance with the relevant instructions, that the taxpayer meets the criteria of this paragraph (b)(2)(ii).

(iii) *Domestic abuse.* For purposes of paragraph (b)(2)(ii) of this section, domestic abuse includes physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate, or to undermine the victim's ability to reason independently. All the facts and circumstances are considered in determining whether an individual is abused, including the effects of alcohol or drug abuse by the victim's spouse. Depending on the facts and circumstances, abuse of the victim's child or another family member living in the household may constitute abuse of the victim.

(iv) *Abandonment.* For purposes of paragraph (b)(2)(ii) of this section, a taxpayer is a victim of spousal abandonment for a taxable year if, taking into account all facts and circumstances, the taxpayer is unable to locate his or her spouse after reasonable diligence.

(v) *Three-year rule.* Paragraph (b)(2)(ii) of this section does not apply if the taxpayer met the requirements of paragraph (b)(2)(ii) of this section for each of the three preceding taxable years.

(b)(3) through (c)(3)(v)(B) [Reserved]. For further guidance, see § 1.36B–2(b)(3) through (c)(3)(v)(B).

(C) *Required contribution percentage.* The required contribution percentage is 9.5 percent. For plan years beginning in a calendar year after 2014, the percentage will be adjusted by the ratio of premium growth to income growth for the preceding calendar year and may be further adjusted to reflect changes to the data used to compute the ratio of premium growth to income growth for the 2014 calendar year or the data sources used to compute the ratio of premium growth to income growth. Premium growth and income growth will be determined under published guidance, see § 601.601(d)(2) of this chapter. In addition, the percentage may be adjusted for plan years beginning in a calendar year after 2018 to reflect rates of premium growth relative to growth in the consumer price index.

(c)(3)(v)(D) through (c)(4) [Reserved]. For further guidance, see § 1.36B–2(c)(3)(v)(D) through (c)(4).

(d) *Effective/applicability date.* Paragraphs (b)(2) and (c)(3)(v)(C) of this section apply to taxable years beginning after December 31, 2013.

(e) *Expiration date.* Paragraphs (b)(2) and (c)(3)(v)(C) of this section expire on July 24, 2017.

■ **Par. 4.** Section 1.36B–3 is amended by:
■ 1. Revising paragraph (g)(1).
■ 2. Adding paragraph (m).

The revisions and additions read as follows:

§ 1.36B–3 Computing the premium assistance credit amount.

* * * * *
(g) * * *
(1) [Reserved]. For further guidance, see § 1.36B–3T(g)(1).
* * * * *
(m) [Reserved]. For further guidance, see § 1.36B–3T(m).

■ **Par. 5.** Section 1.36B–3T is added to read as follows:

§ 1.36B–3T Computing the premium assistance credit amount (temporary).

(a) through (f) [Reserved]. For further guidance, see § 1.36B–3(a) through (f).

(g) *Applicable percentage*—(1) *In general.* The applicable percentage multiplied by a taxpayer's household income determines the taxpayer's annual required share of premiums for the benchmark plan. The required share is divided by 12 and this monthly amount is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. The applicable percentage is computed by first determining the percentage that the taxpayer's household income bears to the Federal poverty line for the taxpayer's family size. The resulting Federal poverty line percentage is then compared to the income categories described in the table in paragraph (g)(2) of this section (or successor tables). An applicable percentage within an income category increases on a sliding scale in a linear manner and is rounded to the nearest one-hundredth of one percent. For taxable years beginning after December 31, 2014, the applicable percentages in the table will be adjusted by the ratio of premium growth to income growth for the preceding calendar year and may be further adjusted to reflect changes to the data used to compute the ratio of premium growth to income growth for the 2014 calendar year or the data sources used to compute the ratio of premium growth to income growth. Premium growth and income growth will be determined in accordance with published guidance, see § 601.601(d)(2) of this chapter. In addition, the applicable percentages in the table may be adjusted for taxable years beginning after December 31, 2018, to reflect rates of premium growth relative to growth in the consumer price index.

(g)(2) through (l) [Reserved]. For further guidance, see § 1.36B–3(g)(2) through (l).

(m) *Effective/applicability date.* Paragraph (g)(1) of this section applies to taxable years beginning after December 31, 2013.

(n) *Expiration date.* Paragraph (g)(1) of this section expires on July 24, 2017.

■ **Par. 6.** Section 1.36B–4 is amended by:
■ 1. Revising paragraph (a)(1)(ii).
■ 2. Adding paragraph (a)(3)(iii).
■ 3. In paragraph (a)(4), revising *Example 4* and adding *Examples 10, 11, 12, 13,* and *14.*
■ 4. Revising paragraphs (b)(3) and (b)(4).
■ 5. Removing paragraph (b)(5).
■ 6. Redesignating paragraph (b)(6) as paragraph (b)(5), and revising *Example 9,* and adding Example 10 to newly redesignated paragraph (b)(5).
■ 7. Adding paragraph (c).

The revisions and additions read as follows:

§ 1.36B–4 Reconciling the premium tax credit with advance credit payments.

(a) * * * (1) * * *

(ii) [Reserved]. For further guidance, see § 1.36B–4T(a)(1)(ii).

* * * * *

(3) * * *

(iii) [Reserved]. For further guidance, see § 1.36B–4T(a)(3)(iii).

(4) * * *

Example 4. [Reserved]. For further guidance, see § 1.36B–4T(a)(4), *Example 4.*

* * * * *

Example 10. [Reserved]. For further guidance, see § 1.36B–4T(a)(4), *Example 10.*

Example 11. [Reserved]. For further guidance, see § 1.36B–4T(a)(4), *Example 11.*

Example 12. [Reserved]. For further guidance, see § 1.36B–4T(a)(4), *Example 12.*

Example 13. [Reserved]. For further guidance, see § 1.36B–4T(a)(4), *Example 13.*

Example 14. [Reserved]. For further guidance, see § 1.36B–4T(a)(4), *Example 14.*

(b) * * *

(3) [Reserved]. For further guidance, see § 1.36B–4T(b)(3).

(4) [Reserved]. For further guidance, see § 1.36B–4T(b)(4).

(5) * * *

Example 9. [Reserved]. For further guidance, see § 1.36B–4T(b)(5), *Example 9.*

Example 10. [Reserved]. For further guidance, see § 1.36B–4T(b)(5), *Example 10.*

* * * * *

(c) [Reserved]. For further guidance, see § 1.36B–4T(c).

■ **Par. 7.** Section 1.36B–4T is added to read as follows:

§ 1.36B–4T Reconciling the premium tax credit with advance credit payments (temporary).

(a)(1)(i) [Reserved]. For further guidance, see § 1.36B–4(a)(1)(i).

(ii) *Allocation rules and responsibility for advance credit payments*—(A) *In general.* A taxpayer must reconcile all advance credit payments for coverage of any member of the taxpayer's family.

(B) *Individuals enrolled by a taxpayer and claimed as a personal exemption deduction by another taxpayer*—(*1*) *In general.* If a taxpayer (the enrolling taxpayer) enrolls an individual in a qualified health plan and another taxpayer (the claiming taxpayer) claims a personal exemption deduction for the individual (the shifting enrollee), then for purposes of computing each taxpayer's premium tax credit and reconciling any advance credit payments, the premiums and advance credit payments for the plan in which the shifting enrollee was enrolled are allocated under this paragraph (a)(1)(ii)(B) according to the allocation percentage described in paragraph (a)(1)(ii)(B)(*2*) of this section. If advance credit payments are allocated under paragraph (a)(1)(ii)(B)(*4*) of this section, the claiming taxpayer and enrolling taxpayer must use this same allocation percentage to calculate their § 1.36B–3(d)(2) adjusted monthly premiums for the applicable benchmark plan (benchmark plan premiums). This paragraph (a)(1)(ii)(B) does not apply to amounts allocated under § 1.36B–3(h) (qualified health plan covering more than one family) or if the shifting enrollee or enrollees are the only individuals enrolled in the qualified health plan. For purposes of this paragraph (a)(1)(ii)(B)(*1*), a taxpayer who is expected at enrollment in a qualified health plan to be the taxpayer filing an income tax return for the year of coverage with respect to an individual enrolling in the plan has enrolled that individual.

(*2*) *Allocation percentage.* The enrolling taxpayer and claiming taxpayer may agree on any allocation percentage between zero and one hundred percent. If the enrolling taxpayer and claiming taxpayer do not agree on an allocation percentage, the percentage is equal to the number of shifting enrollees claimed as a personal exemption deduction by the claiming taxpayer divided by the number of individuals enrolled by the enrolling taxpayer in the same qualified health plan as the shifting enrollee.

(*3*) *Allocating premiums.* In computing the premium tax credit, the claiming taxpayer is allocated a portion of the premiums for the plan in which the shifting enrollee was enrolled equal to the premiums for the plan times the allocation percentage. The enrolling taxpayer is allocated the remainder of the premiums not allocated to one or more claiming taxpayers.

(*4*) *Allocating advance credit payments.* In reconciling any advance credit payments, the claiming taxpayer is allocated a portion of the advance credit payments for the plan in which the shifting enrollee was enrolled equal to the enrolling taxpayer's advance credit payments for the plan times the allocation percentage. The enrolling taxpayer is allocated the remainder of the advance credit payments not allocated to one or more claiming taxpayers. This paragraph (a)(1)(ii)(B)(*4*) only applies in situations in which advance credit payments are made for coverage of a shifting enrollee.

(*5*) *Premiums for the applicable benchmark plan.* If paragraph (a)(1)(ii)(B)(*4*) of this section applies, the claiming taxpayer's benchmark plan premium is the sum of the benchmark plan premium for the claiming taxpayer's coverage family, excluding the shifting enrollee or enrollees, and the allocable portion. The allocable portion for purposes of this paragraph (a)(1)(ii)(B)(*5*) is the product of the benchmark plan premium for the enrolling taxpayer's coverage family if the shifting enrollee was a member of the enrolling taxpayer's coverage family and the allocation percentage. If the enrolling taxpayer's coverage family is enrolled in more than one qualified health plan, the allocable portion is determined as if the enrolling taxpayer's coverage family includes only the coverage family members who enrolled in the same plan as the shifting enrollee or enrollees. The enrolling taxpayer's benchmark plan premium is the benchmark plan premium for the enrolling taxpayer's coverage family had the shifting enrollee or enrollees remained a part of the enrolling taxpayer's coverage family, minus the allocable portion.

(C) *Responsibility for advance credit payments for an individual for whom no personal exemption deduction is claimed.* If advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who attested to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the advance credit payment eligibility determination for coverage of the individual must reconcile the advance credit payments.

(a)(1)(iii) through (a)(3)(ii) [Reserved]. For further guidance, see § 1.36B–4(a)(1)(iii) through (a)(3)(ii).

(iii) *Limitation on additional tax for taxpayers who claim a section 162(l) deduction for a qualified health plan*—(A) *In general.* A taxpayer who receives advance credit payments and deducts premiums for a qualified health plan under section 162(l) must use paragraphs (a)(3)(iii)(B) and (C) of this section to determine the limitation on additional tax in this paragraph (a)(3) (limitation amount). Taxpayers must make this determination before calculating their section 162(l) deduction and premium tax credit. For additional rules for taxpayers who may claim a deduction under section 162(l) for a qualified health plan for which advance credit payments are made, see § 1.162(l)–1T.

(B) *Determining the limitation amount.* A taxpayer described in paragraph (a)(3)(iii)(A) of this section must use the limitation amount for which the taxpayer qualifies under the requirements of paragraph (a)(3)(iii)(C) of this section. The limitation amount determined under this paragraph (a)(3)(iii) replaces the limitation amount that would otherwise be determined under the additional tax limitation table in paragraph (a)(3)(ii) of this section. In applying paragraph (a)(3)(iii)(C) of this section, a taxpayer must first determine whether he or she qualifies for the limitation amount applicable to taxpayers with household income of less than 200 percent of the Federal poverty line for the taxpayer's family size. If the taxpayer is unable to meet the requirements of paragraph (a)(3)(iii)(C) of this section for that limitation amount, the taxpayer must next determine whether he or she qualifies for the limitation applicable to taxpayers with household income of less than 300 percent of the Federal poverty line for the taxpayer's family size. If the taxpayer is unable to meet the requirements of paragraph (a)(3)(iii)(C) of this section for taxpayers with household income of less than 300 percent of the Federal poverty line for the taxpayer's family size, the taxpayer must next determine whether he or she qualifies for the limitation applicable to taxpayers with household income of less than 400 percent of the Federal poverty line for the taxpayer's family size. If the taxpayer is unable to meet the requirements of paragraph (a)(3)(iii)(C) of this section for any limitation amount, the limitation on additional tax under section 36B(f)(2)(B) does not apply to the taxpayer.

(C) *Requirements.* A taxpayer meets the requirements of this paragraph (a)(3)(iii)(C) for a limitation amount if the taxpayer's household income as a percentage of the Federal poverty line is less than or equal to the maximum household income as a percentage of the Federal poverty line for which that limitation is available. Household income for this purpose is determined by using a section 162(l) deduction equal to the sum of the specified premiums for the plan not paid through advance credit payments and the limitation amount in addition to any deduction allowable under section 162(l) for premiums other than specified premiums. For purposes of this paragraph (a)(3)(iii)(C), specified premiums not paid through advance credit payments means specified premiums, as defined in § 1.162(l)–1T(a)(2), minus advance credit payments made with respect to the specified premiums.

(D) *Examples.* For examples illustrating the rules of this paragraph (a)(3)(iii), see *Examples 13* and *14* of paragraph (a)(4) of this section.

(a)(4), *Example 1,* through *Example 3* [Reserved]. For further guidance, see § 1.36B–4(a)(4), *Example 1* through *Example 3.*

Example 4. Family size decreases. (i) Taxpayers B and C are married and have two children, K and L (ages 17 and 20), whom they claim as dependents in 2013. The Exchange for their rating area projects their 2014 household income to be $63,388 (275 percent of the Federal poverty line for a family of four, applicable percentage 8.78). B and C enroll in a qualified health plan for 2014 that covers the four family members. The annual premium for the applicable benchmark plan is $14,100. B's and C's advance credit payments for 2014 are $8,535, computed as follows: benchmark plan premium of $14,100 less contribution amount of $5,565 (projected household income of $63,388 × .0878) = $8,535.

(ii) In 2014, B and C do not claim L as their dependent (and no taxpayer claims a personal exemption deduction for L). Consequently, B's and C's family size for 2014 is three, their household income of $63,388 is 332 percent of the Federal poverty line for a family of three (applicable percentage 9.5), and the annual premium for their applicable benchmark plan is $12,000. Their premium tax credit for 2014 is $5,978 ($12,000 benchmark plan premium less $6,022 contribution amount (household income of $63,388 × .095)). Because B's and C's advance credit payments for 2014 are $8,535 and their 2014 credit is $5,978, B and C have excess advance payments of $2,557. B's and C's additional tax liability for 2014 under paragraph (a)(1) of this section, however, is limited to $2,500 under paragraph (a)(3) of this section.

Example 5 through *Example 9* [Reserved]. For further guidance, see 1.36B–4(a)(4), *Example 5* through *Example 9.*

Example 10. Allocation percentage, agreement on allocation. (i) Taxpayers G and H are divorced and have two children, J and K. G enrolls herself and J and K in a qualified health plan for 2014. The premium for the plan in which G enrolls is $13,000. The Exchange in G's rating area approves advance credit payments for G based on a family size of three, an annual benchmark plan premium of $12,000 and projected 2014 household income of $58,590 (300 percent of the Federal poverty line for a family of three, applicable percentage 9.5). G's advance credit payments for 2014 are $6,434 ($12,000 benchmark plan premium less $5,566 contribution amount (household income of $58,590 × .095)). G's actual household income for 2014 is $58,900.

(ii) K lives with H for more than half of 2014 and H claims K as a dependent for 2014. G and H agree to an allocation percentage, as described in paragraph (a)(1)(ii)(B)(*2*) of this section, of 20 percent. Under the agreement, H is allocated 20 percent of the items to be allocated and G is allocated the remainder of those items.

(iii) If H is eligible for a premium tax credit, H takes into account $2,600 of the premiums for the plan in which K was enrolled ($13,000 × .20) and $2,400 of G's benchmark plan premium ($12,000 × .20). In addition, H is responsible for reconciling $1,287 ($6,434 × .20) of the advance credit payments for K's coverage.

(iv) G's family size for 2014 includes only G and J and G's household income of $58,900 is 380 percent of the Federal poverty line for a family of two (applicable percentage 9.5). G's benchmark plan premium for 2014 is $9,600 (the benchmark premium for the plan covering G, J and K ($12,000), minus the amount allocated to H ($2,400). Consequently, G's premium tax credit is $4,004 (G's benchmark plan premium of $9,600 minus G's contribution amount of $5,596 ($58,900 × .095)). G has an excess advance payment of $1,143 (the excess of the advance credit payments of $5,147 ($6,434 − $1,287 allocated to H) over the premium tax credit of $4,004).

Example 11. Allocation percentage, no agreement on allocation. (i) The facts are the same as in *Example 10,* except that G and H do not agree on an allocation percentage. Under paragraph (a)(1)(ii)(B)(*2*) of this section, the allocation percentage is 33 percent, computed as follows: The number of shifting enrollees, 1 (K), divided by the number of individuals enrolled by the enrolling taxpayer on the same qualified health plan as the shifting enrollee, 3 (G,J, and K). Thus, H is allocated 33 percent of the items to be allocated and G is allocated the remainder of those items.

(ii) If H is eligible for a premium tax credit, H takes into account $4,290 of the premiums for the plan in which K was enrolled ($13,000 × .33). H, in computing H's benchmark plan premium must include $3,960 of G's benchmark plan premium ($12,000 × .33). In addition, H is responsible for reconciling $2,123 ($6,434 × .33) of the advance credit payments for K's coverage.

(iii) G's benchmark plan premium for 2014 is $8,040 (the benchmark premium for the plan covering G, J, and K ($12,000), minus the amount allocated to H ($3,960). Consequently, G's premium tax credit is $2,444 (G's benchmark plan premium of $8,040 minus G's contribution amount of $5,596 ($58,900 × .095)). G has an excess advance credit payment of $1,867 (the excess of the advance credit payments of $4,311 ($6,434 − $2,123 allocated to H) over the premium tax credit of $2,444).

Example 12. Allocations for an emancipated child. Spouses L and M enroll in a qualified health plan with their child, N. L and M attest that they will claim N as a dependent and advance credit payments are made for the coverage of all three family members. However, N files his own return and claims a personal exemption deduction for himself for the taxable year. Under paragraph (a)(1)(ii)(B)(*1*) of this section, L and M are enrolling taxpayers, N is a claiming taxpayer and all are subject to the allocation rules in paragraph (a)(1)(ii)(B) of this section.

Example 13. Taxpayer with advance credit payments allowed a section 162(l) deduction but not a limitation on additional tax. (i) In 2014, B, B's spouse, and their two dependents enroll in the applicable second lowest cost silver plan with an annual premium of $14,000. B's advance credit payments attributable to the premiums are $8,000. B is self-employed for all of 2014 and derives $75,000 of earnings from B's trade or business. B's household income without including a deduction under section 162(l) for specified premiums is $103,700. The Federal poverty line for a family the size of B's family is $23,550.

(ii) Because B received advance credit payments and deducts premiums for a qualified health plan under section 162(l), B must determine whether B is allowed a limitation on additional tax under paragraph (a)(3)(iii) of this section. B begins by testing eligibility for the $600 limitation amount for taxpayers with household income at less than 200 percent of the Federal poverty line for the taxpayer's family size. B determines household income as a percentage of the Federal poverty line by taking a section 162(l) deduction equal to the sum of the amount of premiums not paid through advance credit payments, $6,000 ($14,000 − $8,000), and the limitation amount, $600. The result is $97,100 ($103,700 − $6,600) or 412 percent of the Federal poverty line for B's family size. Since 412 percent is not less than 200 percent, B may not use a $600 limitation amount.

(iii) B performs the same calculation for the $1,500 ($103,700 − $7,500 = $96,200 or 408 percent of the Federal poverty line) and $2,500 limitation amounts ($103,700 − $8,500 = $95,200 or 404 percent of the Federal poverty line), the amounts for taxpayers with household income of less than 300 percent or 400 percent, respectively, of the Federal poverty line for the taxpayer's family size, and determines that B may not use either of those limitation amounts. Because B does not meet the requirements of paragraph (a)(3)(iii) of this section for any of the limitation amounts in section 36B(f)(2)(B), B is not eligible for the limitation on additional tax for excess advance credit payments.

(iv) Although B may not claim a limitation on additional tax for excess advance credit payments, B may still be eligible for a premium tax credit. B would determine eligibility for the premium tax credit and the amounts of the premium tax credit and the section 162(l) deduction using other rules, including the regulations under section 36B and section 162(l), applying no limitation on additional tax.

Example 14. Taxpayer with advance credit payments allowed a section 162(l) deduction and a limitation on additional tax. (i) Same facts as Example 13, except that B's household income without including a deduction under section 162(l) for specified premiums is $78,802.

(ii) Because B received advance credit payments and deducts premiums for a qualified health plan under section 162(l), B must determine whether B is allowed a limitation on additional tax under paragraph (a)(3)(iii) of this section. B first determines that B does not meet the requirements of paragraph (a)(3)(iii)(C) of this section for using the $600 or $1,500 limitation amounts, the amounts for taxpayers with household income of less than 200 percent or 300 percent, respectively, of the Federal poverty line for the taxpayer's family size. That is because B's household income as a percentage of the Federal poverty line, determined by using a section 162(l) deduction for premiums for the qualified health plan equal to the sum of the premiums for the plan not paid through advance credit payments and the limitation amount, is more than the maximum household income as a percentage of the Federal poverty line for which that limitation is available (using the $600 limitation, B's household income would be $72,202 ($78,802 − ($6,000 + $600)), which is 307 percent of the Federal poverty line for B's family size; and using the $1,500 limitation, B's household income would be $71,302 ($78,802 − ($6,000 + $1,500)), which is 303 percent of the Federal poverty line for B's family size).

(iii) However, B meets the requirements of paragraph (a)(3)(iii)(C) of this section using the $2,500 limitation amount for taxpayers with household income of less than 400 percent of the Federal poverty line for the taxpayer's family size. This is because B's household income as a percentage of the Federal poverty line by taking a section 162(l) deduction equal to the sum of the amount of premiums not paid through advance credit payments, $6,000, and the limitation amount, $2,500, is $70,302 (299 percent of the Federal poverty line), which is below 400 percent of the Federal poverty line for B's family size, and is less than the maximum amount for which that limitation is available. Thus, B uses a limitation amount of $2,500 in computing B's additional tax on excess advance credit payments.

(iv) B may then determine the amount of the premium tax credit and section 162(l) deduction using the rules under section 36B and section 162(l), applying the $2,500 limitation amount determined above.

(b)(1) through (b)(2) [Reserved]. For further guidance, see § 1.36B–4(b)(1) through (b)(2).

(3) *Taxpayers not married to each other at the end of the taxable year.* Taxpayers who are married (within the meaning of section 7703) to each other during a taxable year but legally separate under a decree of divorce or of separate maintenance during the taxable year, and who are enrolled in the same qualified health plan at any time during the taxable year must allocate the benchmark plan premium, the premium for the plan in which the taxpayers enroll, and the advance credit payments for the period the taxpayers are married during the taxable year. Taxpayers must also allocate these items if one of the taxpayers has a dependent enrolled in the same plan as the taxpayer's former spouse or enrolled in the same plan as a dependent of the taxpayer's former spouse. The taxpayers may allocate these items to each former spouse in any proportion but must allocate all items in the same proportion. If the taxpayers do not agree on an allocation that is reported to the IRS in accordance with the relevant forms and instructions, 50 percent of the premium for the applicable benchmark plan, the premium for the plan in which the taxpayers enroll, and the advance credit payments for the married period are allocated to each taxpayer. If for a period a plan covers only one of the taxpayers and no dependents, only one of the taxpayers and one or more dependents of that same taxpayer, or only one or more dependents of one of the taxpayers, then the benchmark plan premium, the premium for the plan in which the taxpayers enroll, and the advance credit payments for that period are allocated entirely to that taxpayer.

(4) *Taxpayers filing returns as married filing separately or head of household*—(i) *Allocation of advance credit payments.* Except as provided in § 1.36B–2(b)(2)(ii), the premium tax credit is allowed to married (within the meaning of section 7703) taxpayers only if they file joint returns. See § 1.36B–2(b)(2)(i). Taxpayers who receive advance credit payments as married taxpayers and do not file a joint return must allocate the advance credit payments for coverage under a qualified health plan equally to each taxpayer for any period the plan covers and advance credit payments are made for both taxpayers, only one of the taxpayers and one or more dependents of the other taxpayer, or one or more dependents of both taxpayers. If for a period a plan covers or advance credit payments are made for only one of the taxpayers and no dependents, only one of the taxpayers and one or more dependents of that same taxpayer, or only one or more dependents of one of the taxpayers, the advance credit payments for that period are allocated entirely to that taxpayer. If one or both of the taxpayers is an applicable taxpayer eligible for a premium tax credit for the taxable year, the premium tax credit is computed by allocating the premiums for the plan in which the taxpayers or their family members enroll under paragraph (b)(4)(ii) of this section. The repayment limitation described in paragraph (a)(3) of this section applies to each taxpayer based on the household income and family size reported on that taxpayer's return. This paragraph (b)(4) also applies to taxpayers who receive advance credit payments as married taxpayers and file a tax return using the head of household filing status.

(ii) *Allocation of premiums.* If taxpayers who are married within the meaning of section 7703, without regard

to section 7703(b), do not file a joint return, 50 percent of the premiums for a period of coverage in a qualified health plan are allocated to each taxpayer. However, all of the premiums are allocated to only one of the taxpayers for a period in which a qualified health plan covers only that taxpayer, only that taxpayer and one or more dependents of that taxpayer, or only one or more dependents of that taxpayer.

(b)(5), *Example 1* through *Example 8* [Reserved]. For further guidance, see § 1.36B–4(b)(5), *Example 1* through *Example 8.*

Example 9. (i) The facts are the same as in *Example 8,* except that X and Y live apart for over 6 months of the year and X properly files an income tax return as head of household. Under section 7703(b), X is treated as unmarried and therefore is not required to file a joint return. If X otherwise qualifies as an applicable taxpayer, X may claim the premium tax credit based on the household income and family size X reports on the return. Y is not an applicable taxpayer and is not eligible to claim the premium tax credit.

(ii) X must reconcile the amount of credit with advance credit payments under paragraph (a) of this section. The premium for the applicable benchmark plan covering X and his two dependents is $9,800. X's premium tax credit is computed as follows: $9,800 benchmark plan premium minus X's contribution amount of $5,700 ($60,000 × .095) equals $4,100.

(iii) Under paragraph (b)(4) of this section, half of the advance payments ($6,880/2 = $3,440) is allocated to X and half is allocated to Y. Thus, X is entitled to $660 additional premium tax credit ($4,100 − $3,440). Y has $3,440 excess advance payments, which is limited to $600 under paragraph (a)(3) of this section.

Example 10. (i) A is married to B at the close of 2014 and they have no dependents. A and B are enrolled in a qualified health plan for 2014 with an annual premium of $10,000 and advance credit payments of $6,500. A is not eligible for minimum essential coverage (other than coverage described in section 5000A(f)(1)(C)) for any month in 2014. A is a victim of domestic abuse as described in § 1.36B–2(b)(2)(iii). At the time A files her tax return for 2014, A is unable to file a joint return with B for 2014 because of the domestic abuse. A certifies on her 2014 return, in accordance with relevant instructions, that she is living apart from B and is unable to file a joint return because of domestic abuse. Thus, under § 1.36B–2(b)(2)(ii), A satisfies the joint return filing requirement in section 36B(c)(1)(C) for 2014.

(ii) A's family size for 2014 for purposes of computing the premium tax credit is one and A is the only member of her coverage family. Thus, A's benchmark plan for all months of 2014 is the second lowest cost silver plan offered by the Exchange for A's rating area that covers A. A's household income includes only A's modified adjusted gross income. Under paragraph (b)(4)(ii) of this section, A takes into account $5,000 ($10,000 × .50) of the premiums for the plan in which she was enrolled in determining her premium tax credit. Further, A must reconcile $3,250 ($6,500 × .50) of the advance credit payments for her coverage under paragraph (b)(4)(i) of this section.

(c) *Effective/applicability date.* Paragraphs (a)(1)(ii), (a)(3)(iii), (a)(4), *Examples 4, 10, 11, 12, 13,* and *14,* (b)(3), (b)(4), and (b)(5), *Examples 9* and *10* apply to taxable years beginning after December 31, 2013.

(d) *Expiration date.* Paragraphs (a)(1)(ii), (a)(3)(iii), (a)(4), *Examples 4, 10, 11, 12, 13,* and *14,* (b)(3), (b)(4), and (b)(5), *Examples 9* and *10* expire on July 24, 2017.

■ **Par. 8.** Section 1.162(l)–1T is added to read as follows:

§ 1.162(l)–1T Deduction for health insurance costs of self-employed individuals (temporary).

(a) *Coordination of section 162(l) deduction for taxpayers subject to section 36B*—(1) *In general.* A taxpayer is allowed a deduction under section 162(l) for specified premiums, as defined in paragraph (a)(2) of this section, not to exceed an amount equal to the lesser of—

(i) The specified premiums less the premium tax credit attributable to the specified premiums; and

(ii) The sum of the specified premiums not paid through advance credit payments, as described in paragraph (a)(3) of this section, and the additional tax (if any) imposed under section 36B(f)(2)(A) and § 1.36B–4(a)(1) with respect to the specified premiums after application of the limitation on additional tax in section 36B(f)(2)(B) and § 1.36B–4(a)(3).

(2) *Specified premiums.* For purposes of paragraph (a)(1) of this section, specified premiums means premiums for a specified qualified health plan or plans for which the taxpayer may otherwise claim a deduction under section 162(l). For purposes of this paragraph (a)(2), a specified qualified health plan is a qualified health plan, as defined in § 1.36B–1(c), covering the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer (enrolled family member) for a month that is a coverage month within the meaning of § 1.36B–3(c) for the enrolled family member. If a specified qualified health plan covers individuals other than enrolled family members, the specified premiums include only the portion of the premiums for the specified qualified health plan that is allocable to the enrolled family members under rules similar to § 1.36B–3(h), which provides rules for determining the amount under § 1.36B–3(d)(1) when two families are enrolled in the same qualified health plan.

(3) *Specified premiums not paid through advance credit payments.* For purposes of paragraph (a)(1)(ii) of this section, specified premiums not paid through advance credit payments equal the amount of the specified premiums minus the advance credit payments attributable to the specified premiums.

(b) *Additional guidance.* The Secretary may provide by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) additional guidance on coordinating the deduction allowed under section 162(l) and the credit provided under section 36B.

(c) *Effective/applicability date.* This section applies for taxable years beginning after December 31, 2013.

(d) *Expiration date.* This section expires on July 24, 2017.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: July 22, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–17695 Filed 7–24–14; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 51 and 602

[TD 9684]

RIN 1545–BJ39

Branded Prescription Drug Fee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations, temporary regulations, and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on the annual fee imposed on covered entities engaged in the business of manufacturing or importing branded prescription drugs. This fee was enacted by section 9008 of the Patient Protection and Affordable Care Act, as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010. This document also withdraws the Branded Prescription Drug Fee temporary regulations and contains new temporary regulations regarding the definition of controlled group that apply beginning on January 1, 2015. The final regulations and the new temporary

regulations affect persons engaged in the business of manufacturing or importing certain branded prescription drugs. The text of the temporary regulations in this document also serves as the text of proposed regulations set forth in a notice of proposed rulemaking (REG–123286–14) on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 28, 2014.

Applicability Date: For dates of applicability, see §§ 51.11, 51.11T, and 51.6302–1(b).

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh at (202) 317–6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget under control number 1545–2209. The collection of information in these final regulations is in §§ 51.2(f)(2) and 51.7. Section 51.2(f)(2) requires consents to be maintained, in the case of a controlled group that is not an affiliated group, by the designated entity and each member of the controlled group. Section § 51.7 requires a covered entity that chooses to dispute its preliminary fee calculation to provide certain information.

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 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 section 6103 of the Internal Revenue Code.

Background

This document contains final regulations that provide guidance under section 9008 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively the ACA). All references in this preamble to section 9008 are references to section 9008 of the ACA. Section 9008 did not amend the Internal Revenue Code (Code) but cross-references specified Code sections.

On November 29, 2010, the IRS released Notice 2010–71, 2010–50 IRB 822, which proposed an approach to implementing the section 9008 fee and requested comments on the proposed approach. The proposed approach included an opportunity to report certain information to the IRS relevant to the fee calculation and provided that the IRS would provide each covered entity with notice of a preliminary fee calculation. This notice was modified and superseded by Notice 2011–9, 2011–6 IRB 459, which was released on January 14, 2011.

On August 18, 2011, the **Federal Register** published temporary regulations relating to the fee on branded prescription drugs (TD 9544, 76 FR 51245). The **Federal Register** also published on the same day a notice of proposed rulemaking (REG–112805–10, 76 FR 51310) cross-referencing the temporary regulations (the proposed regulations).

In response to the proposed regulations, the Department of the Treasury (Treasury Department) and the IRS received a variety of comments from the public. All written comments are available at *www.regulations.gov* or upon request. The Treasury Department and the IRS held a public hearing on November 9, 2012. After considering the public comments and the hearing testimony, the final regulations adopted by this Treasury decision are generally consistent with the proposed regulations and also reflect certain minor changes as described in this preamble. The corresponding temporary regulations are removed. The final regulations and the new temporary regulations are discussed in this preamble.

All references to section 505 are references to section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)). Unless otherwise indicated, all other references to subtitles, chapters, subchapters, and sections in this preamble are references to subtitles, chapters, subchapters, and sections in the Code and related regulations. All references to ''fee'' in the final regulations are references to the fee imposed by section 9008 of the ACA.

Effect on Other Documents

The following publications are obsolete as of July 28, 2014:

Notice 2010–71, 2010–51 IRB 822, and Notice 2011–9, 2011–6 IRB 459.

Explanation of Provisions and Summary of Comments

Definitions

Manufacturer or Importer

Section 9008(d)(1) defines covered entity as any manufacturer or importer with gross receipts from branded prescription drug sales. Section 9008(e) defines branded prescription drug sales to mean sales of branded prescription drugs to any specified government programs or pursuant to coverage under such programs. These programs are the Medicare Part B program, the Medicare Part D program, the Medicaid program, any program under which branded prescription drugs are procured by the Department of Veterans Affairs, any program under which branded prescription drugs are procured by the Department of Defense, and the TRICARE retail pharmacy program (collectively, the Programs).

The temporary regulations defined a manufacturer or importer of a branded prescription drug as the person identified in the Labeler Code of the National Drug Code (NDC). The NDC is a unique identifier that is assigned to all drug products approved by the Food and Drug Administration (FDA), including a branded prescription drug. The Labeler Code is the first five numeric characters of the NDC or the first six numeric characters when the available five-character code combinations are exhausted.

Commenters asked the IRS to allocate drug sales to an entity other than the person identified in the Labeler Code of a drug's NDC when a covered entity transfers a drug to another covered entity during the sales year or engages in a transaction, such as a reorganization or a bankruptcy, that results in a different entity selling the drug. The final regulations do not adopt this request. A rule that uses the Labeler Code to identify the manufacturer or importer of a branded prescription drug provides certainty for both covered entities and the IRS. The FDA maintains a database that is available on the FDA Web site with information about each NDC, including its Labeler Code, which is assigned by the FDA. The IRS refers to this database to identify the person in the NDC's Labeler Code. The IRS encourages covered entities to review and update their NDC data with the FDA to reflect changes in the manufacturer or importer of a branded prescription drug.

Covered Entity and Adjustment Amount

To be a covered entity, a manufacturer or importer must have gross receipts from branded prescription drug sales. Section 9008(b)(1) requires the IRS to calculate each covered entity's fee each fee year using sales data from the preceding calendar year. Pursuant to section 9008(g), the Centers for Medicare and Medicaid Services of the Department of Health and Human Services (CMS), the Department of

Veterans Affairs (VA), and the Department of Defense (DOD) (collectively, the Agencies) provide sales data to the IRS. For purposes of calculating the fee, the temporary regulations used the second calendar year preceding the fee year as the sales year. This rule is necessary because CMS cannot complete its data processing within the necessary time frame. The temporary regulations further provided that, because the use of the second preceding year as the sales year, rather than the immediately preceding year, may affect the amount of the fee paid by a covered entity, the annual fee due in every year after 2011 will include an adjustment amount. This amount will be added (or subtracted), as appropriate, to (or from) the fee otherwise payable by the covered entity in the fee year in which the adjustment is calculated. Because CMS cannot complete its data processing any earlier, the final regulations adopt this approach.

A commenter asserted that, under the temporary regulations, a former covered entity may not be eligible for an adjustment amount if the entity does not have any sales in subsequent years and is, therefore, no longer a covered entity. According to the commenter, if a covered entity owes a fee in 2013 based on 2011 sales, but has no sales in 2012 or later years, then that entity would not qualify as a covered entity in 2014 because the temporary regulations do not provide a mechanism for the entity to receive an adjustment amount for 2013. The commenter suggested that if an adjustment amount results in a net credit to the covered entity's fee, the IRS should treat the adjustment amount as an overpayment. The final regulations do not adopt this suggestion. However, the final regulations clarify that an entity is treated as a covered entity for any year in which the entity has branded prescription drug sales and for any year for which those sales must be taken into account in calculating the fee and determining the adjustment amount. Therefore, an entity's status as a covered entity begins in the first year it has branded prescription drug sales to the Programs even though the fee does not take those sales immediately into account, and continues until all sales for that entity have been taken into account for both fee calculation and adjustment amount purposes.

For example, assume that an entity had sales in 2011 with no sales in earlier or later years. The entity is a covered entity beginning in 2011. The entity is not liable for a fee in 2011 or 2012 since those fee years are based on 2009 and 2010 sales, respectively. In 2013, the entity is liable for the fee based on its 2011 sales. Furthermore, the entity is liable for the adjustment amount for the difference between the 2012 fee for the entity computed using 2010 sales, which is $0, and what the 2012 fee would have been using 2011 sales. Even though the entity does not have any sales in 2012 or later years, it will continue to be a covered entity in 2014 because its 2011 sales must be taken into account for purposes of determining the adjustment amount relating to the 2013 fee that applies to the 2014 fee year. The entity will not be a covered entity after 2014 because its 2011 sales will not be taken into account after 2014. The final regulations include this example.

Controlled Group

In accordance with the statute, the temporary regulations provided that a covered entity includes a controlled group. The temporary regulations defined the term *controlled group* to mean a group of at least two covered entities that are treated as a single employer under section 52(a), 52(b), 414(m), or 414(o). Under the final regulations, this definition applies through December 31, 2014. Therefore, this definition applies for purposes of determining who is in the controlled group through the 2016 fee year because the fee for the 2016 fee year is based upon data from the 2014 sales year. In this Treasury decision, the Treasury Department and the IRS are also issuing new temporary regulations (the 2014 temporary regulations), that define the term *controlled group* to mean a group of two or more persons, including at least one person that is a covered entity, that are treated as a single employer under section 52(a), 52(b), 414(m) or 414(o). This new definition applies beginning on January 1, 2015. Therefore, this definition applies for purposes of determining who is in the controlled group beginning with the 2017 fee year because the fee for the 2017 fee year is based upon data from the 2015 sales year. The broader definition of controlled group in the 2014 temporary regulations is supported by the statutory language and is consistent with how controlled group rules with similar statutory language are applied, including how controlled group is defined in § 57.2(c)(1) for purposes of the health insurance providers fee under ACA section 9010. The Treasury Department and the IRS expect that the broader definition in the 2014 temporary regulations will primarily impact joint and several liability for the fee and will not otherwise affect the administration of the fee. The final regulations include conforming changes to the provision for joint and several liability to clarify that joint and several liability applies to all members of the controlled group under either definition of controlled group, whichever applies.

Designated Entity

The temporary regulations required each controlled group that files a Form 8947, ''Report of Branded Prescription Drug Information,'' to have a designated entity. A designated entity is the person within the controlled group that acts on behalf of the controlled group with regard to the fee. The temporary regulations further provided that if the controlled group, without regard to foreign corporations included under section 9008(d)(2)(B), is also an affiliated group that files a consolidated return for federal income tax purposes, the designated entity is the common parent of the affiliated group identified on the tax return filed for the sales year. If the controlled group is not an affiliated group that files a consolidated return, the temporary regulations allowed the controlled group to select its designated entity. However, if the controlled group did not select a designated entity, the IRS would select a member of the controlled group as the designated entity.

The final regulations modify the temporary regulations to better coordinate with the consolidated return regulations. Specifically, the final regulations provide that the designated entity of a controlled group, without regard to foreign corporations included under section 9008(d)(2)(B), that is a consolidated group (within the meaning of § 1.1502–1(h)) is the agent for the group (within the meaning of § 1.1502–77).

The temporary regulations required the designated entity to state under penalties of perjury that all the covered entities that are members of the controlled group have consented to the selection of the designated entity. The final regulations adopt this requirement and further require each member of the controlled group to maintain a record of its consent. The final regulations also require the designated entity to maintain a record of all of the members' consents. Under the final regulations, this consent requirement does not apply to a controlled group that is a consolidated group (within the meaning of § 1.1502–1(h)). If a controlled group that is not a consolidated group does not select a designated entity, the final regulations provide that the IRS will select a designated entity and all covered entities in the controlled group

will be deemed to have consented to the IRS's selection of a designated entity.

Orphan Drug Sales

Section 9008(e)(3) provides that the term branded prescription drug sales does not include sales of any drug or biological product with respect to which a credit was allowed for any taxable year under section 45C. Section 9008(e)(3) also provides that this exclusion does not apply with respect to any such drug or biological product after the date on which such drug or biological product is approved by the FDA for marketing for any indication other than the treatment of the rare disease or condition with respect to which such credit was allowed. In accordance with the statute, the temporary regulations generally defined the term *orphan drug* to mean any branded prescription drug for which any person claimed a section 45C credit and that credit was allowed for any taxable year. The temporary regulations further provided that an orphan drug does not include any drug for which there has been a final assessment or court order disallowing the full section 45C credit taken for the drug. Additionally, in accordance with the statute, the temporary regulations provided that an orphan drug does not include any drug for any sales year after the calendar year in which the FDA approved the drug for marketing for any indication other than the treatment of a rare disease or condition for which a section 45C credit was allowed, regardless of whether a section 45C credit was allowed for the drug before, in the same year as, or after this FDA approval.

Commenters requested that the final regulations treat a drug as an orphan drug if the section 45C credit was ''allowable''; that is, the section 45C credit could have been claimed, but was not actually claimed. Another commenter requested that the final regulations extend orphan drug treatment to any drug for which the section 45C credit was allowable but for which a research tax credit under section 41 was claimed with respect to a taxable year ending on or before December 31, 2010. Several commenters also reasoned that the statutory exception for orphan drugs should be extended to any drug that has been designated by the FDA as an orphan drug. Commenters also requested that the final regulations extend the orphan drug exclusion to drug sales for therapies that have only been approved to treat orphan diseases, and to all products that are FDA-approved for marketing solely for rare diseases and conditions. The final regulations do not adopt these suggestions because the plain language of section 9008(e)(3) requires that the drug be an orphan drug for which the section 45C credit was actually allowed rather than merely allowable. The terms ''allowed'' and ''allowable'' have separate and distinct meanings throughout the Code. For example, under section 1016(a)(2), a taxpayer may adjust basis to the extent the amount was ''allowed'' as a deduction in computing taxable income but not less than the amount ''allowable.'' [1] In addition, the overwhelming weight of authority under the case law interprets the term ''allowed'' in the Code to require the taxpayer to have actually taken the amount into account for tax purposes.[2] The FDA's mere classification of a drug as an orphan drug is not a determining factor because the plain language of section 9008(e)(3) applies the exclusion only to sales of drugs for which a section 45C credit was in fact allowed.

Commenters also requested that orphan drug status be given to a drug for which a section 45C credit was allowed, even though the drug had been subsequently approved by the FDA for marketing for an indication other than the treatment of a rare disease or condition for which a section 45C credit was allowed. The final regulations do not adopt this suggestion because the plain language of section 9008(e)(3) indicates that if a drug is ever approved for an indication other than the treatment of a rare disease or condition for which a section 45C credit was allowed, whether before, in the same year as, or after a section 45C credit was allowed for the drug, sales of that drug are not considered sales of an orphan drug beginning in the following sales year. However, a drug will retain its orphan drug status if the drug subsequently receives approval only for another indication for a rare disease or condition for which a section 45C credit was allowed.

Pre-1984 Generic Drugs

Section 9008(e)(2)(A) defines the term branded prescription drug to include any prescription drug the application for which was submitted to the FDA under section 505(b). The final regulations track the statutory language in defining the term branded prescription drug. Neither the statute nor the final regulations specifically refer to or address the treatment of generic drugs.

On September 24, 1984, Congress enacted the Drug Price Competition and Patent Restoration Act of 1984, Public Law 98–417 (1984) (the 1984 Act). The 1984 Act added section 505(j) to provide an expedited approval process for generic drugs. Because an applicant submits an application for approval of a generic drug after the 1984 Act under section 505(j) rather than section 505(b), such a drug is not a branded prescription drug for purposes of the branded prescription drug fee.

It has come to our attention that, before the 1984 Act, an applicant submitted an application for approval of any prescription drug under section 505(b), and no separate statutory process existed for approval of a generic drug. The Treasury Department and the IRS request comments on whether a special rule is appropriate regarding the treatment of generic drugs for which applications were submitted under section 505(b) prior to the 1984 Act, including comments on how to distinguish generic drugs for which applications were submitted under section 505(b) prior to the 1984 Act from other prescription drugs for which applications were submitted under section 505(b) prior to the 1984 Act in a manner that is both administrable and consistent with section 9008. Any special rule regarding the treatment of these generic drugs would be prospective only.

Comments with regard to this issue should be submitted in writing and can be mailed to the Office of Associate Chief Counsel (Passthroughs and Special Industries), Re: REG–112805–10, CC;PSI:B7, Room 5314, 1111 Constitution Avenue NW., Washington, DC 20224. All comments received will be available for public inspection at *http://www.regulations.gov* (IRS REG–112805–10).

Information Requested From Covered Entities

The temporary regulations gave each covered entity the opportunity to provide information relevant to the determination of the fee by annually submitting Form 8947, including information regarding rebates. Commenters asked that CMS include all rebate data in its reports to the IRS, rather than have the IRS collect rebate data from the covered entities on Form 8947. CMS now includes rebate data for

[1] Likewise, under section 1250(b)(3), if a taxpayer can establish that the amount ''allowed'' as a deduction was less than the amount ''allowable,'' then the amount taken into account for purposes of a depreciation adjustment is the amount ''allowed.'' *See* also section 36B(c)(1)(D) and section 42(j)(5)(A)(i).

[2] *See Virginian Hotel Corporation of Lynchburg* v. *Helvering,* 319 U.S. 523, 526 (1943); *Flood* v. *United States,* 33 F.3d 1174, 1178 n.5 (9th Cir. 1994); *Lenz* v. *Commissioner,* 101 T.C. 260, 265 (1993); *Hightower* v. *Commissioner,* T.C. Memo 1982–559.

Medicare and federal Medicaid in its reports. Therefore, the final regulations eliminate the provision for separate reporting of Medicare and federal Medicaid rebates by covered entities and Form 8947 no longer requests information on these rebates. However, CMS does not include Medicaid state supplemental rebate data. Until CMS can include Medicaid state supplemental rebate data in its reports to the IRS, covered entities will continue to have the opportunity to submit this rebate data on Form 8947. Therefore, the final regulations retain the provision that permits separate reporting of Medicaid state supplemental rebate data by covered entities.

A commenter asked whether to include state-only pharmaceutical program rebates on Form 8947 as Medicaid Drug Rebates. According to CMS, state-only pharmaceutical programs are not part of the Medicaid Drug Rebate Program or the federal Medicaid program. Therefore, the final regulations specify that the Medicaid Drug Rebate Program's calculated branded prescription drug fee does not include state-only pharmaceutical sales or rebates. Accordingly, a covered entity may not report on its Form 8947 or error report a rebate paid by the covered entity in connection with a state-only pharmaceutical program.

A commenter asked that the final regulations provide that a covered entity may submit an incomplete Form 8947. The final regulations do not adopt this suggestion. Submission of Form 8947 is voluntary. A covered entity that chooses to file Form 8947, however, must state, under penalties of perjury, that to the best of the filer's knowledge and belief, the information provided on Form 8947 is true, correct, and complete. As in the past, a covered entity may correct and supplement information it submitted on Form 8947, if necessary, by submitting one or more error reports as part of the dispute resolution process.

Information Provided by the Agencies

Section 9008(g) requires each Program to calculate and provide sales data based on the methodologies described in section 9008(g). Section 9008(b)(3) requires the IRS to use the data provided by the Programs to calculate the fee. In accordance with the statute, the temporary regulations required the Agencies to provide data to the IRS on branded prescription drug sales that occurred during the sales year by Program and NDC. The temporary regulations also set forth the methodologies used by the Agencies for calculating the sales amounts for each Program.

Commenters raised questions about the descriptions in the temporary regulations of the methodologies used by the Agencies, asked that these descriptions be clarified, suggested alternative methods of calculating Program sales data, and requested additional data. In response to these comments, the final regulations adopt certain suggestions to include revised descriptions of the data and computations the Agencies use to calculate branded prescription drug sales as described in the following sections for each Program. In addition, this preamble provides further background on the methodologies used by the Agencies as described in the following sections for each Program. Because the Agencies have the responsibility to compute and report the data described in the statute, the Treasury Department and the IRS coordinated extensively with the Agencies in preparing the additional background information in the preamble and the revised descriptions in the final regulations.

Medicare Part D

The temporary regulations provided that, to determine branded prescription drug sales amounts for Medicare Part D, CMS will aggregate the ingredient cost reported in the ''Ingredient Cost Paid'' field and the units reported in the ''Quantity Dispensed'' field of the Prescription Drug Event (PDE) records at the NDC level for each sales year. Section 9008(g)(1)(A) requires Medicare Part D sales amounts to be reduced by ''any per-unit rebate, discount, or other price concession provided by the covered entity.''

Commenters asked that the final regulations clarify how CMS determines these net sales amounts. The final regulations adopt this suggestion. The final regulations clarify that CMS will aggregate the ''Ingredient Cost Paid'' field on the PDE records at the NDC level, reduced by discounts, rebates, and other price concessions provided by the covered entity. To obtain this information, CMS uses two main data sources to determine net sales amounts: the PDE records and the Detailed Direct and Indirect Remuneration (DIR) Report. CMS obtains information for these two data sources from Medicare Part D sponsors.

The final regulations specifically define ''discounts, rebates, and other price concessions provided by the covered entity'' to include, in part, DIR. DIR is any and all rebates, subsidies, or other price concessions from any source (including manufacturers, pharmacies, enrollees, or any other person) that serve to decrease the costs incurred by the Medicare Part D sponsor (whether directly or indirectly) for the Medicare Part D drug. See 42 CFR 423.308. Thus, DIR includes discounts, chargebacks, rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, and coupons. DIR also includes goods in kind, free or reduced-price services, grants, legal judgment amounts, settlement amounts from lawsuits or other legal action, and other price concessions or similar benefits. However, DIR does not include price concessions that CMS does not consider to directly or indirectly impact drug costs incurred by the Medicare Part D sponsor.

The final regulations further provide that DIR includes both DIR reported on the PDE records at the point of sale and DIR reported on the Detailed DIR Report. The temporary regulations provided that, if CMS does not have Medicare Part D rebate information for a sales year, then the IRS will reduce the branded prescription drug sales reported for Medicare Part D by rebates reported by covered entities on Form 8947. This procedure was necessary for fee year 2011 because CMS did not have the information necessary to report Medicare Part D sales data net of DIR. To provide this data to the IRS at the individual drug level as the statute requires, CMS began to collect DIR at the NDC level from Medicare Part D sponsors for use in the 2012 fee year, which Medicare Part D sponsors report to CMS on the Detailed DIR Report. Medicare Part D sponsors also report DIR on the PDE records at the point of sale, though these amounts tend to be nominal. Therefore, since fee year 2012, CMS has been reporting its Medicare Part D sales data to the IRS net of all DIR by deducting from the Ingredient Cost both DIR reported on the PDE records at the point of sale and DIR reported on the Detailed DIR Report. The final regulations reflect this approach. As stated earlier in this preamble, the final regulations also eliminate the provision for separate reporting of Medicare Part D rebates by covered entities on Form 8947.

A commenter requested that the final regulations clarify the treatment of coverage gap discount amounts. The final regulations adopt this suggestion effective for fee years beginning in 2014. The Medicare Part D coverage gap, also known as the ''donut hole,'' is a gap in prescription drug coverage that is being closed due to the Affordable Care Act. Part of closing the coverage gap is the Coverage Gap Discount Program

described in section 1860D–14A of the Social Security Act, which requires a 50-percent manufacturer-paid discount on covered brand-name drugs in certain instances. For fee years 2012 and 2013, CMS did not deduct coverage gap discount amounts from the Ingredient Cost. This comment, however, prompted CMS to recharacterize coverage gap discount amounts as a type of rebate, discount, or other price concession for purposes of the fee calculation. Therefore, beginning with the final fee calculation for fee year 2014, CMS will report Medicare Part D sales data to the IRS that is net of coverage gap discount amounts. The final regulations reflect this change.

The final regulations also remove the reference to the ''Quantity Dispensed'' field of the PDE records. This field has no impact on sales because CMS totals the ingredient cost at the NDC level and determines DIR reported on the PDE records at the point of sale and DIR reported on the Detailed DIR Report at the NDC level. Thus, the unit of reference used by CMS is consistently at the NDC level.

Commenters suggested that the final regulations require CMS to exclude sales in Puerto Rico in determining sales amounts for Medicare Part D. The final regulations do not adopt this suggestion. Section 9008(g) requires each Agency to report to the IRS the total branded prescription drug sales for each covered entity for each Program. Section 9008 does not provide any exclusion for sales in Puerto Rico or any other territory. When calculating its branded prescription drug sales data for Medicare Part D, CMS includes sales, DIR reported on the PDE records at the point of sale, and DIR reported on the Detailed DIR Report for all sales in the United States and its territories, including the Commonwealth of Puerto Rico.

Medicare Part B

The temporary regulations provided that CMS will determine branded prescription drug sales under Medicare Part B using two data sources. First, CMS will use the data reported by manufacturers pursuant to section 1847A(c) of the Social Security Act (42 U.S.C. 1395w-3a(c)) to calculate the annual weighted average sales price (ASP) for each Healthcare Common Procedure Coding System code (HCPCS code) for the sales year. Second, CMS will use the Medicare Part B National Summary Data File located at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/NonIdentifiableDataFiles/PartBNationalSummaryDataFile.html* to obtain the number of allowed billing units per HCPCS code for claims incurred during the sales year. The temporary regulations further provided separate detailed methods for CMS to use this data to determine Medicare Part B sales amounts depending on whether (1) the HCPCS code consists solely and exclusively of branded prescription drugs manufactured by a single entity, (2) the HCPCS code consists of a mixture of branded prescription drugs made by different manufacturers and/or a mixture of branded prescription and generic drugs, or (3) CMS is unable to establish a reliable proportion of sales attributable to each NDC assigned to the HCPCS code.

Under the third method in the temporary regulations, if CMS is unable to establish a reliable proportion of sales attributable to each NDC assigned to the HCPCS code, CMS will calculate Medicare Part B sales by using Medicare Part D utilization percentages. A commenter requested that CMS develop a more accurate backup method. The final regulations do not adopt this suggestion. In CMS's view, the existing backup method is sufficiently reliable. Additionally, CMS did not anticipate frequent use of this approach and has not needed to use the backup method for any fee calculation to date. The final regulations do, however, include a more detailed explanation of how CMS uses HCPCS codes as well as an example.

Commenters also expressed concern about whether Medicare Part B is capturing complete data on what are sometimes referred to as non-separately payable drugs. Non-separately payable drugs may not be directly correlated with a single specific HCPCS code. Some non-separately payable drugs are associated with more than one HCPCS code or are bundled with services, such as dialysis. CMS recognizes this concern and makes extensive effort to gather as complete a data set as possible. CMS will continue to work with the data available to capture non-separately payable drugs.

Medicaid

The temporary regulations provided that CMS will determine branded prescription drug sales as the per-unit Average Manufacturer Price (AMP) less the Unit Rebate Amount (URA) that CMS calculates based on manufacturer-reported pricing data multiplied by the number of units reported billed by the states to manufacturers. Specifically, the temporary regulations provided that for any covered entity identified in the first five (or six) digits of an NDC during any of the four quarters of a sales year, CMS uses the following methodology to derive the branded prescription sales amounts that account for third-party payers:

Step 1. Report total dollars per NDC for AMP minus URA, multiplied by the units reported by a state or states;

Step 2. Determine the percentage of the total amount reimbursed that is the Medicaid amount of that reimbursement; and

Step 3. Multiply the percentage of the Medicaid amount of that reimbursement by the dollar figure from step 1 (AMP minus URA, multiplied by units) to get the new adjusted sales dollar totals.

The final regulations clarify that CMS will determine branded prescription drug sales as the per-unit AMP less the URA that CMS calculates based on manufacturer-reported pricing data multiplied by the number of units reported as paid by the states rather than as billed by the states.

Commenters requested that the final regulations require Medicaid to use the per-unit ingredient cost paid to pharmacies by the states as provided in section 9008(g)(3) instead of AMP in computing total branded prescription drug sales. The final regulations do not adopt this suggestion. Medicaid does not have the ability to use the per-unit ingredient cost paid to pharmacies by the states because Medicaid systems are not designed to track drug sales data in this manner or obtain this type of detailed information from the states. Instead, Medicaid systems track drug sales data using AMP. AMP is the best alternative that Medicaid systems permit and serves as a reasonable proxy for the per-unit ingredient cost paid to pharmacies by the states.

The temporary regulations provided that Medicaid branded prescription drug sales data will be based on the data reported to CMS during the sales year by covered entities and the states for drugs paid for by the states in the Medicaid Drug Rebate Program during the sales year. The final regulations clarify that the sales data is based on the data that covered entities report for the sales year rather than the data that covered entities report during the sales year because some reporting for a sales year may occur after that year ends.

Commenters requested that the final regulations clarify the meaning of the phrase ''drugs paid for by the states in the Medicaid Drug Rebate Program'' and whether it includes units paid for under managed care organization plans. In response to this request, the final regulations specify that ''drugs paid for by the states in the Medicaid Drug Rebate Program'' includes all branded prescription drug units for which the states bill rebates to covered entities

under the Medicaid Drug Rebate Program. This program includes, but is not limited to, units paid for under various health care plans such as fee for service, managed care organizations, and drugs administered in a non-retail setting such as drugs administered in a physician's office, clinic, hospital or other setting. Under the Medicaid Drug Rebate Program, states provide the required utilization data. States report separate totals for each NDC for both fee-for-service and managed care organization utilization data. Also, as stated earlier in this preamble, the final regulations specify that the Medicaid Drug Rebate Program's calculated branded prescription drug fee does not include state-only pharmaceutical program sales or rebates.

Commenters asked how a covered entity can ensure that a state has updated its Medicaid data files to accurately reflect state rebates. This issue is beyond the scope of these regulations. However, since 2011, in the context of the dispute resolution process, CMS, IRS, and covered entities have devoted extensive resources to resolving discrepancies between a state's reported rebate data that CMS uses to compute Medicaid's branded prescription drug sales data for the IRS and the rebate data that covered entities receive from that state. To resolve these discrepancies on a timely basis, CMS has established a reconciliation process. To maximize the effectiveness of this reconciliation process, however, a covered entity must use the CMS reconciliation process in a timeframe that allows discrepancies to be resolved before CMS computes the branded prescription sales data that it sends the IRS for purposes of computing a covered entity's preliminary fee calculation. A covered entity's timely use of the CMS reconciliation process will help minimize, if not eliminate, the errors related to CMS's Medicaid data that a covered entity would otherwise include in its error report. The web address for this resource is *http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Prescription-Drugs/Branded-Prescription-Drug.html.* This CMS Medicaid Branded Prescription Drug Fee program Web page also has additional information regarding Medicaid sales data. Covered entities may email questions to CMS Medicaid regarding the data used in this program at *MedicaidBPD@cms.hhs.gov* with ''BPD'' in the email subject line.

Department of Veterans Affairs

The temporary regulations provided that VA will provide, by NDC, the total amount paid (net of refunds and rebates, when they are associated with a specific NDC) for each branded prescription drug procured by VA for its beneficiaries during the sales year. For this purpose, a drug is procured on the invoice (billing) date. The temporary regulations further provided that the basis of this information will be national procurement data reported during the sales year by VA's Pharmaceutical Prime Vendor to the VA Pharmacy Benefits Management Service and National Acquisition Center.

A commenter requested that the final regulations require that the amount of the IFF and CRF be excluded from VA sales either by requiring VA to exclude these amounts from its sales data or by allowing a covered entity to report these amounts on its Form 8947. The final regulations do not adopt this suggestion. According to VA, these amounts are part of the total price VA pays to its Pharmaceutical Prime Vendor and are properly included in the sales amount.

A commenter requested that the final regulations confirm that VA sales data does not include DOD, Coast Guard, Indian Health, or other purchases made under the Federal Supply Schedule. VA does not include in its sales data purchases made by other agencies. Because the methodology in the regulations is already limited to purchases made by VA, the final regulations do not need further clarification.

Department of Defense

The temporary regulations provided that, for DOD programs other than TRICARE, DOD will provide, by Labeler Code, the manufacturer's name, the NDC, brand name, and the amount paid (net of rebates or refunds) for each branded prescription drug procured by DOD during the sales year. For this purpose, a drug is procured based upon the date it was ordered.

A commenter requested that the final regulations require that the amount of the Industrial Funding Fee (IFF) and the Cost Recovery Fee (CRF) be excluded from DOD sales, either by requiring DOD to exclude these fees from its sales data or by allowing a covered entity to report these fees on its Form 8947. The IFF and CRF are administrative fees that are added to the cost of purchasing under the Federal Supply Schedule and National Contract Service. The final regulations do not adopt this suggestion. According to DOD, these fee amounts are part of the total price DOD pays to procure a drug and are properly included in the sales amount.

TRICARE

The temporary regulations provided that DOD will provide, by Labeler Code, the manufacturer's name, the NDC, brand name, and the amount paid (net of rebates or refunds) for each branded prescription drug procured by DOD through the TRICARE retail pharmacy program (TRICARE) during the sales year. For TRICARE, a drug is procured based upon the date it was dispensed. The amount paid is based on the submitted ingredient cost paid, aggregated by NDC, for eligible TRICARE claims submitted during the program year, minus any refunds or rebates for the corresponding claims.

Commenters expressed concern that TRICARE's drug sales overlap with DOD and VA and asked that the final regulations address this perceived overlap. The final regulations do not adopt this suggestion. No overlap exists because TRICARE only reports sales from its retail pharmacy network, which is distinct from sales reported by DOD and VA. TRICARE, DOD, and VA separately maintain and report their own drug sales data.

Section 51.4T(f) described the TRICARE and DOD methodologies for calculating sales data. Section 51.4(f) continues to describe the DOD methodology. A new subsection, § 51.4(g), describes the TRICARE methodology.

Fee Calculation Including Adjustment

As stated earlier in this preamble, because the use of the second preceding year as the sales year, rather than the immediately preceding year, may affect the amount of the fee paid by a covered entity, the temporary regulations provided that the annual fee due in every year after 2011 will include an adjustment amount. This adjustment amount will be added (or subtracted), as appropriate, to (or from) the fee otherwise payable by the covered entity in the fee year in which the adjustment is calculated.

A commenter asked that the final regulations provide for a separate dispute resolution process for the adjustment amount after the final fee calculation because errors reported in the dispute resolution process may not be resolved in time to be reflected in the final fee calculation. The final regulations do not adopt this suggestion. The adjustment amount is part of the preliminary fee calculation. Therefore, each covered entity has an opportunity to raise disputes regarding the adjustment amount during the existing dispute resolution process. Moreover, an adjustment to one covered entity's

final fee calculation would necessitate a recalculation of each covered entity's prior final fee calculation because the fee is an allocated fee. The final regulations clarify that the IRS will not make adjustments to a final fee calculation.

Because the amount of the fee under the temporary regulations was based on sales from the second preceding year, commenters suggested that the final regulations allow a covered entity to reduce its fee liability in the same year that the covered entity experiences an event that would significantly reduce its sales to the Programs and make corresponding adjustments in future years. Such events may include a drug recall, a loss of patent exclusivity, or bankruptcy. The final regulations do not adopt this suggestion. The statute requires the IRS to determine each covered entity's branded prescription drug sales on the basis of reports submitted by the Agencies and to uniformly apply the fee determination rules to each covered entity's sales data. The methodology adopted in the final regulations ensures that the applicable fee amount is appropriately apportioned among the covered entities.

In accordance with section 9008(f)(1), the temporary regulations treated the fee as an excise tax for purposes of subtitle F. A commenter suggested that the final regulations provide for interest payments for adjustment amounts that are credited to a covered entity. The final regulations do not adopt this suggestion. Instead, the final regulations clarify that an adjustment amount itself is neither an overpayment nor an underpayment, but rather a component of the current year's fee. Thus, for purposes of section 6601, any increase in the current year's fee resulting from any adjustment amount, along with the remainder of the fee, is treated as due on the due date for the current year's fee. Conversely, for purposes of section 6611, any adjustment amount that decreases the current year's fee is treated as a payment towards the current fee amount made on the due date of the current fee year.

Commenters asked that the final regulations clarify whether a covered entity must file Form 843, ''Claim for Refund and Request for Abatement,'' to request that the IRS calculate an adjustment amount when a covered entity anticipates that it is entitled to a positive adjustment amount. As stated earlier in this preamble, a positive adjustment amount is not an overpayment. Accordingly, in response to this comment, the final regulations clarify that a covered entity does not file Form 843 to obtain an adjustment amount. The IRS automatically calculates adjustment amounts. Additionally, the final regulations clarify that if a covered entity's adjustment amount reduces the fee below zero and results in an amount due to the covered entity for the fee year, the IRS will automatically pay this amount due to the covered entity.

Another commenter suggested that the final regulations clarify whether the period of limitations on filing a claim set forth in section 6511 applies to the adjustment amount. Under the final regulations, section 6511 applies to the fee, but not separately to the adjustment amount, because the adjustment amount is merely a component of the fee. For purposes of section 6511, any adjustment amount that decreases the current year's fee is treated as a payment towards the current fee amount made on the due date of the current fee year.

Notification and Payment of Fee

The temporary regulations provided that, no later than August 31st of each fee year, the IRS will send each covered entity its final fee calculation for that fee year. Several commenters suggested that the IRS send the final fee notice in an electronic format. The final regulations do not adopt this suggestion because it is outside the scope of these regulations. However, the final regulations do not prohibit the IRS from using an electronic format for the final fee notice. Moreover, at the time these comments were submitted, the IRS was already sending a covered entity's sales data with its preliminary fee notice on a separate CD–ROM in Microsoft Excel format to each covered entity that timely requested it. After receiving these comments, the IRS began also sending a covered entity's sales data with its final notice on a separate CD–ROM in Microsoft Excel format if the entity had made a timely request for the CD–ROM to be sent with its preliminary fee notice. More information about the manner for notifying covered entities of their preliminary and final fee calculations is contained in Notice 2014–42.

In accordance with section 9008(a)(2), the temporary regulations provided that each covered entity must pay its final fee by September 30th of the fee year. A commenter suggested that the final regulations clarify whether section 7503 applies to the deadline for fee payment. Section 7503 provides that if the last day for performing an act required under the authority of the internal revenue laws falls on a Saturday, Sunday, or a legal holiday, the performance of the act is timely if the act is performed on the next succeeding day that is not a Saturday, Sunday, or a legal holiday. The final regulations do not provide a special rule because section 9008(f)(1) and the final regulations treat the fee as an excise tax for purposes of subtitle F. Therefore, section 7503 applies to the deadline for fee payment.

Dispute Resolution Process

The temporary regulations provided for a dispute resolution process that allows a covered entity to submit error reports in response to the preliminary fee calculation for the IRS to consider before performing the final fee calculation. The temporary regulations described the information that covered entities must submit. The final regulations adopt these provisions with the following minor changes that will allow the IRS to more accurately process a covered entity's disputes.

The temporary regulations required that a Form 2848, ''Power of Attorney and Declaration of Representative'' must be filed with an error report. The final regulations clarify that a Form 2848 is required only when the representative is not an employee of the covered entity who is authorized under section 6103 or designated on Form 8947 to discuss the information reported on Form 8947.

The temporary regulations required the name, telephone number, and email address (if available) of one or more employees or representatives with whom errors may be discussed. The final regulations also require a fax number.

For Program errors, the temporary regulations required a covered entity to submit a separate error report for each Program with the asserted errors. For non-Program errors, the temporary regulations required a covered entity to submit one error report with all of the non-Program errors. To streamline the error reporting process, the final regulations require a covered entity to combine both Program and non-Program errors on a single error report, with each asserted error on a separate line.

Availability of IRS Documents

The IRS notices, the revenue procedure, and the temporary regulations cited in this preamble are published in the Internal Revenue Bulletin and are available at *www.irs.gov.* The temporary regulations are also available in the Code of Federal Regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as

supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the only collection burden imposed by these regulations is the requirement to maintain a record of consent to the selection of a designated entity, and this collection burden applies only to designated entities of controlled groups, which tend to be large corporations, and their members. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 51

Drugs, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 51 and 602 are amended as follows:

PART 51—BRANDED PRESCRIPTION DRUG FEE

■ **Paragraph 1.** The authority citation for part 51 continues to read as follows:

Authority: 26 U.S.C. 7805; sec. 9008, Public Law 111–347 (124 Stat. 119).

Section 51.8 also issued under 26 U.S.C. 6302(a).

Section 51.6302–1 also issued under 26 U.S.C. 6302(a).

■ **Par. 2.** Section 51.1 is added to read as follows:

§ 51.1 Overview.

(a) The regulations in this part 51 are designated ''Branded Prescription Drug Fee Regulations.''

(b) The regulations in this part 51 provide guidance on the annual fee imposed on covered entities engaged in the business of manufacturing or importing branded prescription drugs by section 9008 of the Patient Protection and Affordable Care Act (ACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111–152 (124 Stat. 1029 (2010)). All references in these regulations to section 9008 are references to section 9008 of the ACA, as amended by section 1404 of HCERA. Unless otherwise indicated, all other section references are to sections in the Internal Revenue Code. All references to ''fee'' in these regulations are references to the fee imposed by section 9008.

(c) Section 9008(b)(4) sets an applicable fee amount for each year, beginning with 2011, that will be apportioned among covered entities with aggregate branded prescription drug sales of over $5 million to government programs or pursuant to coverage under such programs. Generally, each covered entity is liable for a fee in each fee year that is based on its sales of branded prescription drugs in the sales year that corresponds to the fee year in an amount determined by the Internal Revenue Service (IRS) under the rules of this part.

§ 51.1T [Removed]

■ **Par. 3.** Section 51.1T is removed.

■ **Par. 4.** Section 51.2T is revised to read as follows:

§ 51.2T Explanation of terms (temporary).

(a) Through (e)(2) [Reserved]. For further guidance see § 51.2(a) through (e)(2).

(3) *Controlled Group.* The term *controlled group* means a group of two or more persons, including at least one person that is a covered entity, that is treated as a single employer under section 52(a), 52(b), 414(m), or 414(o).

(e)(4) through (m) [Reserved]. For further guidance see § 51.2(e)(4) through (m).

Par. 5. Section 51.2 is added to read as follows:

§ 51.2 Explanation of terms.

(a) *In general.* This section explains the terms used in this part for purposes of the fee imposed by section 9008 on branded prescription drugs.

(b) *Agencies.* The term *Agencies* means—

(1) The Centers for Medicare and Medicaid Services of the Department of Health and Human Services (CMS);

(2) The Department of Veterans Affairs (VA); and

(3) The Department of Defense (DOD).

(c) *Branded prescription drug*—(1) *In general.* The term *branded prescription drug* means—

(i) Any prescription drug the application for which was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) (FFDCA); or

(ii) Any biological product the license for which was submitted under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

(2) *Prescription drug.* The term *prescription drug* means any drug that is subject to section 503(b) of the FFDCA.

(d) *Branded prescription drug sales.* The term *branded prescription drug sales* means sales of branded prescription drugs to any government program or pursuant to coverage under any such government program. However, the term does not include sales of orphan drugs.

(e) *Covered entity*—(1) *In general.* The term *covered entity* means any manufacturer or importer with gross receipts from branded prescription drug sales including—

(i) A single-person covered entity; or

(ii) A controlled group.

(2) *Single-person covered entity.* The term *single-person covered entity* means a covered entity that is not affiliated with a controlled group.

(3) *Controlled group*— (i) *On or before December 31, 2014.* The term *controlled group* means a group of at least two covered entities that are treated as a single employer under section 52(a), 52(b), 414(m), or 414(o).

(ii) *After December 31, 2014.* For guidance regarding the definition of controlled group after December 31, 2014, see § 51.2T(e)(3).

(4) *Special rules for controlled groups.* For purposes of paragraph (e)(3) of this section (related to controlled groups)—

(i) A foreign entity subject to tax under section 881 is included within a group under section 52(a) or 52(b); and

(ii) A person is treated as being a member of a controlled group if it is a member of the group on the end of the day on December 31st of the sales year.

(5) *Covered entity status*—(i) *Rule.* An entity's status as a covered entity begins in the first fee year in which the entity has branded prescription drug sales and continues each subsequent fee year until there are no remaining branded prescription drug sales for that entity to be taken into account as described in § 51.5(c) or used to calculate the

adjustment amount described in § 51.5(e).

(ii)

Example. The following example illustrates the rule of paragraph (e)(5)(i) of this section:

(A) *Facts.* Entity A is a manufacturer with gross receipts of more than $5 million from branded prescription drugs sales in 2011. Entity A does not have any gross receipts from branded prescription drug sales before or after 2011.

(B) *Analysis.* Entity A is a covered entity beginning in 2011 because it had gross receipts from branded prescription drug sales in 2011. For the 2011 fee year, Entity A does not owe a fee because the 2011 fee is based on sales data from the 2009 sales year. For the 2012 fee year, Entity A does not owe a fee because the 2012 fee is based on sales data from the 2010 sales year. Entity A continues to be a covered entity for the 2012 fee year because its branded prescription drug sales from the 2011 sales year have not yet been taken into account as described in § 51.5(c) and used to calculate the adjustment amount described in § 51.5(e). For the 2013 fee year, Entity A continues to be a covered entity because a portion of its branded prescription drug sales from the 2011 sales year are taken into account as described in § 51.5(c) for purposes of computing the 2013 fee. For the 2013 fee year, Entity A is also liable for the adjustment amount described in § 51.5(e) for the difference between its 2012 fee computed using sales data from the 2010 sales year, which is $0, and what the 2012 fee would have been using sales data from the 2011 sales year. For the 2014 fee year, Entity A continues to be a covered entity because a portion of its branded prescription drug sales for the 2011 sales year are used to calculate the adjustment amount described in § 51.5(e). Therefore, for the 2014 fee year, Entity A will receive an adjustment amount for the difference between its 2013 fee computed using sales data from the 2011 sales year, and what the 2013 fee would have been using sales data from the 2012 sales year, which is $0. After the 2014 fee year, there are no remaining branded prescription drug sales to be taken into account as described in § 51.5(c) or used to calculate the adjustment amount described in § 51.5(e) for Entity A. Accordingly, Entity A is not a covered entity after the 2014 fee year.

(f) *Designated entity*—(1) *In general.* The term *designated entity* means the person within a controlled group that is designated to act for the controlled group regarding the fee by—

(i) Filing Form 8947, ''Report of Branded Prescription Drug Information'';

(ii) Receiving IRS communications about the fee for the group;

(iii) Filing an error report for the group, if applicable, as described in § 51.7; and

(iv) Paying the fee to the government.

(2) *Selection of designated entity*—(i) *Controlled group selection of a designated entity.* Except as provided in paragraph (f)(2)(ii) of this section, the controlled group may select a person as the designated entity by filing Form 8947 in accordance with the form instructions. The designated entity must state under penalties of perjury that all members of the controlled group have consented to the selection of the designated entity. The designated entity must maintain a record of all member consents. Each member of a controlled group must maintain a record of its consent to the controlled group's selection of the designated entity.

(ii) *Requirement for affiliated groups; agent for the group.* If the controlled group, without regard to foreign corporations included under section 9008(d)(2)(B), is also an affiliated group whose common parent files a consolidated return for federal income tax purposes, the designated entity is the agent for the group (within the meaning of § 1.1502–77 of this title).

(iii) *IRS selection of a designated entity.* Except as provided in paragraph (f)(2)(ii) of this section, if a controlled group does not select a designated entity as provided in paragraph (f)(2)(i) of this section, the IRS will select a member of the controlled group as the designated entity for the controlled group. If the IRS selects the designated entity, then all members of that controlled group will be deemed to have consented to the IRS's selection of the designated entity.

(g) *Fee year.* The term *fee year* means the calendar year in which the fee for a particular sales year must be paid to the government.

(h) *Government programs.* The term *government programs* (collectively ''Programs''), means—

(1) The Medicare Part B program;

(2) The Medicare Part D program;

(3) The Medicaid program;

(4) Any program under which branded prescription drugs are procured by the Department of Veterans Affairs;

(5) Any program under which branded prescription drugs are procured by the Department of Defense; and

(6) The TRICARE retail pharmacy program.

(i) *Manufacturer or importer.* The term *manufacturer or importer* means the person identified in the Labeler Code of the National Drug Code (NDC) for a branded prescription drug.

(j) *NDC.* The term *NDC* means the National Drug Code. The NDC is a unique identifier that is assigned to all drug products approved by the Food and Drug Administration (FDA), including a branded prescription drug. The Labeler Code is the first five numeric characters of the NDC or the first six numeric characters when the available five-character code combinations are exhausted.

(k) *Orphan drugs*—(1) *In general.* Except as provided in paragraph (k)(2) of this section, the term *orphan drug* means any branded prescription drug for which any person claimed a section 45C credit and that credit was allowed for any taxable year.

(2) *Exclusions.* The term *orphan drug* does not include—

(i) Any drug for which there has been a final assessment or court order disallowing the full section 45C credit taken for the drug; or

(ii) Any drug for any sales year after the calendar year in which the FDA approved the drug for marketing for any indication other than the treatment of a rare disease or condition for which a section 45C credit was allowed, regardless of whether a section 45C credit was allowed for the drug before, in the same year as, or after this FDA designation.

(3) *FDA marketing approval for treatment of another rare disease or condition.* If a drug has prior FDA marketing approval for the treatment of a rare disease or condition for which a section 45C credit was allowed, and the FDA subsequently gives the drug marketing approval for the treatment of another rare disease or condition for which another section 45C credit was also allowed, the drug retains its status as an orphan drug provided the FDA has never approved the drug for marketing for any indication other than the treatment of a rare disease or condition for which a section 45C credit was allowed.

(4) *Examples.* The following examples illustrate the rules of this paragraph (k):

Example 1: Allowance of section 45C credit and later FDA marketing approval of drug for an indication other than the treatment of a rare disease or condition. (i) *Facts.* Drug A is a branded prescription drug that was not on the market before 2011. In 2011, a covered entity claimed a section 45C credit for its qualified clinical testing expenses related to Drug A. There was no final IRS assessment or court order that disallowed the full credit for Drug A. In 2012, the FDA approved Drug A for marketing for an indication other than the treatment of the rare disease or condition for which the section 45C credit was allowed and this indication was not for another rare disease or condition for which a section 45C was allowed.

(ii) *Analysis.* In 2011 and 2012, Drug A is an orphan drug because: first, it was a branded prescription drug for which a person claimed a section 45C credit and for which that credit was allowed for a taxable year; second, there was not a final assessment or court order disallowing the full credit taken for the drug; and third, before 2012, the FDA did not approve the drug for marketing for any indication other than the treatment of a

rare disease or condition for which a section 45C credit was allowed. However, Drug A is not an orphan drug for the 2013 sales year or later sales years because in 2012 the FDA approved Drug A for marketing for an indication other than the treatment of the rare disease or condition for which the section 45C credit was allowed and this indication was not for treatment of another rare disease or condition for which a section 45C credit was allowed.

Example 2: FDA marketing approval of drug for an indication other than the treatment of a rare disease or condition and later allowance of section 45C credit. (i) *Facts.* Drug B is a branded prescription drug that was not on the market before 2011. In 2011, FDA approved Drug B for marketing for the treatment of a rare disease or condition and also approved Drug B for marketing for an indication other than the treatment of a rare disease or condition. In 2012, a covered entity claimed a section 45C credit for its qualified clinical testing expenses related to Drug B. There was no final IRS assessment or court order that disallowed the full credit for Drug B.

(ii) *Analysis.* In 2011, Drug B is not an orphan drug because no section 45C credit was allowed and because the FDA approved Drug B for an indication other than the treatment of a rare disease or condition. In 2012, although the covered entity was allowed a section 45C credit for its qualified clinical testing expenses related to Drug B and there was no final IRS assessment or court order that disallowed the full credit, Drug B still is not an orphan drug because the FDA had approved the drug in 2011 for marketing for an indication other than the treatment of a rare disease or condition for which a section 45C credit was allowed in 2012. Thus, Drug B is not an orphan drug for the 2012 sales year or later sales years.

Example 3: Allowance of section 45C credit and subsequent allowance of section 45C credit with no intervening FDA marketing approval of drug for an indication other than the treatment of a rare disease or condition for which a section 45C credit was allowed. (i) *Facts.* Drug C is a branded prescription drug that was not on the market before 2010. In 2010, a covered entity claimed a section 45C credit for its qualified clinical testing expenses related to Drug C. In 2012, a covered entity claimed an additional section 45C credit for its qualified clinical testing expenses related to Drug C for marketing for the treatment of a rare disease or condition different than the one for which the section 45C credit was claimed in 2010. There was no final IRS assessment or court order that disallowed the full credit for Drug C in 2010 or 2012. The FDA has not approved Drug C for an indication other than the treatment of a rare disease or condition for which a section 45C was allowed.

(ii) *Analysis.* In 2010 and 2011, Drug C is an orphan drug because: first, it was a branded prescription drug for which a person claimed a section 45C credit and for which that credit was allowed for a taxable year; second, there was not a final assessment or court order disallowing the full credit taken for the drug; and third, FDA had not approved the drug for marketing for any indication other than the treatment of a rare disease or condition for which a section 45C credit was allowed. In 2012, Drug C retains its orphan drug status because another section 45C credit was allowed and the FDA did not approve Drug C for marketing for any indication other than the treatment of another rare disease or condition for which a section 45C credit was allowed. Thus, Drug C is an orphan drug for the 2013 sales year.

(l) *Sales taken into account.* The term *sales taken into account* means branded prescription drug sales after application of the percentage adjustment table in section 9008(b)(2) (relating to annual sales less than $400,000,001). See § 51.5(a)(3).

(m) *Sales year.* The term *sales year* means the second calendar year preceding the fee year. Thus, for example, for the fee year of 2014, the sales year is 2012.

■ **Par. 6.** Section 51.3 is added to read as follows:

§ 51.3 Information requested from covered entities.

(a) *In general.* Annually, each covered entity may submit a completed Form 8947, ''Report of Branded Prescription Drug Information,'' in accordance with the instructions for the form. Generally, the form solicits information from covered entities on NDCs, orphan drugs, designated entities, rebates, and other information specified by the form or its instructions.

(b) *Due date.* Form 8947 must be filed by the date prescribed in guidance in the Internal Revenue Bulletin.

§ 51.3T [Removed]

■ **Par. 7.** Section 51.3T is removed.

■ **Par. 8.** Section 51.4 is added to read as follows:

§ 51.4 Information provided by the Agencies.

(a) *In general.* For each sales year, the IRS will compile a list of branded prescription drugs by NDC using the data submitted on Forms 8947 and in error reports submitted as part of the dispute resolution process (described in § 51.7) and, after applying appropriate due diligence, will provide this list to the Agencies. The Agencies will provide data to the IRS on branded prescription drug sales that occurred during the sales year by Program and NDC. The Agencies will provide data for use in preparing the preliminary fee calculation (described in §§ 51.5 and 51.6) and may revise or supplement that data following review of error reports submitted as part of the dispute resolution process. The calculation methodology for calculating the sales amounts for each Program, including any reasonable estimation techniques and assumptions that the Agencies expect to use, is described in this section.

(b) *Medicare Part D*—(1) *In general.* CMS will determine branded prescription drug sales under Medicare Part D by aggregating the ingredient cost reported in the ''Ingredient Cost Paid'' field on the Prescription Drug Event (PDE) records at the NDC level, reduced by discounts, rebates, and other price concessions provided by the covered entity, for each sales year. CMS will only include PDE data that Part D sponsors have submitted by the PDE submission deadline (within 6 months after the end of the sales year) and that CMS has approved for inclusion in the Part D payment reconciliation.

(2) *Discounts, rebates, and other price concessions*—(i) *In general.* For purposes of paragraph (b)(1) of this section, the term *discounts, rebates, and other price concessions* means:

(A) Any direct and indirect remuneration (DIR) (within the meaning of paragraph (b)(2)(B) of this section), which includes any DIR reported on the PDE records at the point of sale and any DIR reported on a Detailed DIR Report (within the meaning of paragraph (b)(2)(C) of this section); and

(B) Any coverage gap discount amount (within the meaning of paragraph (b)(2)(D) of this section).

(ii) *Direct and indirect remuneration.* For purposes of paragraph (b)(2)(A)(i) of this section, the term *direct and indirect remuneration* (DIR) has the same meaning as found in the definition of *actually paid* in 42 CFR 423.308.

(iii) *Detailed DIR Report.* For purposes of paragraph (b)(2)(A)(i) of this section, the term *Detailed DIR Report* means the report containing any DIR (within the meaning of paragraph (b)(2)(B) of this section) that is collected yearly from Part D sponsors at the NDC level.

(iv) *Coverage gap discount amount.* For purposes of paragraph (b)(2)(A)(ii) of this section, the term *coverage gap discount amount* means a 50-percent manufacturer-paid discount on certain drugs under the Coverage Gap Discount Program described in section 1860D–14A of the Social Security Act.

(c) *Medicare Part B*—(1) *In general.* CMS will determine branded prescription drug sales under Medicare Part B using the following two data sources:

(i) CMS will use data reported by manufacturers pursuant to section 1847A(c) of the Social Security Act to calculate the annual weighted average sales price (ASP) for each Healthcare Common Procedure Coding System (HCPCS) code for the sales year.

(ii) CMS will use the Medicare Part B National Summary Data File located at *http://www.cms.gov/NonIdentifiableDataFiles/03_PartBNationalSummaryDataFile.asp* to obtain the number of allowed billing units per HCPCS code for claims incurred during the sales year.

(2) *Calculation*—(i) *In general.* Using the data described in paragraph (c)(1) of this section, CMS will determine branded prescription drugs sales under Medicare Part B as described in paragraphs (c)(3), (4), and (5) of this section. CMS reports sales amounts per HCPCS billing code, not per NDC. Therefore, a covered entity's total Part B sales amounts for all NDCs in a given HCPCS billing code appears under only one NDC in each HCPCS billing code and the covered entity's remaining NDCs in the HCPCS billing code are listed with a sales amount of zero.

(ii) *Example of a Part B sales report:*

HCPCS	NDC	Part B amount
J9876	12345–6789–01	$789,000
	12345–6789–02	0
	12345–6789–03	0
	12345–6800–80	0
	12345–6800–90	0

(3) *HCPCS code; single entity.* For each HCPCS code consisting solely and exclusively of branded prescription drugs (as identified by their respective NDCs) manufactured by a single entity, CMS will multiply the annual weighted ASP by the total number of allowed billing units paid during the sales year to determine the total sales for all NDCs associated with the HCPCS code attributed to Medicare Part B.

(4) *HCPCS code; multiple manufacturers and/or multiple drugs*—(i) *Step one.* For each HCPCS code consisting of a mixture of branded prescription drugs made by different manufacturers and/or a mixture of branded prescription and generic drugs, CMS will determine—

(A) The annual weighted ASP for the HCPCS code;

(B) The total number of allowed billing units paid by Medicare Part B for each HCPCS code during the sales year;

(C) The names of the entities engaged in manufacturing each NDC assigned to the HCPCS code; and

(D) Those entities (if any) identified in paragraph (c)(4)(C) of this section that are manufacturing branded prescription drugs assigned to the HCPCS code.

(ii) *Step two.* Using the information from paragraph (c)(4)(i) of this section, CMS will then do the following:

(A) Calculate the proportion of sales, expressed as a percentage, attributed to each NDC assigned to the HCPCS code by determining the percentage of total sales reported to CMS by each manufacturer of NDC(s) that are assigned to the HCPCS code. For example, if HCPCS code JXXXX contains three drugs with a total of $310,000 sales reported by manufacturers to CMS for the sales year, and $100,000 was reported for Drug A, $200,000 was reported for Drug B, and $10,000 was reported for Drug C, the proportion of sales attributed to each NDC will be 32.26 percent for Drug A, 64.52 percent for Drug B, and 3.22 percent for Drug C; and

(B) For each NDC, multiply the product of the annual weighted ASP and the total allowed billing units paid by Medicare Part B for the HCPCS code by the proportion of sales calculated in paragraph (c)(4)(ii)(A) of this section to determine the sales reportable to the IRS (that is, percentage × (annual weighted ASP × allowed units) = total sales reported to IRS for the NDC). The sales for each manufacturer's NDCs assigned to a HCPCS code are summed and the total sales for each manufacturer's NDCs in a HCPCS code will be reported to the IRS.

(5) *HCPCS code; unable to establish a reliable proportion of sales.* If CMS is unable to establish a reliable proportion of sales attributable to each NDC assigned to the HCPCS code using the method described in paragraph (c)(4)(ii)(A) of this section, CMS will use Medicare Part D utilization percentages in lieu of the proportion of sales determined under paragraph (c)(4)(ii)(A) of this section to perform the calculation described in paragraph (c)(4)(ii)(B) of this section.

(d) *Medicaid.* (1) CMS will determine the branded prescription drug sales for Medicaid as the per-unit Average Manufacturer Price (AMP) less the Unit Rebate Amounts (URA) that CMS calculates based on manufacturer-reported pricing data multiplied by the number of units reported billed by states to manufacturers. This data will be based on the data reported to CMS for the sales year by covered entities and the states for drugs paid for by the states in the Medicaid Drug Rebate Program for the sales year. The data will include all branded prescription drug units for which the states bill rebates to covered entities under the Medicaid Drug Rebate Program. This program includes, but is not limited to, units paid for under various health care plans such as fee for service, managed care organizations, and drugs administered in a non-retail setting such as drugs administered in a physician's office, clinic, hospital or other setting. The Medicaid Drug Rebate Program's calculated branded prescription drug fee does not include state-only pharmaceutical program sales or rebates.

(2) For any covered entity identified in the first five (or six) digits of an NDC during any of the four quarters of a sales year, CMS will use the following methodology to derive the sales figures that account for third-party payers, such as Medicare Part B:

(i) Report total dollars per NDC for AMP minus URA multiplied by the units reported by a state or states.

(ii) Determine the percentage of the total amount reimbursed that is the Medicaid amount of that reimbursement. For example, if the total amount reimbursed is $100,000, and the Medicaid amount reimbursed is $20,000, then the percentage is 20 percent.

(iii) Multiply the percentage of the Medicaid amount of that reimbursement (in the example in paragraph (d)(2)(ii) of this section, 20 percent) by the dollar figure derived from paragraph (d)(2)(i) of this section (AMP minus URA multiplied by units) to get the new adjusted sales dollar totals.

(e) *Department of Veterans Affairs.* VA will determine branded prescription drug sales to VA by providing, by NDC, the total amount paid (net of refunds and rebates, when they are associated with a specific NDC) for each branded prescription drug procured by VA for its beneficiaries during the sales year. For this purpose, a drug is procured on the invoice (billing) date. The basis of this information will be national procurement data reported during the sales year by VA's Pharmaceutical Prime Vendor to the VA Pharmacy Benefits Management Service and National Acquisition Center. VA sales data includes the Industrial Funding Fee and the Cost Recovery Fee because these amounts are part of the price VA pays to its Pharmaceutical Prime Vendor to procure a drug.

(f) *Department of Defense.* DOD will determine branded prescription drug sales to DOD (for DOD programs other than the TRICARE retail pharmacy program) by providing, by Labeler Code, the manufacturer's name, the NDC, brand name, and the amount paid (net of rebates and or refunds) for each branded prescription drug procured by DOD (for DOD programs other than the TRICARE retail pharmacy program) during the sales year. For DOD programs other than the TRICARE retail pharmacy program, a drug is procured based upon the date it was ordered. DOD includes the Industrial Funding Fee and the Cost Recovery Fee in its drug sales data

because these amounts are part of the price DOD pays to procure a drug.

(g) *TRICARE.* DOD will determine branded prescription drug sales to DOD for the TRICARE retail pharmacy program by providing, by Labeler Code, the manufacturer's name, the NDC, brand name, and the amount paid (net of rebates or refunds) for each branded prescription drug procured by DOD through the TRICARE retail pharmacy program during the sales year. For the TRICARE retail pharmacy program, a drug is procured based upon the date it was dispensed. The amount paid is based on the submitted ingredient cost paid, aggregated by NDC, for eligible TRICARE retail pharmacy claims submitted during the program year, minus any refunds or rebates for the corresponding claims.

§ 51.4T [Removed]

■ **Par. 9.** Section 51.4T is removed.

■ **Par. 10.** Section 51.5 is added to read as follows:

§ 51.5 Fee calculation.

(a) *Fee components*—(1) *In general.* For every fee year, the IRS will calculate a covered entity's total fee as described in this section. The IRS will determine a covered entity's total fee by applying, if applicable, the adjustment amount described in paragraph (e) of this section to the entity's allocated fee described in paragraph (d) of this section.

(2) *Calculation of branded prescription drug sales.* Each covered entity's allocated fee for any fee year is equal to an amount that bears the same ratio to the applicable amount as the covered entity's branded prescription drug sales taken into account during the sales year bears to the aggregate branded prescription drug sales of all covered entities taken into account during the sales year.

(3) *Applicable amount.* The applicable amounts for fee years are—

Fee year	Applicable amount
2011	$2,500,000,000
2012	2,800,000,000
2013	2,800,000,000
2014	3,000,000,000
2015	3,000,000,000
2016	3,000,000,000
2017	4,000,000,000
2018	4,100,000,000
2019 and thereafter	2,800,000,000

(4) *Sales taken into account.* A covered entity's branded prescription drug sales taken into account during any calendar year are as follows:

Covered entity's branded prescription drug sales during the calendar year that are:	Percentage of branded prescription drug sales taken into account is:
Not more than $5,000,000	0
More than $5,000,000 but not more than $125,000,000	10
More than $125,000,000 but not more than $225,000,000	40
More than $225,000,000 but not more than $400,000,000	75
More than $400,000,000	100

(b) *Determination of branded prescription drug sales.* The IRS will compile each covered entity's branded prescription drug sales for each Program by NDC. Each NDC will be attributed to the covered entity identified in the Labeler Code as of the end of the day on December 31st of the sales year. For a covered entity that is a controlled group, this includes all NDCs in which a member of the covered entity is identified. For this purpose, the IRS may revise the list of NDCs as a result of information received in the dispute resolution process, and the data the IRS uses to produce the final fee calculation will include any revisions provided by the Agencies at the completion of the dispute resolution process. Each covered entity's branded prescription drug sales will be reduced by its Medicaid state supplemental rebate amounts in the following manner. If CMS has Medicaid state supplemental rebate information for a sales year, CMS will report to the IRS branded prescription drug sales for Medicaid net of Medicaid state supplemental rebates. If CMS does not have complete Medicaid state supplemental rebate information for a sales year, the IRS will reduce the branded prescription drug sales that CMS reported for Medicaid by Medicaid state supplemental rebates reported by the covered entities on Form 8947.

(c) *Determination of sales taken into account.* (1) For each sales year and for each covered entity, the IRS will calculate sales taken into account. The resulting number is the numerator of the ratio described in paragraph (d)(1) of this section.

(2) For each sales year, the IRS will calculate the aggregate branded prescription drug sales taken into account for all covered entities. The resulting number is the denominator of the ratio described in paragraph (d)(2) of this section.

(d) *Allocated fee calculation.* For each covered entity for each fee year, the IRS will calculate the entity's allocated fee by multiplying the applicable amount from paragraph (a)(2) of this section by a fraction—

(1) The numerator of which is the covered entity's branded prescription drug sales taken into account during the sales year (described in paragraph (c)(1) of this section); and

(2) The denominator of which is the aggregate branded prescription drug sales taken into account for all covered entities during the same year (described in paragraph (c)(2) of this section).

(e) *Adjustment amount*—(1) *In general.* In addition to the allocated fee computed under paragraph (d) of this section, the IRS will also automatically calculate for each covered entity an adjustment amount. An adjustment amount reflects the difference between the allocated fee determined for the covered entity in the immediately preceding fee year, using data from the second calendar year preceding that fee year, and what the allocated fee would have been for that entity for the immediately preceding fee year using data from the calendar year immediately preceding that fee year. For example, for 2014, the adjustment amount for a covered entity will be the difference between the entity's 2013 allocated fee, using 2011 data, and what the 2013 allocated fee would have been using 2012 data. Although the adjustment reflects a revision of the prior year's fee based on data from the year immediately preceding the prior fee year, the adjustment is only taken into account by adding it to or subtracting it from the allocated fee computed under paragraph (d) of this section for the current fee year to arrive at the total fee for the current fee year. An adjustment amount is treated as a component of the current year's fee. For purposes of section 6601, any increase in the allocated fee computed under paragraph (d) of this section for the current fee year resulting from any adjustment amount, along with the remainder of the fee, is treated as a fee liability due on the due date for the current year's fee. For purposes of sections 6511 and 6611, any adjustment amount that decreases the allocated fee computed under paragraph (d) of this section for the current fee year is treated as a payment towards the current fee liability made on the due date of the current fee year.

(2) *Amounts paid to a covered entity because of an adjustment amount.* If a covered entity's adjustment amount reduces the fee computed under paragraph (d) of this section below zero and results in an amount due to the covered entity for the fee year, the IRS will pay this amount due to the covered

entity. A covered entity does not file Form 843, Claim for Refund and Request for Abatement, to receive this amount owed to a covered entity.

§ 51.5T [Removed]

■ **Par. 11.** Section 51.5T is removed.

■ **Par. 12.** Section 51.6 is added to read as follows:

§ 51.6 Notice of preliminary fee calculation.

(a) *Content of notice.* For each sales year, the IRS will make a preliminary calculation of the fee for each covered entity as described in § 51.5. The IRS will notify each covered entity of its preliminary fee calculation for that sales year. The notification to a covered entity of its preliminary fee calculation will include—

(1) The covered entity's allocated fee;

(2) The covered entity's branded prescription drug sales, by NDC, by Program;

(3) The covered entity's branded prescription drug sales taken into account after application of § 51.5(a)(4);

(4) The aggregate branded prescription drug sales taken into account for all covered entities;

(5) The covered entity's adjustment amount calculated as described in § 51.5(e); and

(6) A reference to the fee dispute resolution procedures set forth in guidance published in the Internal Revenue Bulletin.

(b) *Time of notice.* The IRS will send each covered entity notice of its preliminary fee calculation by the date prescribed in guidance published in the Internal Revenue Bulletin.

§ 51.6T [Removed]

■ **Par. 13.** Section 51.6T is removed.

■ **Par. 14.** Section 51.7 is added to read as follows:

§ 51.7 Dispute resolution process.

(a) *In general.* Upon receipt of its preliminary fee calculation, each covered entity will have an opportunity to dispute this calculation by submitting to the IRS an error report as described in this section. The IRS will provide its final determination with respect to error reports no later than the time the IRS provides a covered entity with a final fee calculation.

(b) *Error report information.* To assert that there have been one or more errors in the drug sales data reported by a Program, the mathematical calculation of the fee, the rebate data, the listing of an NDC for an orphan drug, or any other error, a covered entity must submit an error report with each asserted error reported on a separate line. The report must include the following information—

(1) Entity name, address, and Employer Identification Number (EIN) as previously reported on the Form 8947;

(2) The name, telephone number, fax number, and email address (if available) of one or more employees or representatives of the entity with whom the IRS may discuss the claimed errors. If the representative is not an employee of the covered entity who is authorized under section 6103 or designated on Form 8947 to discuss the information reported on Form 8947 with the IRS, a Form 2848, ''Power of Attorney and Declaration of Representative,'' must be filed with the error report;

(3) For an error in the drug sales data reported by a Program, the name of the Program that reported the data, the NDC, the specific amount of sales data disputed, the proposed corrected amount, an explanation of why the Agency should use the proposed corrected data instead, and documentation of any Program drug sales data or other information used to establish the existence of any errors.

(4) For a mathematical calculation error, the specific calculation element(s) that the entity disputes and its proposed corrected calculation;

(5) For a rebate data error, the NDC for the drug to which it relates; a discussion of whether the data used in the preliminary fee calculation matches previously reported Form 8947 data on rebates; and, if the data used in the preliminary fee calculation does match the Form 8947 data, an explanation of why the Form 8947 data was erroneous and why the IRS should use the proposed corrected data instead;

(6) For the listing of an NDC for an orphan drug, the name and NDC of the orphan drug; a discussion of whether the data used in the preliminary fee calculation matches previously reported Form 8947 data on orphan drugs; and, if the data used in the preliminary fee calculation does match the Form 8947 data, an explanation of why the Form 8947 data was erroneous and why the IRS should use the proposed corrected data instead;

(7) For any other asserted error, an explanation of the nature of the error, how the error affects the fee calculation, an explanation of how the entity established that an error occurred, the proposed correction to the error, and an explanation of why the IRS or Agency should use the proposed corrected data instead;

(8) If an entity is using data to establish the existence of an error and that data was not reported on Form 8947 or contained in the notification of the preliminary fee calculation, a description of what the data is, how the entity acquired the data, and who maintains it; and

(9) Documentation of any rebate and orphan drug data, or other information used to establish the existence of any errors.

(c) *Form, manner, and timing of submission.* Each covered entity must submit its error report(s) in the form and manner that is prescribed in guidance published in the Internal Revenue Bulletin. This guidance will also prescribe the date by which each covered entity must submit its report(s).

(d) *Finality.* A covered entity must assert any basis for contesting its preliminary fee calculation during the dispute resolution period. In the interest of providing finality to the fee calculation process, the IRS will not accept an error report after the end of the dispute resolution period or alter the final fee calculation on the basis of information provided after the end of the dispute resolution period.

§ 51.7T [Removed]

■ **Par. 15.** Section 51.7T is removed.

■ **Par. 16.** Section 51.8 is added to read as follows:

§ 51.8 Notification and payment of fee.

(a) *Notification of final fee calculation.* No later than August 31st of each fee year, the IRS will send each covered entity its final fee calculation for that year. In any fee year, the IRS will base its final fee calculation on data provided to it by the Agencies as adjusted pursuant to the dispute resolution process. The notification to a covered entity of its final fee calculation will include—

(1) The covered entity's allocated fee;

(2) The covered entity's adjustment amount calculated as described in § 51.5;

(3) The covered entity's branded prescription drug sales, by NDC, by Program;

(4) The covered entity's branded prescription drug sales taken into account after application of § 51.5(a)(4);

(5) The aggregate branded prescription drug sales taken into account for all covered entities; and

(6) The final determination with respect to error reports.

(b) *Differences in preliminary fee calculation and final fee calculation.* A covered entity's final fee calculation may differ from the covered entity's preliminary fee calculation because of changes made pursuant to the dispute resolution process described in § 51.7. Even if a covered entity did not file an

error report described in § 51.7, a covered entity's final fee may differ from a covered entity's preliminary fee because of a change in data reported by the Agencies after resolution of error reports, including a change in the aggregate prescription drug sales figure. A change in aggregate prescription drug sales data can affect each covered entity's fee because each covered entity's fee is a fraction of the aggregate fee collected from all covered entities. A covered entity's final fee may also differ from its preliminary fee calculation because the data used in the preliminary fee calculation may have contained inaccurate branded prescription drug sales information that was corrected or updated at the conclusion of the dispute resolution process.

(c) *Payment of final fee.* Each covered entity must pay its final fee by September 30th of the fee year. For a controlled group, the payment must be made using the designated entity's EIN as reported on Form 8947. The fee must be paid by electronic funds transfer as required by § 51.6302–1. There is no tax return to be filed for the fee.

(d) *Joint and several liability.* In the case of a controlled group that is liable for the fee, all members of the controlled group are jointly and severally liable for the fee. Accordingly, if a controlled group's fee is not paid, the IRS will separately assess each member of the group for the full amount of the controlled group's fee.

§ 51.8T [Removed]

■ **Par. 17.** Section 51.8T is removed.

■ **Par. 18.** Section 51.9 is added to read as follows:

§ 51.9 Tax treatment of fee.

(a) *Treatment as an excise tax.* The fee imposed by section 9008 is treated as an excise tax for purposes of subtitle F of the Internal Revenue Code (Code) (sections 6001–7874). Thus, references in subtitle F to ''taxes imposed by this title,'' ''internal revenue tax,'' and similar references, are also references to the fee imposed by section 9008. For example, the fee imposed by section 9008 is assessed (section 6201), collected (sections 6301, 6321, and 6331), enforced (section 7402 and 7403), subject to examination and summons (section 7602), and subject to confidentiality rules (section 6103) in the same manner as taxes imposed by the Code.

(b) *Deficiency procedures.* The deficiency procedures of sections 6211–6216 do not apply to the fee imposed by section 9008.

(c) *Limitation on assessment.* The IRS must assess the amount of the fee for any fee year within three years of September 30th of that fee year.

(d) *Application of section 275.* The fee is treated as a tax described in section 275(a)(6) (relating to taxes for which no deduction is allowed).

§ 51.9T [Removed]

■ **Par. 19.** Section 51.9T is removed.

■ **Par. 20.** Section 51.10 is added to read as follows:

§ 51.10 Refund claims.

Any claim for a refund of the fee must be made by the person that paid the fee to the government and must be made on Form 843, ''Claim for Refund and Request for Abatement,'' in accordance with the instructions for that form.

§ 51.10T [Removed]

■ **Par. 21.** Section 51.10T is removed.

■ **Par. 22.** Section 51.11T is revised to read as follows:

§ 51.11T Effective/applicability date.

(a) through (b) [Reserved]. For further guidance see § 51.11(a) through (b).

(c) Section 51.2T(e)(3) applies to any fee on branded prescription drug sales that is due on or after January 1, 2015.

(d) The applicability of § 51.2T(e)(3) expires on July 24, 2017.

■ **Par. 23.** Section 51.11 is added to read as follows:

§ 51.11 Effective/applicability date.

(a) Except as otherwise provided in this section, §§ 51.1 through 51.10 apply on and after July 28, 2014.

(b) Section 51.2(e)(3) applies on July 28, 2014 through December 31, 2014.

(c) [Reserved]. For further guidance see § 51.11T(c).

§ 51.12T [Removed]

■ **Par. 24.** Section 51.12T is removed.

■ **Par. 25.** Section 51.6302–1 is added to read as follows:

§ 51.6302–1 Method of paying the branded prescription drug fee.

(a) *Fee to be paid by electronic funds transfer.* Under the authority of section 6302(a), the fee imposed on branded prescription drug sales by section 9008 and § 51.5 must be paid by electronic funds transfer as defined in § 31.6302–1(h)(4)(i) of this title, as if the fee were a depository tax. For the time for paying the fee, see § 51.8.

(b) *Effective/applicability date.* This section applies on and after July 28, 2014.

§ 51.6302–1T [Removed]

■ **Par. 26.** Section 51.6302–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 27.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 28.** In § 602.101, paragraph (b) is amended by:

■ 1. Removing the entry for 51.8T from the table; and

■ 2. Adding entries, in numerical order, for 51.2(f)(2)(ii) and 51.7 to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
51.2(f)(2)(ii)	1545–2209
51.7	1545–2209
* * * * *	

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: July 22, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–17697 Filed 7–24–14; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2014–0410]

RIN 1625–AC13

Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule in the **Federal Register** on July 7, 2014, that made non-substantive corrections throughout Title 33 of the Code of Federal Regulations. One of the amendatory instructions, which was intended to update a mailing stop number, contained a reference to the wrong paragraph in a section. This rule corrects that error.

DATES: Effective on July 28, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Crissy, U.S. Coast Guard, telephone 202–372–1093; email *Paul.H.Crissy@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Viewing Documents Associated With This Rule

To view the original rule, go to *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 reulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background

On July 7, 2014, the Coast Guard published its annual technical amendment final rule (79 FR 38422) to make non-substantive changes to Title 33 of the Code of Federal Regulations.

Need for Correction

In attempting to amend 33 CFR 151.66(c)(3)(iv)(C) to reflect the correct mail stop for Commandant (CG–OES), we mistakenly referred to paragraph (d)(3)(iv)(C) in amendatory instruction 106 on page 79 FR 38435 of that rule. This rule corrects that error by amending the correct paragraph.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

Accordingly, 33 CFR part 151 is corrected by making the following correcting amendment:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227(110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063), § 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; 322; DHS Delegation No. 0170.1, sec. 2(77).

§ 151.66 [Amended]

■ 2. In § 151.66(c)(3)(iv)(C), remove the text ''Stop 7126'' and add, in its place, the text ''Stop 7509''.

Dated: July 22, 2014.

Katia Cervoni,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2014–17687 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0574]

RIN 1625–AA00

Safety Zone, Marine Week Seattle Seahawks Demonstration, Lake Washington; Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Marine Week Seattle Seahawks Demonstration area on Lake Washington, Seattle, WA. This event will occur on July 30, 2014 and July 31, 2014. This action is necessary to protect participants and the maritime public from the safety hazards associated with this event, which involves low flying aircraft, combat equipment, and other on-water displays, and will do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port (COTP) or a Designated Representative.

DATES: This rule is effective from July 30, 2014 through July 31, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0574]. To view documents mentioned in this preamble as being available in the docket, go to *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 rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Johnny Zeng, Coast Guard Sector Puget Sound, Waterways Management Division; telephone (206) 217–6175, email *SectorPugetSoundWWM@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final 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 to do so would be impracticable due to the insufficient time available for notice and opportunity to comment prior to the dates of the actual event and the inability for the event to be rescheduled.

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**. Delayed promulgation would eliminate the safety zone's effectiveness and usefulness in protecting event participants and the maritime public during the scheduled event.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define and establish regulatory safety zones.

The Marine Corps will be conducting an aerial and on-water demonstration in support of Marine Week. The event involves low flying aircraft, combat equipment, and other on-water displays, which will take place immediately offshore from the Seattle Seahawks training facility on Lake Washington, Seattle, WA. The safety zone is necessary to protect event participants and the maritime public from the safety hazards associated with this event.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone on all waters encompassed by the following points: 47°32′19″ N, 122°12′14″ W, thence southeasterly to 47°32′11″ N, 122°11′56″ W, thence southwesterly along the shoreline to 47°31′58″ N, 122°12′11″ W, thence northwesterly to 47°32′01″ N, 122°12′29″ W, thence northeasterly back to the point of origin.

Vessels wishing to enter the safety zone must request permission for entry by contacting the Joint Harbor Operations Center at (206) 217–6175, or the on-scene patrol craft via VHF–FM Ch 13. If permission for entry is granted vessels must proceed at a minimum speed for safe navigation.

D. 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 or executive orders.

1. Regulatory Planning and Review

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. This rule is not a significant regulatory action because it creates a safety zone that is minimal in size and short in duration.

2. 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 rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the established safety zones during the times of enforcement. This rule will not have a significant economic impact on a substantial number of small entities because the temporary safety zone is minimal in size and short in duration, maritime traffic will be able to transit around it and may be permitted to transit them with the permission from the Captain of the Port or a Designated Representative.

3. Assistance for Small Entities

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**, above.

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.

4. 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).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. 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.

7. 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. 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 (NEPA)(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 the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental 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.

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. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T13–274 to read as follows:

§ 165.T13–274 Safety Zone; Marine Week Seattle Seahawks Demonstration, Lake Washington; Seattle, WA.

(a) *Location.* The following area is designated as a safety zone: All waters encompassed by the following points: 47°32′19″ N, 122°12′14″ W, thence southeasterly to 47°32′11″ N, 122°11′56″ W, thence southwesterly along the shoreline to 47°31′58″ N, 122°12′11″ W, thence northwesterly to 47°32′01″ N, 122°12′29″ W, thence northeasterly back to the point of origin.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his designated representative. Designated representatives are Coast Guard personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, Subpart C, for additional information and requirements. Vessels wishing to enter the zone must request permission for entry by contacting the Joint Harbor Operations Center at (206) 217–6175, or the on-scene patrol craft via VHF–FM Ch 13. If permission for entry is granted vessels must proceed at a minimum speed for safe navigation.

(c) *Enforcement Period.* This rule is effective from 7:00 a.m. until 10:00 a.m. on July 30, 2014, and from 11:00 a.m. until 2:00 p.m. on July 31, 2014.

Dated: July 11, 2014.

M. W. Raymond,

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

[FR Doc. 2014–17688 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0556]

RIN 1625–AA00

Safety Zone; Columbus Road Bridge Installation, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Cuyahoga River, Cleveland, OH. This temporary safety zone is intended to restrict vessels from a portion of the Cuyahoga River during the installation operation for the new Columbus Road Bridge spanning the Cuyahoga River. This temporary safety zone is necessary to protect mariners and vessels and construction crews from the navigational hazards associated with blocking the river for the large scale heavy lift of the bridge structure and securing it to the towers on either side of the river.

DATES: This rule is effective from 6 a.m. July 28, 2014 to 6 a.m. August 1, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0556]. To view documents mentioned in this preamble as being available in the docket, go to *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 rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Amanda Cost, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9573, email *SectorBuffaloMarineSafety@uscg.mil*. If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (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 doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect vessels and mariners from the hazards associated with the demolition of a bridge across the span of a river.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

This temporary safety zone is intended to restrict vessels from a portion of the Cuyahoga River during the installation operation for the new Columbus Road Bridge spanning the Cuyahoga River. This temporary safety zone is necessary to protect mariners and vessels and construction crews from the navigational hazards associated with blocking the river for the large scale heavy lift of the bridge structure and securing it to the towers on either side of the river. This rule is effective from 6 a.m. July 28, 2014, to 6 a.m. August 1, 2014.

During this effective period, there will be a continuous closure of a portion of the Cuyahoga River at MM 1.93 and resultant stoppage of any traffic beyond MM 1.93 south to the terminus of the maintained navigable channel. The Captain of the Port Buffalo has determined that these bridge installation operations will pose a significant risk to the maritime public. Such hazards include falling bridge structure, falling building materials, death, and serious bodily harm.

C. Discussion of the Temporary Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of mariners and vessels on the Cuyahoga River during the Columbus Road Bridge installation operation in Cleveland, OH.

This safety zone will be effective from 6 a.m. on July 28, 2014, to 6 a.m. on August 1, 2014. The safety zone will encompass waters of the Cuyahoga River in the vicinity of the Columbus Road Bridge on the Cuyahoga River at river mile marker 1.93. Specifically, the safety zone will cover an area 1000 feet upstream and 1000 feet downstream of the bridge from position 41°29′16.4″ N, 081°42′01.7″ W, (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

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.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a maximum of 4 days and will result in the reinstallation of critical local infrastructure crossing the Cuyahoga River. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port or his designated on-scene representative.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. 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. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit a portion of the Cuyahoga River in Cleveland, OH from 6 a.m. July 28, 2014 to 6 a.m. August 1, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

3. Assistance for Small Entities

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 above.

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.

4. 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).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. 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.

7. 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. 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 (NEPA) (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 the establishment of a safety zone and, therefore 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.

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; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0556 to read as follows:

§ 165.T09–0556 Safety Zone; Columbus Road Bridge Installation, Cuyahoga River, Cleveland, OH.

(a) *Location.* This safety zone will encompass all waters of the Cuyahoga River 1000 feet upriver and 1000 feet down river of the Columbus Road Bridge in position 41°29′16.4″ N, 081°42′01.7″ W, (NAD 83).

(b) *Enforcement period.* This section will be enforced from 6 a.m. July 28, 2014 to 6 a.m. August 1, 2014.

(c) *Regulations.* (1) Under general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) of this temporary section is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) To seek permission to enter or operate within the safety zone, vessel operators or other persons must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo, or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: July 10, 2014.

B.W. Roche,

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

[FR Doc. 2014–17686 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2014–OSERS–0028]

Final Priority; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

[CFDA Number: 84.133B–1.]

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce a priority for an RRTC on Vocational Rehabilitation Practices for Youth and Young Adults. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2014 and later years. We take this action to focus research attention on an area of national need. We intend for this priority to contribute to improved outcomes for youth and young adults with disabilities in the State Vocational Rehabilitation Services program.

DATES: *Effective Date:* This priority is effective August 27, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., room 5142, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–6211 or by email: *patricia.barrett@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers, and other research stakeholders. Additional information on the RRTC program can be found at: *http://www2.ed.gov/programs/rrtc/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2)(A).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on May 27, 2014 (79 FR 30056). That notice contained background information and our reasons for proposing the particular priority.

There are no differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the notice of proposed priority, three parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of the Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Comment: One commenter suggested that NIDRR modify the priority to require transition-related research on best practices in the following areas: Engaging youth consumers in the VR process, engaging parents/families in the VR process, how motivational interviewing works best with youth consumers, and partnering with school staff in the career development of youth with disabilities.

Discussion: As written, the priority specifies that the RRTC must conduct research on engaging youth consumers in the VR program. Paragraph (a) requires applicants to investigate factors that affect the likelihood that youth and young adults are fully engaged in the VR program. Paragraph (a)(1)(i) requires applicants to identify individual- and system-level factors (including practices of State VR agencies) that affect youth engagement in the VR program. We believe that, consistent with the proposed priority, the priority contains the transition-related research the commenter supports.

Changes: None.

Final Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC to conduct research on Vocational Rehabilitation (VR) Practices for Youth and Young Adults. The RRTC must contribute to increased knowledge about effective VR practices that can improve employment outcomes of youth and young adults with disabilities by:

(a) Generating new knowledge that builds the evidence base of VR practices, services, or models that improve the employment outcomes for youth and young adults. The center will conduct research to better understand the factors that affect the likelihood that youth and young adults are fully engaged in the VR program and achieve their vocational goals; i.e., completion of postsecondary education and training programs, and attainment of competitive employment, including research that—

(i) Identifies individual- and system-level factors that affect engagement and attainment of an employment outcome. Individual-level factors include, but are not limited to, demographic characteristics and impairment types and severity. System-level factors include, but are not limited to, financial disincentives to obtaining employment associated with other public programs and systems, characteristics and practices of VR State agencies, employer practices and perceptions, and macroeconomic conditions; and

(ii) Identifies the reasons for which youth and young adults with disabilities discontinue their participation in the VR program before achieving successful postsecondary goals (e.g., postsecondary education or training) or employment outcomes.

(b) Conducting research to identify VR services and transition practices that increase the likelihood of youth and young adults with disabilities achieving successful employment outcomes. The research must also identify practices relevant to improving the outcomes of youth and young adults who are at particular risk for poor employment outcomes. Applicants must identify the specific at-risk group or groups of youth and young adults with disabilities they propose to include; provide evidence that the selected population or populations are, in fact, at risk for poor employment outcomes; and explain how the practices are expected to address the needs of the population or populations.

(c) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those research stages must be clearly specified. (These stages and their definitions are provided at the end of the background statement section of the notice of proposed priority published in the **Federal Register** on May 27, 2014 (79 FR 30056).)

(d) Serving as a national resource center for youth and young adults with disabilities, their families, and other stakeholders, including other relevant grantees funded by the Office of Special Education and Rehabilitative Services. Specifically, this center must coordinate, as appropriate, with the Office of Special Education Programs (OSEP)-funded Parent Training and Information Centers, the OSEP-funded National Technical Assistance Center on Improving Transition, and the Rehabilitation Services Administration (RSA)-funded Parent Information and Training Projects, and other relevant entities by conducting knowledge translation activities related to improving employment outcomes of youth and young adults that must include, but are not limited to:

(i) Providing information and technical assistance to VR State agencies and related service providers, educators, employers, youth and young adults with disabilities and their representatives, families, and other key stakeholders.

(ii) Providing training, including graduate, pre-service, and in-service training, to educators, VR professionals, direct service professionals, and related service providers, to facilitate a seamless and effective transition service delivery system. Training may be offered through conferences, workshops,

public education programs, in-service training programs, and similar activities.

(iii) Disseminating research-based information and materials related to VR practices and services that increase employment for youth and young adults with disabilities.

(iv) Involving key stakeholder groups in the activities conducted under paragraphs (a) through (d) of this priority in order to maximize the relevance and usability of the new knowledge generated by the RRTC.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years, as projects similar to the one envisioned by the final priority have been completed successfully, and the proposed priority will generate new knowledge through research. The new RRTCs will generate, disseminate, and promote the use of new information that would improve outcomes for individuals with disabilities in the areas of community living and participation, employment, and health and function.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced

search feature at this site, you can limit your search to documents published by the Department.

Dated: July 23, 2014.

Melody Musgrove,

Director, Office of Special Education Programs.

[FR Doc. 2014–17718 Filed 7–25–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2014–OSERS–0041]

Final Priority; National Institute on Disability and Rehabilitation Research—Research Fellowships Program (Also Known as the Mary E. Switzer Research Fellowships)

[CFDA Number: 84.133F–2.]

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Research Fellowships Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces a priority for a Distinguished Residential Disability and Rehabilitation Policy Fellowship. We take this action to focus attention on an area of national need. We intend the priority to build research capacity by providing support to highly qualified, experienced researchers, including those who are individuals with disabilities, to conduct policy research in the areas of disability and rehabilitation.

DATES: *Effective Date:* This priority is effective August 27, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–6211 or by email: *patricia.barrett@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to experienced, highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities.

Fellows must conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended (the Act). Section 204 of the Act authorizes research, demonstration projects, training, and related activities, the purposes of which are to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most significant disabilities, and to improve the effectiveness of services authorized under the Act.

Program Authority: 29 U.S.C. 762(e).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on June 03, 2014 (79 FR 31898). That notice contained background information and our reasons for proposing the particular priority.

There are no differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the NPP we did not receive any comments on the proposed priority.

Final Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes a new priority for a Distinguished Residential Disability and Rehabilitation Policy Fellowship as part of NIDRR's Research Fellowship Program (also known as the Mary E. Switzer Research Fellowships). The goals of this proposed priority are: (1) To provide experienced disability and rehabilitation researchers with opportunities to enhance their knowledge and understanding of the public policy-making process and the effects of public policy on the outcomes of individuals with disabilities; (2) to enhance the capacity of disability and rehabilitation researchers to conduct and disseminate relevant disability policy research; (3) to increase the integration and use of research findings in shaping disability-related policy; and 4) to increase awareness of disability-related issues in public policy discussions, formulations, and reviews.

Consistent with the goals of this program, an applicant for a Distinguished Residential Disability and Rehabilitation Policy Fellowship must include:

(a) An Eligibility Statement that demonstrates that you meet the eligibility requirements in 34 CFR part 356.2(c)(1), including relevant publications and prior research experience; and that provides sufficient information in order to evaluate your qualifications consistent with 34 CFR part 356.30(a).

(b) A plan for how you will fulfill the full-time equivalent requirement for a Distinguished Residential Disability and Rehabilitation Policy Fellowship and the requirement to work a minimum of 50 percent of the time in an agency or office within the Executive or Legislative branches of the Federal government, in the Washington, DC metropolitan area.

Note: As described in 34 CFR 356.41, fellows will work full-time on authorized fellowship activities. The application package for this priority provides a thorough description of how NIDRR defines and administers the full-time equivalent requirement for this program, as well as the 50 percent residential requirement.

(c) A letter of support from a potential mentor at an agency or office within the Executive or Legislative branches of the Federal Government where your fellowship will be based. The letter of support from the potential mentor should indicate the mentor's capacity and willingness to facilitate your fellowship placement should you be awarded the Distinguished Residential Disability and Rehabilitation Policy Fellowship.

(d) An assurance that you will commit to spending at least 50 percent of the time during the period of the fellowship at an agency or office within the Executive or Legislative branches of the Federal government in the Washington, DC metropolitan area, receiving orientation, conducting research, and providing expertise related to disability and rehabilitation research.

(e) A description of a proposed Distinguished Residential Disability and Rehabilitation Policy Fellowship research project that includes the following:

(1) A brief history or literature review of the disability issue, as appropriate; identification of the relevant recent legislative, regulatory, or administrative actions and the policy options related to this topic; and a rationale for the importance of the topic to improving the well-being of individuals with disabilities in one or more of NIDRR's primary outcome domains: Community Living and Participation, Employment, and Health and Function.

(2) Specific objectives and research questions or hypotheses that will guide the project, the methods you will use to conduct the research, and the proposed timeline for implementing the project.

(3) A plan for how the results of the project will be disseminated and used to influence policy.

Note: Fellows funded under this program are responsible for ensuring that their conduct does not violate Federal anti-lobbying requirements (see *www.gpo.gov/fdsys/granule/USCODE-2011-title18/USCODE-2011-title18-partI-chap93-sec1913*) during the period of their fellowship.

Note: The costs associated with carrying out this residential policy practicum are intended to be covered, in full or in part, by the Distinguished Residential Disability and Rehabilitation Policy Fellowship Award; however, the fellow is responsible for paying for any costs that exceed the amount of the award.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Research Fellowships Program have been well established over the years. Projects similar to the Research Fellowships Program have been completed successfully, and the proposed priority will generate new capacity in the area of rehabilitation and disability policy research.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced

search feature at this site, you can limit your search to documents published by the Department.

Dated: July 23, 2014

Melody Musgrove,

Director, Office of Special Education Programs.

[FR Doc. 2014–17707 Filed 7–25–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0072; FRL–9913–62–OAR]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

Correction

In rule document 2014–16556, appearing on pages 41437–41438, in the issue of Wednesday, July 16, 2014, make the following correction:

On page 41437, in the first column, the subject heading is corrected to read as set forth above.

[FR Doc. C1–2014–16556 Filed 7–25–14; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2013–0791; FRL–9914–22–Region–5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Bellefontaine Area To Attainment of the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 29, 2013, the Ohio Environmental Protection Agency (OEPA) submitted a request for the Environmental Protection Agency (EPA) to redesignate the Bellefontaine nonattainment area to attainment for the 2008 national ambient air quality standards (NAAQS or standards) for lead. EPA determined that the Bellefontaine area meets the requirements for redesignation and is also approving several additional related actions. EPA is approving, as revisions to the Ohio state implementation plan (SIP), the state's plan for maintaining the 2008 lead NAAQS through 2025 for the area. EPA is approving the 2010 emissions inventory for the Bellefontaine area, which meet the comprehensive emissions inventory requirement of the Act. EPA is approving to take these actions in accordance with the Clean Air Act (CAA or Act) and EPA's implementation regulations regarding the 2008 lead NAAQS.

DATES: This direct final rule is effective September 26, 2014, unless EPA receives adverse comments by August 27, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0791, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2013–0791. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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.

Docket: All 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 material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@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 actions is EPA taking?
II. What is the background for these actions?
III. What are the criteria for redesignation to attainment?
IV. What is EPA's analysis of the state's request?
V. What are the effects of EPA's actions?
VI. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is taking several actions related to the redesignation of the Bellefontaine area to attainment for the 2008 lead

NAAQS. EPA is approving Ohio's lead maintenance plan for the Bellefontaine area as a revision to the Ohio SIP. EPA is approving the 2010 lead base year emission inventory which satisfies the requirement in section 172(c)(3) for a current, accurate and comprehensive emission inventory.

EPA also finds that Ohio meets the requirements for redesignation of the Bellefontaine area to attainment of the 2008 lead NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus granting Ohio's request to change the designation of the Bellefontaine area from nonattainment to attainment for the 2008 lead NAAQS. EPA's analysis for these actions are discussed in Section V. of today's rulemaking.

II. What is the background for these actions?

Lead is a metal found naturally in the environment as well as in manufactured products. The major sources of lead emissions have historically been from fuels used in on-road motor vehicles (such as cars and trucks) and industrial sources. As a result of EPA's regulatory efforts to remove lead from on-road motor vehicle gasoline, emissions of lead from the transportation sector dramatically declined by 95 percent between 1980 and 1999, and levels of lead in the air decreased by 94 percent between 1980 and 1999.

Today, the highest levels of lead in the air are usually found near lead smelters. The major sources of lead emissions to the air today are ore and metals processing and piston-engine aircraft operating on leaded aviation gasoline.

On November 12, 2008 (73 FR 66964), EPA established the 2008 primary and secondary lead NAAQS at 0.15 micrograms per cubic meter ($\mu g/m^3$) based on a maximum arithmetic 3-month mean concentration for a 3-year period. *See* 40 CFR 50.16.

On November 22, 2010 (75 FR 71033), EPA published its initial air quality designations and classifications for the 2008 lead NAAQS based upon air quality monitoring data for calendar years 2007–2009. These designations became effective on December 31, 2010.[1] The Bellefontaine area was designated nonattainment for the 2008 lead NAAQS. *See* 40 CFR 81.336. OEPA submitted their redesignation request on October 29, 2013.

[1] EPA completed a second and final round of designations for the 2008 lead NAAQS on November 22, 2011. *See* 76 FR 72097. No additional areas in Ohio were designated as nonattainment for the 2008 lead NAAQS.

III. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, or other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

IV. What is EPA's analysis of the state's request?

EPA is approving the redesignation of the Bellefontaine area to attainment of the 2008 lead NAAQS and is also approving Ohio's maintenance plan and emissions inventory for the area. The bases for these actions follow.

A. Attainment Determination and Redesignation

1. The Area Has Attained the 2008 Lead NAAQS (Section 107(d)(3)(E)(i))

In accordance with section 179(c) of the CAA, 42 U.S.C. 7509(c), EPA is determining that the Bellefontaine, Ohio area has attained the 2008 lead NAAQS. This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2010–2012 monitoring period that show this area has monitored attainment of the lead NAAQS.

Under EPA regulations at 40 CFR 50.16, the 2008 primary and secondary lead standards are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR part 50, appendix R, is less than or equal to 0.15 $\mu g/m^3$ at all relevant monitoring sites in the subject area. In a rulemaking on November 5, 2011, EPA determined that the Bellefontaine air quality data was attaining the standard with a design value of 0.006 $\mu g/m^3$ for the period of 2010–2012, well below the standard of 0.15 $\mu g/m^3$. *See 78 FR 66280.*

Although 2010 to 2012 data are still the most recent quality-assured and certified data, preliminary 2013 data indicate that the area continues to attain the standard. The 2013 data, complete, but not yet certified, show that the maximum value for the entire year was 0.005 $\mu g/m^3$. Because 0.005 $\mu g/m^3$ was the highest 3-month rolling average in 2011 and 2012 (*Id.*), the design value for the 2011 to 2013 time period would not exceed 0.005 $\mu g/m^3$, a concentration that is only 3.3% of the 0.15 $\mu g/m^3$ standard.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Section 107(d)(3)(E)(ii) and (v))

We have determined that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Bellefontaine area under section 110 of the CAA (general SIP requirements). We also find that the Ohio submittal meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the emissions inventory under section 172(c)(3), we are proposing to find that all applicable requirements of the Ohio SIP for purposes of redesignation have been approved, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action, EPA is approving Ohio's 2010 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In making these determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and concluded that the Ohio SIP includes measures meeting those requirements and that they are fully approved under section 110(k) of the CAA.

a. Ohio Has Met All Applicable Requirements for Purposes of Redesignation of the Bellefontaine Area Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of

appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. See 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997) (proposed and final redesignation for Reading, Pennsylvania ozone nonattainment area); 61 FR 20458 (May 7, 1996) (final redesignation for Cleveland-Akron-Lorain, Ohio ozone nonattainment area); and 60 FR 62748 (December 7, 1995) (final redesignation of Tampa, Florida ozone nonattainment area). See also 65 FR 37879, 37890 (June 19, 2000) (discussing this issue in final redesignation of Cincinnati, Ohio 1-hour ozone nonattainment area); 66 FR 50399 (October 19, 2001) (final redesignation of Pittsburgh, Pennsylvania 1-hour ozone nonattainment area).

We have reviewed the Ohio SIP and determined that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Ohio's SIP addressing section 110 requirements (including provisions addressing lead), at 40 CFR 52.1870.

On October 12, 2011, and supplemented on June 7, 2013, Ohio made submittals addressing ''infrastructure SIP'' elements for the lead NAAQS required under CAA section 110(a)(2). EPA has not yet acted on this submittal, however, the requirements of section 110(a)(2) are statewide requirements that are not linked to the lead nonattainment status of the Bellefontaine area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's lead redesignation request.

ii. Part D Requirements

EPA has determined that upon approval of the base year emissions inventories discussed in section V.B. of this rulemaking, the Ohio SIP will meet the applicable SIP requirements for the Bellefontaine area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

(1) Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Bellefontaine area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measure (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all states to consider all available control measures for all nonattainment areas and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because the Bellefontaine area has reached attainment, Ohio does not need to address additional measures to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.918).

The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of the Bellefontaine redesignation because the area has monitored attainment of the 2008 lead NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. The requirement to submit the section 172(c)(9) contingency measures is similarly not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio submitted a 2005 and 2010 base year emissions inventory along with their redesignation request and via email on February 6, 2014, requested that the 2010 inventory be used as the most accurate and current inventory. As discussed below in section V.B., EPA is approving the 2010 base year inventory as meeting the section 172(c)(3) emissions inventory requirement for the Bellefontaine area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we find that the Ohio SIP meets the section 110(a)(2) applicable requirements for purposes of redesignation.

(2) Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway and transit projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded

projects (general conformity). In light of the elimination of lead additives in gasoline, transportation conformity does not apply to the lead NAAQS. See *73 FR 66964, 67043 n.120.* EPA approved Ohio's general conformity SIPs on March 11, 1996 (61 FR 9646).

b. Ohio Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Ohio's comprehensive 2010 emissions inventories, EPA will have fully approved the Ohio SIP for the Bellefontaine area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the September 4, 1992, *Processing Requests to Redesignate Areas to Attainment: Policy Memorandum* (Calcagni memorandum)); *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under lead standards.

Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. On April 19, 2013, the Ohio EPA, submitted a request to EPA to make a determination under the CAA that the Bellefontaine nonattainment area has attained the 2008 lead NAAQS. EPA made a final determination of attainment for the area (also known as a clean data determination) on November 5, 2013. See 78 FR 66280. Pursuant to 40 CFR 51.1004(c), EPA's determination that the area has attained the 2008 lead standards suspended the requirement to submit certain planning SIPs related to attainment, including attainment demonstration requirements, the Reasonably Available Control Technology (RACT)-RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA. As noted above, the area has continued to attain the standard, and preliminary data indicate the area will remain in attainment, since EPA made the final determination of attainment in 2013.

As a result, the only remaining requirement under section 172 to be considered is the emissions inventory required under section 172(c)(3). In this action, EPA is approving Ohio's 2010 emissions inventories for the Bellefontaine area as meeting the requirement of section 172(c)(3) of the CAA. No Bellefontaine area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIPs and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA believes that Ohio has demonstrated that the observed air quality improvement in the Bellefontaine area is due to permanent and enforceable reductions in emissions. The only stationary source of lead in the Bellefontaine area was the Daido facility. This source was permanently shutdown in June of 2009.

4. Ohio Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with Ohio's request to redesignate the Bellefontaine nonattainment area to attainment status, Ohio has submitted a SIP revision to provide for maintenance of the 2008 lead NAAQS in the area through 2025.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future lead violations.

The September 4, 1992, Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: the attainment emissions inventory, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni memorandum at 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni memorandum at 9–10.

As discussed in detail in the section below, the state's maintenance plan submission expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2025, more than ten years after redesignation.

b. Attainment Inventory

Ohio developed an emissions inventory for lead for 2010, one of the years in the period during which the Bellefontaine area monitored attainment of the 2008 lead standard. The attainment level of emissions is summarized in Table 1 below along with future maintenance projections.

c. Demonstration of Maintenance

Along with the redesignation request, Ohio submitted a revision to its lead SIP to include a maintenance plan for the Bellefontaine area, as required by section 175A of the CAA. Ohio's plan demonstrates maintenance of the 2008 lead standard through 2025 by showing that current and future emissions of lead in the area remain at or below attainment year emission levels. Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni memorandum at 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that

emissions during the maintenance period will not increase over the attainment year inventory. Calcagni memorandum at 9–10.

As discussed in the section below, the state's maintenance plan submission expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2025.

Ohio's plan demonstrates maintenance of the 2008 lead NAAQS through 2025 by showing that current and future emissions of lead for the area remain at attainment year emission levels. When the Daido facility was operating, as shown in Table 1 as the 2005 baseline, the emissions were 0.0035 tons per year (tpy). Now that the facility is shut down, and given that the mobile source emissions of lead are approximately zero, the emissions level for the area is approximately zero tpy. No new sources of lead are projected for the area, so the remainder of the maintenance period is projected as zero tpy as well. Since the shut down of the Daido facility in 2009, the Bellefontaine area has shown monitored design value concentrations well below the NAAQS and, with no other significant sources of lead, is predicted to easily stay below the standard.

TABLE 1—COMPARISON OF 2005, 2010, 2015, AND 2025 LEAD TOTALS (TPY) FOR THE BELLEFONTAINE AREA

2005 (Baseline)	2010 (Attainment)	2015 (Interim)	2025 (Maintenance)
0.0035	0	0	0

d. Monitoring Network

Ohio's maintenance plan includes additional elements. Ohio's plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. Ohio currently operates one lead monitor in the Bellefontaine, Ohio area.

e. Verification of Continued Attainment

Ohio remains obligated to continue to quality-assure monitoring data and enter all data into the Air Quality System (AQS) in accordance with Federal guidelines. Ohio will use these data, supplemented with additional information as necessary, to assure that the area continues to attain the standard. Ohio will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions. Both of these actions will help to verify continued attainment in accordance with 40 CFR part 58.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA.

Ohio's contingency plan defines a warning level and action level response. The warning level response will trigger when a lead monitor 3-month rolling average exceeds 0.135 $\mu g/m^3$ in the maintenance area. If a warning level response is triggered, Ohio will conduct a study to determine whether the lead values indicate a trend toward exceeding the standard and what control measure would be necessary to reverse the trend within 12 months of the conclusion of the calendar year. The action level response will be prompted by the determination of the warning level study that a reverse of the trend is needed, or by the 3-month rolling average exceeding 0.143 $\mu g/m^3$. The action level response will require Ohio to work with the culpable entity to evaluate and implement the needed control measures to bring the area into attainment within 18 months of the conclusion of the calendar year that triggered the response.

Currently, no new sources of lead are projected for the Bellefontaine area, so all control measures would be determined after an analysis of the situation but could include control devices, secondary controls, or improves housekeeping and maintenance. Ohio commits to continue implementing SIP requirements upon and after redesignation.

EPA believes that Ohio's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA an updated lead maintenance plan eight years after redesignation of the Bellefontaine area to cover an additional ten year period beyond the initial ten year maintenance period.

For all of the reasons set forth above, EPA is approving Ohio's 2008 lead maintenance plan for the Bellefontaine area as meeting the requirements of CAA section 175A.

B. Comprehensive Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory including all lead sources in the nonattainment area. In an email dated February 6, 2014, Ohio clarified their request that their 2005 emissions inventory submitted on October 5, 2009, as part of their designation request documents be updated with their 2010 emissions inventory submitted to EPA as part of their redesignation request to more accurately represent the current emissions status of the area. By 2010, the only source of lead is shutdown so the emissions level for the entire Bellefontaine area is estimated to be zero tpy. EPA is approving the Ohio 2010 emissions inventory to fulfill this requirement. EPA believes that the 2010 emissions inventory is complete and accurate, and meets the requirement of CAA section 172(c)(3).

V. What are the effects of EPA's actions?

Approval of this redesignation request changes the official designation of the Bellefontaine, Ohio area for the 2008 lead NAAQS, found at 40 CFR part 81, from nonattainment to attainment. This action also approves as a revision to the

Ohio SIP for the Bellefontaine area, the maintenance plan for the 2008 lead standard and finds that Ohio's 2010 emissions inventory for the Bellefontaine area satisfies the requirement of section 172(c)(3).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective September 26, 2014 without further notice unless we receive relevant adverse written comments by August 27, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective September 26, 2014.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: July 11, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Subpart KK is amended by adding § 52.1893 to read as follows:

§ 52.1893 Control strategy: Lead (Pb).

(a) Ohio's 2008 lead emissions inventory for the Bellefontaine area as, as submitted on October 29, 2013, satisfying the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Bellefontaine area.

(b) Approval—the 2008 lead maintenance plan for the Bellefontaine, Ohio nonattainment area has been approved as submitted on October 29, 2013.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. Section 81.336 is amended by revising the entry for Bellefontaine, OH, in the table entitled ''Ohio—2008 Lead NAAQS'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
* * * * * * *		
Bellefontaine, OH:		
Logan County (part)	7/28/2014	Attainment.
The portions of Logan County that are bounded by: Sections 27, 28, 33, and 34 of Lake Township		
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011, unless otherwise noted.

* * * * *

[FR Doc. 2014–17612 Filed 7–25–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA–HQ–OAR–2013–0162; FRL–9913–88–OAR]

RIN 2060–AQ71

Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the compliance certification requirements for state and federal operating permits programs that were published in the **Federal Register** on June 27, 2003. In that action, one sentence was removed from the rules inadvertently. This action restores the sentence to its original location in the rules.

DATES: This final rule is effective on August 27, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2013–0162. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket ID No. EPA–HQ–OAR–2013–0162. EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket Information Center is (202) 566–1742. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: For further general information on this rulemaking, contact Ms. Joanna Swanson, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5282; fax number (919) 541–5509; email address: *swanson.joanna@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in the Supplementary Information section of this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
II. Background for the Final Rulemaking
III. Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs
A. Rationale for the Final Action
B. Scope of Rulemaking
C. Comments and Responses
1. The Necessity of the Amended Language
2. The Use of Material Information
3. Scope of Compliance Certifications
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IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
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E. Executive Order 13132: Federalism
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H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review

I. General Information

A. Does this action apply to me?

Entities potentially affected by this final rulemaking include owners and operators of emission sources in all industry groups who hold or apply for a title V operating permit. Other entities potentially affected by this final rulemaking include federal, state, local and tribal air pollution control agencies who administer title V permit programs.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket found on *http://www.regulations.gov,* an electronic copy of this document will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted on the EPA's title V Web page at *http://www.epa.gov/nsr*.

II. Background for the Final Rulemaking

On March 29, 2013, the EPA proposed to restore a sentence that was inadvertently removed from the operating permits program rules (found in 40 CFR parts 70 and 71) due to an editing error. This error occurred in a June 27, 2003, final rule (68 FR 38517) amending the compliance certification requirements in 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). The final 2003 rule inadvertently removed the following sentence from the end of paragraph (c)(5)(iii)(B) of both sections: ''If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.'' The EPA proposed to restore this sentence to its former position in both paragraphs.

This sentence was originally added to the operating permits rules in the context of the 1997 Compliance Assurance Monitoring (CAM) rulemaking (62 FR 54900), which clarified the use of CAM monitoring data in compliance certifications. Specifically, this sentence was intended to clarify that ''other material information (i.e., information beyond required monitoring that has been specifically assessed in relation to how the information potentially affects compliance status)'' (62 FR 54937) known by the owner or operator must be identified and addressed in compliance certifications consistent with section 113(c)(2) of the Clean Air Act (CAA or Act) and the 1997 Credible Evidence Revisions rule (62 FR 8314). The 2003 rulemaking that erroneously removed the subject sentence was intended to address a court remand concerning other aspects of the annual compliance certification requirements of title V.

For the reasons discussed in this document, we are finalizing the regulatory language that we proposed without change.

III. Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs

A. Rationale for the Final Action

As discussed in the preamble to the proposed rule (78 FR 19166), the substance of the regulatory preambles and rule text from the 2001 [1] and 2003 rulemakings make it clear that the EPA did not intend to remove the missing sentence from 40 CFR 70.6(c)(5)(iii)(B) or 71.6(c)(5)(iii)(B). The EPA did not discuss or propose any revisions to these paragraphs in the 2001 direct final rulemaking or parallel proposal.[2] Similarly, while the EPA revised the text of 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) as part of the 2003 final amendments, it did not discuss any intent to remove this sentence. To the contrary, the EPA stated clearly that ''[o]ther text within [sections] 70.6(c)(5)(iii)(B), 71.6(c)(5)(iii)(B), 70.6(c)(5)(iii)(C), and 71.6(c)(5)(iii)(C) remains as proposed in March 2001'' (68 FR 38521). The EPA did not propose to remove the deleted sentence from paragraph (c)(5)(iii)(B) of 40 CFR 70.6 and 71.6 or to make any other changes to those paragraphs in that March 2001 rulemaking. Moreover, the EPA's response to comments on the 2001 proposed amendments reiterated the sentence's requirement that ''responsible officials must identify in [their title V compliance certifications] other material information where failure to do so would constitute a false certification of compliance.'' [3]

Despite the inadvertent removal of the sentence in question on June 27, 2003, the EPA's actions since that time have remained consistent with the direction provided in the inadvertently removed ''other material information'' sentence, and with the Credible Evidence Revisions rule in general. For example, the Part 71 federal operating permits program administered by the EPA includes a form for sources to use for their annual compliance certifications, and the instructions for completing the form state the following:

Compliance Status: For each permit requirement and its associated compliance methods, indicate whether there was intermittent or continuous compliance (check one) during the reporting period. *You should consider all available information or knowledge that you have when evaluating this, including compliance methods required by the permit and ''credible evidence'' (e.g., non-reference test methods and information ''readily available'' to you).* You are always free to include written explanations and other information to clarify your conclusion regarding compliance status.[4]

Similarly, the instructions for the initial compliance certification form that the EPA issued shortly after the ''other material information'' sentence was added to parts 70 and 71 as part of the promulgation of the CAM rule in 1997 also discussed the consideration of ''all available information or knowledge'' in compliance status certification.[5] After the ''other material information'' language was inadvertently deleted from the part 71 rule in 2003, the EPA revised the annual compliance certification form and associated instructions in 2004 ''to reflect policy decisions concerning monitoring and the data used for compliance certifications.'' [6] Specifically, the form added the requirement for sources to certify whether compliance was continuous or intermittent, but the EPA did not revise the instruction for sources to consider ''all available information and knowledge'' and ''credible evidence'' when determining compliance status.[7] The retention of the instruction to consider all available information, including credible evidence, in the Annual Compliance Certification form clearly indicates that the EPA continues to believe that the title V rules should be implemented consistent with the ''other material information'' sentence that had been removed inadvertently. The EPA also has made revisions to the part 71 forms a number of times since 2003, providing ample opportunity to change this language if its policy had changed; however, the EPA has made no such changes.[8]

Title V permits issued by EPA Regional Offices since 2003 also provide evidence of the EPA's ongoing practice of requiring sources to use ''other material information'' in compliance certifications. A review of a sample of recent part 71 permits reveals that they include language similar to the language

[1] In 2001, the EPA published a direct final rule (66 FR 12872) and a parallel proposal (66 FR 12916) requiring title V compliance certifications to identify whether compliance during the period was continuous or intermittent as specified in CAA section 114(a)(3) per the 1990 CAA Amendments. We subsequently received adverse comments on the direct final rule and withdrew it (66 FR 55883).

[2] As discussed in the preamble to the proposed rule (78 FR 19166), while the 2001 preamble discussion of the proposed revisions at 66 FR 12918 mistakenly referred to changes to paragraph (c)(5)(iii)(B) of 40 CFR 70.6 and 71.6, the proposed amendments in that action addressed only 40 CFR 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C). The proposed revisions to the regulatory language correctly addressed 40 CFR 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C).

[3] Responses to public comments prepared for the June 27, 2003, Final Rule, section 2.3, page 11, EPA Docket No. EPA–HQ–OAR–2002–0062–0008, June 2003.

[4] Annual Compliance Certification (A–COMP), EPA Form 5900–04, at page 4 (emphasis added), available at *http://www.epa.gov/airquality/permits/pdfs/a-comp.pdf.*

[5] Initial Compliance Plan and Compliance Certification (I–COMP), EPA Form 5900–86, at page 4, available at *http://www.epa.gov/airquality/permits/pdfs/i-comp.pdf.*

[6] *http://www.epa.gov/airquality/permits/p71forms.html,* accessed on June 16, 2014.

[7] See generally Annual Compliance Certification (A–COMP), EPA Form 5900–04, available at *http://www.epa.gov/airquality/permits/pdfs/a-comp.pdf.*

[8] See generally *http://www.epa.gov/airquality/permits/p71forms.html,* accessed on June 16, 2014.

in the inadvertently removed sentence. These permits include a permit issued by Region 2 in 2011, a permit issued by Region 8 in 2010, and a permit issued by Region 5 in 2012, and each permit requires the annual compliance certification to include ''any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.'' [9]

Similarly, the EPA guidance to title V rule writers on an EPA Region 3 Web site concerning compliance and enforcement illustrates the EPA's commitment to the use of credible evidence. That Web site includes the following guidance:

> Title V permit conditions cannot limit the types of data or information (i.e., credible evidence) that may be used to prove a violation of any applicable requirement. Title V permits should contain language clarifying that any credible evidence may be used in determining a source's compliance status (or alternatively, that nothing in the permit precludes the use of credible evidence in determining compliance or noncompliance with the terms of the permit). Such language gives fair notice to the source and the public, and prevents the source from claiming that they weren't on notice that other credible evidence could be used to demonstrate a violation or compliance. Such language can most easily be added to Title V permits by modifying the 'boilerplate' provisions (i.e., general permit conditions) as in the following example. . . .[10]

As illustrated by these examples, following the mistaken removal of the ''other material information'' sentence on June 27, 2003, the EPA has clearly articulated a position consistent with the Credible Evidence Revisions rule under all circumstances, including the annual compliance certification. In light of the EPA's continued, consistent commitment to the use of credible evidence in compliance certifications and other title V contexts, the EPA has not previously devoted its limited resources to correcting the inadvertent deletion in the regulatory text through a formal rulemaking. Nonetheless, the EPA's Office of Inspector General (OIG) has indicated that the title V rules should be amended to restore the ''other material information'' language to the regulatory requirements in order to improve the content of annual compliance certifications.[11] In concurrence with the OIG recommendation, the EPA is now taking this action to restore the language currently missing in the part 70 and 71 rules.

The restored language reflects the general prohibition on knowingly making a false certification or omitting material information that exists in the CAA, independent of any EPA policy or previous rulemaking actions. As modified in the 1990 CAA Amendments, section 113(c)(2) of the Act states that any person who knowingly ''makes any false material statement, representation, or certification in, *or omits material information from,* . . . any notice, application, record, report, plan, or other document required pursuant to this Act'' (emphasis added) is subject to fine or imprisonment, upon conviction. The EPA believes that it is important to ensure that sources are on notice and understand the requirement to consider as part of their compliance status any material information determined by methods other than those identified in the permit. Moreover, for the sake of clarity, the EPA believes that this duty should be explicit in the part 70 and 71 compliance certification requirements.

B. Scope of Rulemaking

The purpose of this final rulemaking is to restore language that was inadvertently deleted from the title V regulations, 40 CFR parts 70 and 71.[12] Given the passage of time, the EPA decided to make this change through a notice and comment rulemaking, rather than a correction notice. In the notice of proposed rulemaking for this action, the EPA requested comments only on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. The EPA did not request comments on any other aspects of these provisions or on any other provisions of the part 70 and 71 rules. In the proposal, the EPA stated that if comments were submitted outside of this scope, the agency would not take them into consideration when finalizing the rule.

C. Comments and Responses

As stated in the previous section, the proposed rule provided an opportunity for comment on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. The EPA provided a 60-day review and comment period on the proposed rulemaking, which closed on May 28, 2013. A total of seven comment letters (three industry comment letters, two citizen comment letters, one government agency comment letter, and one environmental group comment letter) were received on the proposed amendment to restore a sentence to the title V compliance certification requirements that had been inadvertently removed from the rules in June 27, 2003. Three of the commenters opposed the amendment, three were neutral about it, and one supported it. One commenter did not believe the removal was inadvertent, but provided no specific reasoning or evidence to support this general allegation; thus, we have no additional response to this comment beyond the explanation already provided here and in the proposal to support that the removal was inadvertent. Another commenter explained that they ''assumed'' that EPA had determined the ''other material information'' language was no longer necessary or appropriate and that the removal of the language was part of an overall effort to simplify rule language. However, as explained repeatedly in this preamble, as well as in the preamble to the proposal for this action, we provided no such explanation at the time the sentence was removed, nor did we even note that we were removing the sentence. In addition, the EPA's actions

[9] See Region 2 part 71 permit issued to Turning Stone Casino Resort in Verona, New York at section V.D.(1)(iv), *available at http://www.epa.gov/region02/air/permit/trsc07052011.pdf;* Region 8 part 71 permit issued to Samson Resources Company at § III.C.3.(c)(ii), *available at http://www2.epa.gov/sites/production/files/documents/Samson-HowardSWD_Initial_V-SU-0051-10.00.pdf;* Region 5 part 71 permit issued for operations at the Treasure Island Resort & Casino in Red Wing, Minnesota at 4.0(D)1.(ii), *available at http://yosemite.epa.gov/r5/r5ard.nsf/f5dbe2e3ef9dc9c1862570430068f396/10cd79ad1a4c177386257ad0004d7bc3/$FILE/V-PI-2704900084-2012-10%20-%20Final.pdf.*

[10] *http://www.epa.gov/reg3artd/permitting/t5_compl_enf.htm.* The Web site states that this page was last updated on February 11, 2011.

[11] EPA Office of Inspector General, *Substantial Changes Needed in Implementation and Oversight of Title V Permits If Program Goals Are To Be Fully Realized,* Report No. 2005–P–00010, pp 31–32 and p 37, Recommendation 2–2, March 9, 2005. *http://www.epa.gov/oig/reports/2005/20050309-2005-P-00010.pdf.*

[12] Section 70.4(i) provides that states with approved part 70 programs may need to revise their programs when the relevant federal statutes or regulations are modified or supplemented. Given that the relevant federal statute concerning representations or statements made in compliance certifications (CAA section 113(c)(2)) applies regardless of the specific language in 40 CFR 70.6(c)(5)(iii)(B), the EPA proposed that states will not need to submit part 70 program revisions in response to this rulemaking, except where a state program interferes with the implementation of the sentence the EPA proposes to restore. The EPA also proposed that permit reopenings will not be needed under 40 CFR 70.7(f)(1) or 71.7(f)(1) in response to this rulemaking, except where a permit contains language that interferes with the implementation of the sentence the EPA proposes to restore. Notwithstanding the previous statements in this footnote, the EPA may require individual states to revise their programs or reopen permits where the EPA believes such actions would be necessary to ensure the appropriate implementation of the program or its permits.

since the removal demonstrate the EPA's consistent implementation of the language restored in the rule. All these points support the EPA's position that the removal was inadvertent.

The EPA responded to comments on the substance of the inadvertently removed text when the text was first promulgated, see ''Compliance Assurance Monitoring Rulemaking (40 CFR Parts 64, 70, and 71) Responses to Public Comments (Part III),'' October 2, 1997, available at *http://www.epa.gov/ttnatw01/cam/rtcpart3.pdf,* page 285. The following discussion confirms our position on issues related to the substance of the ''other material information'' text as explained in prior response to comments, preambles to **Federal Register** documents, and various EPA forms, permits, and guidance documents, and is consistent with the restoration of the text we are finalizing.

1. The Necessity of the Amended Language

Comment: One industry commenter states that it is not necessary or useful for the EPA to add this additional language to 40 CFR 70.6 and 71.6. In fact, the commenter believes that the inclusion of this language will be harmful in that it will create uncertainty and confusion.

The government agency commenter stated that the addition of the proposed language would be redundant and would not provide any additional clarification to the requirements under this section. The commenter claims that it would instruct the owner/operator to include items that are already required to be included by this section as currently written.

A citizen commenter was also concerned about the proposed language being redundant and stated that: (a) Most title V permits already have conditions that address this issue; (b) most state agencies have been using the language whether it was/was not inadvertently left out of the rule; and (c) the certifications required now by state agencies are sufficient without additional language.

The environmental group commenter supported the EPA's effort to remind permit owners of their obligations while cautioning that the disclosure duties discussed in the proposed rule exist independent of the EPA's implementing regulations.

Response: As stated earlier in this preamble, as well as in the preamble to the proposal for this action, the regulatory requirement to identify ''any other material information . . .'' was originally added to the annual compliance certification requirements of parts 70 and 71 and promulgated in the context of a Compliance Assurance Monitoring rulemaking on October 22, 1997 (62 FR 54900). Restoring the language at issue to the regulatory text through this action only seeks to correct what was an inadvertent error in the 2003 final rulemaking. As explained, the EPA has not reversed or weakened this position in subsequent actions. The restored language reflects the general prohibition on knowingly making a false certification or omitting material information that exists in the CAA, independent of any EPA policy or previous rulemaking actions. As modified in the 1990 CAA Amendments, section 113(c)(2) of the Act states that any person who knowingly ''makes any false material statement, representation, or certification in, or omits material information from, . . . any notice, application, record, report, plan, or other document required pursuant to this Act'' (emphasis added) is subject to fine or imprisonment, upon conviction. The EPA believes that it is important to ensure sources are on notice and understand the requirement to consider as part of their compliance status any material information determined by methods other than those identified in the permit. Moreover, for the sake of ensuring clarity, the EPA believes that this duty should be included explicitly in the part 70 and 71 compliance certification requirements.

As also discussed earlier in this preamble and in the preamble to the proposed rule, the EPA's OIG has indicated that the title V rules should be amended to restore the ''other material information'' language to the regulatory requirements in order to improve the content of annual compliance certifications.[13] Therefore, the decision to restore the regulatory text is responsive to the OIG's recommendation.

2. The Use of Material Information

Comment: The environmental group requested that the agency clarify that ''material'' information includes information known to the permit-holder and pertinent to compliance status, ''whether or not that information necessarily demonstrates a violation.'' An industry commenter stated that including ''other material information'' in a certification does not constitute a concession that the information is ''credible evidence'' of a violation. An industry commenter requested that the agency acknowledge that nothing in the revised language prohibits a responsible official from disputing the relevance or ''materiality'' of any identified information or reserving all rights to challenge use of that information in an enforcement proceeding. Another industry commenter made a similar comment and stated that the EPA should acknowledge that companies may clarify the meaning of ''other material information'' included in a compliance certification document and may dispute its materiality in subsequent proceedings.

Response: In terms of the first and last comment, the agency agrees that material information is not limited to information that conclusively demonstrates a violation. The sentence restored states that ''[i]f necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.'' As the EPA explained in the preamble to the final 1997 CAM rulemaking, any other material information known to the source owner/operator and relevant to the source's compliance status—''i.e., information beyond required monitoring that has been specifically assessed in relation to how the information potentially affects compliance status''—must be identified and addressed in the compliance certification submitted by the responsible official, and in providing this explanation, the EPA did not state that the information is limited to that which indicates non-compliance (62 FR 54937). As explained in the Response to Comments document accompanying the 1997 Compliance Assurance Monitoring Rule, the owner or operator of a source must consider any other material information in order to avoid submitting an incomplete, inaccurate, or false certification.[14] Thus, this other material information could help in documenting whether compliance was continuous or intermittent for the relevant certification period, consistent with §§ 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C).

In response to industry commenters, the agency agrees that a responsible official may provide an explanation concerning the relevance of other material information when it is

[13] See footnote 9, supra.

[14] ''Compliance Assurance Monitoring Rulemaking (40 CFR parts 64, 70, and 71) Responses to Public Comments (Part I), (Comments Submitted in Response to Enhanced Monitoring Proposal),'' dated October 2, 1997, *available at http://www.epa.gov/ttnatw01/cam/rtcpart1.pdf* (hereinafter, CAM Responses to Public Comments) Section 7.2.3 ''Use of Other Monitoring Data for Compliance Certifications,'' page 192.

submitted as part of the compliance certification for the source. At the time of the submittal, the responsible official can explain the relevance of any such information, including, but not limited to, cases in which the responsible official believes the ''other material information'' may be seen as in conflict with his conclusion regarding whether compliance was continuous or intermittent.[15] For example, we have explained that the requirements of the Credible Evidence Revisions rule ''continue[s] to rely on the established compliance method as the benchmark for measuring compliance with the standard. The use of other evidence to document a violation must take into account the averaging requirements related to the data collected by such method, the pollutant constituents measured by such method (*e.g.,* the definition of particulate matter included in Method 5), and any limitations as to the conditions under which such tests may be conducted.'' [16]

The agency further agrees that merely including other material information in a compliance certification does not constitute a concession that the information is credible evidence of a violation.

Comment: The government agency expressed concern that if the proposed sentence is readopted, the interpretation of what is additional information necessary for compliance—outside of what is required by the permit—becomes arbitrary and up to interpretation by the regulatory agency without recourse for the permitted entity. The commenter further states that any inadvertent omission of additional information (whether by oversight or not being aware of its relevance), even though not required by the permit, would subject the facility to enforcement action and imply the responsible official made a false certification, holding him/her both criminally and civilly liable.

A citizen commenter also expressed concern about the possibility of criminal prosecution and monetary penalties as a result of knowingly making a false certification.

Response: As explained in the 2013 proposal and throughout this preamble, the title V operating permits program functioned with this language in place for some time before it was inadvertently removed and has operated similarly since its removal. Moreover, the underlying statutory language in section 113(c)(2) of the CAA has not changed. Thus, restoring this language in the regulatory text does not change what is required of permitted entities.

Additionally, as previously explained in the 1997 Compliance Assurance Monitoring rulemaking, the requirement to consider other material information ''does not impose a duty on the owner or operator to assess every possible piece of information that may have some undetermined bearing on compliance'' (62 FR 54937). Under the existing title V regulations, any application form, report, or compliance certification is required to contain a certification by a responsible official.[17] This certification is required to state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. See 40 CFR 70.5(d) and 71.5(d). It is important to emphasize that, consistent with this requirement, the agency has already explained that it does not expect a certification to be based on absolute knowledge, but rather reasonable inquiry. For example, the EPA has stated that the compliance certification ''will be based on available information, including monitoring and/or other compliance terms required in the permit.'' [18]

Nothing in the current regulations precludes the submission of material information discovered after a compliance certification is filed. Additionally, the responsible official is encouraged to include written explanations, graphs, and other information to clarify his/her conclusions regarding the source's compliance status.

In an explanation of the use of credible evidence in compliance certifications in the Credible Evidence Revisions rule, the agency emphasized that sources may not ignore obviously relevant information in developing their compliance certifications (62 FR 8320). However, in the same preamble, the agency also explained that it does not view compliance certification requirements as imposing a duty on a source to search out and review every possible document to determine its relevance to a source's compliance (*id*).

3. Scope of Compliance Certifications

Comment: The environmental group requested that the agency confirm in the final rule that the compliance certification obligation applies to all applicable requirements under the CAA—not just the specific emissions limitations enumerated in a title V operating permit.

Response: As discussed earlier in this preamble and in the preamble to the proposal, the purpose of this rulemaking is to restore a sentence to the compliance certification requirements that was inadvertently removed from the rule language on June 27, 2003. The EPA requested comment on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. The comment raises an issue that is beyond the scope of this rulemaking, and, consistent with the approach already described, the EPA did not take this comment into consideration when finalizing the rule. However, we note that the text restored is a part of the existing regulation requiring annual (or more frequent) certification addressing compliance of the source ''with terms and conditions contained in the permit, including emission limitations, standards, or work practices.'' 40 CFR 70.6(c)(5), 71.6(c)(5).

4. Rule Language Clarification Requested

Comment: A citizen recommended that the proposed language be revised to be more specific as to the information that needs to be included.

Response: As discussed earlier in this preamble and in the preamble to the proposal, the purpose of this rulemaking is to restore a sentence to the compliance certification requirements that was inadvertently removed from the rule language on June 27, 2003. The EPA requested comment on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. The comment raises an issue that is beyond the scope of this rulemaking, and, consistent with approach already described, the EPA

[15] CAM Response to Public Comments, Section 7.2.3 ''Use of Other Monitoring Data for Compliance Certifications,'' pages 192–193 and Section 7.11.2 ''Deviations,'' page 208.

[16] ''Credible Evidence Rule Revisions: Response to Comments,'' Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, dated February 1997, Section 2.1.6 ''Necessity for a Rulemaking to Establish Compliance Test Methods,'' page 17.

[17] In the Part 70 proposal (56 FR 21712, May 10, 1991), we stated that ''the certification, as well as all other documents required under Part 70, must state that 'to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the statements and information in the compliance certification are true, accurate and complete.' This language is similar to that in Rule 11 of the Federal Rules of Civil Procedure, upon which it was modeled. The provision makes clear that the signer must make a reasonable (under the circumstances) inquiry before attesting to the truth, accuracy, and completeness of the information and statements.'' (56 FR 21734).

[18] ''White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program,'' Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, to Air Division Directors, March 5, 1996, page 33.

did not take this comment into consideration when finalizing the rule. However, we note that the EPA provides guidance on the information to be included in compliance certification in several places, including in the instructions to the Annual Compliance Certification form [19] and as further summarized in the recently issued memo regarding annual compliance certification reporting.[20]

D. Final Action

On March 29, 2013, the EPA proposed to restore the ''other material information'' sentence that was inadvertently removed from the operating permits program rules (found in 40 CFR parts 70 and 71) due to an editing error. This error occurred in a June 27, 2003, final rule (68 FR 38517) amending the compliance certification requirements in 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). The final 2003 rule removed the following sentence from the end of paragraph (c)(5)(iii)(B) of both sections: ''If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.'' This final rule restores this sentence to its former position in both paragraphs.

IV. Statutory and Executive Order Reviews

This final rule implements a technical correction to the Code of Federal Regulations by adding a sentence that was inadvertently removed in a prior rulemaking. It will not otherwise impose or amend any requirements. The analysis below is consistent with the limited nature of this rulemaking.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The EPA is simply correcting the CFR to reinstate a sentence that was inadvertently removed. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR parts 70 and 71 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and has assigned OMB control numbers 2060–0243 and 2060–0336, respectively. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this final action on small entities, small entity is defined as: (1) A small business as defined in the U.S. Small Business Administration size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. As explained above, this final rule merely restores a sentence that was removed from the rules inadvertently, and that reflects a requirement of the CAA; thus, the final rule does not impose any new requirements on any entities, either large or small.

D. Unfunded Mandates Reform Act

This final rule contains no federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector; it simply restores a sentence removed from the rules because of erroneous amendatory language contained in the June 27, 2003, amendments. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The sentence restored in this action reflects a requirement of the CAA and was removed inadvertently and, therefore, it does not impose new regulatory requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained previously, this final rule merely restores a sentence removed from the rules inadvertently. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). As explained previously, this final rule merely restores a sentence that reflects a requirement of the CAA and was removed from the rules inadvertently. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

[19] Annual Compliance Certification (A–COMP), EPA Form 5900–04, at pages 4–6, available at *http://www.epa.gov/airquality/permits/pdfs/a-comp.pdf.*

[20] Memorandum from Stephen D. Page, OAQPS Director, to Regional Air Division Directors, Regions 1–10, Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits (April 30, 2014), available at *http://www.epa.gov/Region7/air/title5/t5memos/20140430.pdf.*

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and as permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As explained previously, this final rule merely restores a sentence that reflects a requirement of the CAA and was removed from the rules inadvertently.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on August 27, 2014.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of this action.

List of Subjects

40 CFR Part 70

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

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 21, 2014.

Gina McCarthy,

Administrator.

Therefore, 40 CFR parts 70 and 71 are amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. In § 70.6, revise paragraph (c)(5)(iii)(B) to read as follows:

§ 70.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

* * * * *

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 4. In § 71.6, revise paragraph (c)(5)(iii)(B) to read as follows:

§ 71.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

* * * * *

[FR Doc. 2014–17680 Filed 7–25–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–8341]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm*.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia:				
Bridgewater, Town of, Rockingham County.	510134	February 19, 1974, Emerg; December 15, 1983, Reg; August 18, 2014, Susp.	August 18, 2014	August 18, 2014
Mount Crawford, Town of, Rockingham County.	510224	July 18, 1975, Emerg; June 5, 1985, Reg; August 18, 2014, Susp.	.....*do	Do.
Rockingham County, Unincorporated Areas.	510133	July 2, 1974, Emerg; September 29, 1986, Reg; August 18, 2014, Susp.	.....do	Do.
Region IV				
Florida:				
Broward County, Unincorporated Areas.	125093	December 18, 1970, Emerg; October 20, 1972, Reg; August 18, 2014, Susp.	.....do	Do.
Coconut Creek, City of, Broward County.	120031	April 17, 1974, Emerg; April 2, 1979, Reg; August 18, 2014, Susp.	.....do	Do.
Cooper City, City of, Broward County.	120032	October 18, 1973, Emerg; June 1, 1977, Reg; August 18, 2014, Susp.	.....do	Do.
Coral Springs, City of, Broward County.	120033	March 16, 1973, Emerg; January 17, 1978, Reg; August 18, 2014, Susp.	.....do	Do.
Dania Beach, City of, Broward County.	120034	September 8, 1972, Emerg; February 15, 1978, Reg; August 18, 2014, Susp.	.....do	Do.
Davie, Town of, Broward County.	120035	November 10, 1972, Emerg; July 13, 1976, Reg; August 18, 2014, Susp.	.....do	Do.
Fort Lauderdale, City of, Broward County.	125105	November 20, 1970, Emerg; November 3, 1972, Reg; August 18, 2014, Susp.	.....do	Do.
Hallandale Beach, City of, Broward County.	125110	September 17, 1971, Emerg; November 24, 1972, Reg; August 18, 2014, Susp.	.....do	Do.
Hillsboro Beach, Town of, Broward County.	120040	February 5, 1974, Emerg; April 17, 1978, Reg; August 18, 2014, Susp.	.....do	Do.
Hollywood, City of, Broward County.	125113	June 4, 1971, Emerg; November 3, 1972, Reg; August 18, 2014, Susp.	.....do	Do.
Lauderdale-by-the-Sea, Town of, Broward County.	125123	February 21, 1971, Emerg; October 27, 1972, Reg; August 18, 2014, Susp.	.....do	Do.
Lauderdale Lakes, City of, Broward County.	120043	May 29, 1973, Emerg; December 4, 1979, Reg; August 18, 2014, Susp.	.....do	Do.
Lauderhill, City of, Broward County.	120044	October 27, 1972, Emerg; June 15, 1978, Reg; August 18, 2014, Susp.	.....do	Do.
North Lauderdale, City of, Broward County.	120049	July 5, 1974, Emerg; April 2, 1979, Reg; August 18, 2014, Susp.	.....do	Do.
Parkland, City of, Broward County.	120051	January 13, 1976, Emerg; April 2, 1979, Reg; August 18, 2014, Susp.	.....do	Do.
Pembroke Park, Town of, Broward County.	120052	July 24, 1975, Emerg; May 1, 1979, Reg; August 18, 2014, Susp.	.....do	Do.
Pembroke Pines, City of, Broward County.	120053	October 27, 1972, Emerg; December 15, 1977, Reg; August 18, 2014, Susp.	.....do	Do.
Plantation, City of, Broward County.	120054	October 13, 1972, Emerg; September 15, 1977, Reg; August 18, 2014, Susp.	.....do	Do.
Sunrise, City of, Broward County.	120328	May 3, 1974, Emerg; March 15, 1979, Reg; August 18, 2014, Susp.	.....do	Do.
West Park, City of, Broward County.	120222	N/A, Emerg; April 25, 2006, Reg; August 18, 2014, Susp	.....do	Do.
Weston, City of, Broward County.	120678	N/A, Emerg; June 29, 1998, Reg; August 18, 2014, Susp.	.....do	Do.
South Carolina: Fountain Inn, City of, Greenville and Laurens Counties.	450209	June 2, 1977, Emerg; June 17, 1986, Reg; August 18, 2014, Susp.	.....do	Do.
Greenville, City of, Greenville County.	450091	January 15, 1974, Emerg; February 1, 1980, Reg; August 18, 2014, Susp.	.....do	Do.
Greenville County, Unincorporated Areas.	450089	February 12, 1974, Emerg; December 2, 1980, Reg; August 18, 2014, Susp.	.....do	Do.
Greer, City of, Greenville and Spartanburg Counties.	450200	March 27, 1974, Emerg; September 28, 1979, Reg; August 18, 2014, Susp.	.....do	Do.
Mauldin, City of, Greenville County.	450198	August 16, 1974, Emerg; September 29, 1978, Reg; August 18, 2014, Susp.	.....do	Do.
Simpsonville, City of, Greenville County.	450092	January 23, 1974, Emerg; September 29, 1978, Reg; August 18, 2014, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Travelers Rest, City of, Greenville County.	450264	N/A, Emerg; April 3, 1997, Reg; August 18, 2014, Susp	.....do	Do.
Region VI				
Texas:				
Conroe, City of, Montgomery County.	480484	March 8, 1974, Emerg; May 16, 1977, Reg; August 18, 2014, Susp.	.....do	Do.
Cut and Shoot, City of, Montgomery County.	481279	February 22, 1988, Emerg; February 22, 1988, Reg; August 18, 2014, Susp.	.....do	Do.
Magnolia, City of, Montgomery County.	481261	November 12, 1980, Emerg; January 3, 1985, Reg; August 18, 2014, Susp.	.....do	Do.
Montgomery, City of, Montgomery County.	481483	N/A, Emerg; September 30, 1997, Reg; August 18, 2014, Susp.	.....do	Do.
Montgomery County, Unincorporated Areas.	480483	October 15, 1973, Emerg; August 1, 1984, Reg; August 18, 2014, Susp.	.....do	Do.
Oak Ridge North, City of, Montgomery County.	481560	October 4, 1979, Emerg; December 18, 1984, Reg; August 18, 2014, Susp.	.....do	Do.
Panorama Village, City of, Montgomery County.	481263	June 2, 1977, Emerg; August 1, 1984, Reg; August 18, 2014, Susp.	.....do	Do.
Patton Village, City of, Montgomery County.	480486	April 15, 1985, Emerg; April 15, 1985, Reg; August 18, 2014, Susp.	.....do	Do.
Roman Forest, City of, Montgomery County.	481538	January 11, 1979, Emerg; August 1, 1984, Reg; August 18, 2014, Susp.	.....do	Do.
Shenandoah, City of, Montgomery County.	481256	June 5, 1975, Emerg; May 26, 1978, Reg; August 18, 2014, Susp.	.....do	Do.
Splendora, City of, Montgomery County.	480488	February 27, 1987, Emerg; February 27, 1987, Reg; August 18, 2014, Susp.	.....do	Do.
Willis, City of, Montgomery County.	480942	June 8, 1984, Emerg; August 1, 1984, Reg; August 18, 2014, Susp.	.....do	Do.
Woodbranch, City of, Montgomery County.	480694	February 19, 1974, Emerg; August 15, 1984, Reg; August 18, 2014, Susp.	.....do	Do.
Woodloch, Town of, Montgomery County.	481168	December 19, 1974, Emerg; January 3, 1985, Reg; August 18, 2014, Susp.	.....do	Do.
Region VIII				
Montana:				
Broadwater County, Unincorporated Areas.	300145	June 3, 1981, Emerg; December 1, 1986, Reg; August 18, 2014, Susp.	.....do	Do.
Townsend, City of, Broadwater County.	300131	August 18, 1976, Emerg; September 29, 1986, Reg; August 18, 2014, Susp.	.....do	Do.
Region IX				
California: Perris, City of, Riverside County.	060258	March 21, 1975, Emerg; April 16, 1979, Reg; August 18, 2014, Susp.	.....do	Do.

*do..... = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: July 10, 2014.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–17621 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, and 579

[Docket No. NHTSA—2012–0068; Notice 6]

RIN 2127–AK72

Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and Equipment Recall Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; responses to petitions for reconsideration; technical corrections.

SUMMARY: This responds to three (3) petitions for reconsideration to NHTSA's August 20, 2013 final rule adopting amendments to certain provisions of the early warning reporting (EWR) rule and regulations governing motor vehicle and equipment safety recalls. NHTSA received three (3) petitions for reconsideration that contained requests to alter or withdraw several adopted amendments. In addition, this document makes minor technical corrections to ensure all recall communications are received through NHTSA's online recalls portal and that

all owner notification letters are sent to owners at the time the remedy is available.

DATES: The effective date for the amendment to 49 CFR 573.15, which requires larger vehicle manufacturers to supply Vehicle Identification Number (VIN) information electronically on their Web sites and transmit those VINs to NHTSA's servers is August 20, 2014. The effective date for the amendments to 49 CFR 573.9, which requires all manufacturers to manage their safety recalls through a new online recalls portal, is also August 20, 2014.

The effective date of the adopted amendments to the EWR regulation in 49 CFR 579.21 and 579.22 is January 1, 2015.

FOR FURTHER INFORMATION CONTACT: For non-legal issues concerning safety recall provisions, contact Jennifer Timian, Chief, Recall Management Division, NHTSA, telephone 202–366–0209, email *jennifer.timian@dot.gov.* For non-legal issues concerning early warning provisions, contact Leo Yon, Safety Defects Engineer, Early Warning Reporting Division, NHTSA, telephone 202–366–7028, email *leo.yon@dot.gov.* For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA, telephone 202–366–1834.

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I. Background

A. Amendments to the Early Warning Rule and Foreign Defect Reporting

On August 20, 2013, NHTSA published a final rule amending certain provisions of the EWR regulations at 49 CFR Part 579 Subpart C ''Reporting of Early Warning Information.'' 78 FR 51382. In summary, the new provisions:

- Require light vehicle manufacturers to specify the vehicle type and the fuel and/or propulsion system type in their quarterly EWR reports.
- Add new component categories for reporting on light vehicles: Electronic stability control, forward collision avoidance, lane departure prevention, and backover prevention, foundation brakes, and automatic brake controls.
- Add one new component category for buses, emergency vehicles, and medium-heavy vehicle manufacturers: Electronic stability control/roll stability control.
- Require motor vehicle manufacturers to report their annual substantially similar vehicle list (SSVL) via the Internet.

The final rule stated that these new provisions will be effective August 20, 2014.

1. Vehicle Type and Fuel and/or Propulsion System Type

The EWR regulation requires light vehicle manufacturers producing 5,000 or more vehicles annually to submit production information including the make, the model, the model year, the type, the platform and the number of vehicles produced. 49 CFR 579.21(a). Manufacturers must provide the production as a cumulative total for the model year, unless production of the product has ceased. *Id.* While light vehicle manufacturers are required to provide the type of vehicle with their production, they are not required to provide the type of vehicle when they submit death and injury data pursuant to 49 CFR 579.21(b) or with aggregate data under 49 CFR 579.21(c). The final rule amended § 579.21(b) and (c) to require light vehicle manufacturers to provide the type of vehicle when they submit their death and injury data and aggregate data under those sections and amended the light vehicle reporting templates for the EWR death and injury and aggregate reports to reflect adding vehicle type.

In addition, the final rule amended the EWR regulation to add a requirement that light vehicle manufacturers identify the specific fuel or propulsion system used in their vehicles. 78 FR 51382, 51424–55. The new fuel and/or propulsion system types required to be reported under the final rule are: Compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel-cell power (FCP); hybrid electric vehicle (HEV); hydrogen combustion power (HCP); plug-in hybrid (PHV); spark ignition fuel (SIF); and other (OTH).

2. New Component Categories for Light Vehicles, Buses, Emergency Vehicles, and Medium-Heavy Vehicles

The EWR regulation requires light and medium-heavy vehicle manufacturers to report the required information by specific component categories. 49 CFR 579.21(b)(2), (c), (d) and 579.22(b), (c), (d). The final rule amended the EWR regulation to add component categories for Electronic Stability Control (ESC), Roll Stability Control (RSC), Forward Collision Avoidance (FCA), Lane Departure Prevention (LDP), and Backover Prevention technologies. NHTSA added component codes for ESC, FCA, LDP and Backover Prevention to the EWR reporting for light vehicles and ESC/RSC for buses, emergency vehicles, and medium and heavy vehicles. 78 FR 51382, 51424–55. The agency also amended the EWR rule to add definitions for these components. 78 FR 51382, 51423–24. The final rule also divided the current ''service brake system'' category for light vehicles into two new categories: ''foundation braking systems and ''automatic brake controls'' and provided definitions for those new categories. *Id.*

B. Amendments to Safety Recalls Reporting, Administration, and Execution

The August 20, 2013 final rule implemented a number of measures in our effort to improve the information the agency receives from recalling manufacturers concerning the products they are recalling and the plans for remedying those products, in addition to our distribution of that information to the affected public.

We added certain items of information in a manufacturer's Part 573 Information Report. These additional

items include: An identification and description of the risk associated with the safety defect or noncompliance with a FMVSS, and, as to motor vehicle equipment recalls, the brand name, model name, and model number, of the equipment recalled. 78 FR 51382, 51421.

Pursuant to Section 31301(a) of MAP–21 (Pub. L. 112–141), the final rule added a requirement that motor vehicle manufacturers that manufacture 25,000 or more light vehicles annually, or 5,000 or more motorcycles annually provide a VIN-based safety recalls search mechanism available to the public on the Internet. *Id.* The final rule required a conspicuous link to the manufacturer's safety recalls search mechanism on the main page of the manufacturer's United States' Web page. Specifically, the safety recalls search function must: (1) Be available to the public on the Internet; (2) be searchable by vehicle make and model and VIN; (3) be in a format that preserves consumer privacy; and (4) includes information about each recall that has not been completed for each vehicle. It must also meet the requirements of new section 49 CFR 573.15.

In addition to certain light vehicle manufacturers hosting a safety recalls search function on their Web sites (or through redirects from those Web sites to a third party's Web site), the agency will offer a similar function to the public through its Web site, *www.safercar.gov.* In order for NHTSA to offer the public a safety recalls search function specific to VINs, manufacturers must allow secure electronic transfer of manufacturer recall data, for one VIN at a time, to NHTSA's public web server(s). As part of the final rule, NHTSA required the secure electronic transfer of the recall information and data required to be made publicly available by this section through a specific Application Programming Interface (API). *See* 78 FR 51382, 51422.

The final rule requires manufacturers to submit, through a secure, agency-owned and managed web-based interface or portal, *www.safercar.gov,* required Part 573 Information Reports and other recall-related reports, information, and associated documents. 78 FR 51382, 51421. In addition, manufacturers must supply new or missing Part 573.6 (b) Report Information within five working days of when the accuracy of the information has been confirmed. *Id.*

The final rule also amended certain provisions related to the notification letter manufacturers must send to owners and purchasers, under 49 CFR part 577, following the determination of the existence of a safety-related defect or noncompliance with a FMVSS. Pursuant to these amendments, the owner notification letters: (1) Must be sent within 60 days of the manufacturer's safety defect or noncompliance notification to the agency; (2) must include the phrase ''IMPORTANT SAFETY RECALL'' in all capital letters and in an enlarged font at the top of those letters; and (3) include the statements ''This notice applies to your vehicle (including the specific VIN)'' and then followed by an opening statement: ''This notice is sent to you in accordance with the National Traffic and Motor Vehicle Safety Act.''

The final rule also required a specific label on the outside of the envelope forwarded to the owner or purchaser. *See* 78 FR 51422. The agency identified the label and provided a link to where the label was available for manufacturer use only.

Lastly, the final rule required that manufacturers notify the agency in the event they file for bankruptcy. *Id.* We required this so we can better preserve our ability to consider and take those measures necessary to protect options for ensuring recalling manufacturers continue to honor obligations to provide free remedies to owners of unsafe vehicle and equipment products.

For further information and a thorough discussion of these amendments, the reader is referred to the final rule, 78 FR 51382, and the prior notice of proposed rulemaking 77 FR 55606, September 10, 2012.

II. Petitions for Reconsideration Summary and Agency Response

We received petitions for reconsideration from the Alliance of Automobile Manufacturers (the Alliance) [1], the Association of Global Automakers (Global) [2], and the Center for Auto Safety (CAS). We address the requests for reconsideration pertaining to the EWR rule first. Thereafter, we address the reconsideration requests related to amendments to the safety recall provisions.

A. Petitions Regarding the Early Warning Rule

The Alliance and Global filed petitions for reconsideration of two amendments made to the EWR.

[1] Members are: BMW group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen, and Volvo Cars.

[2] Members are: Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, McLaren, Nissan, Peugeot, Subaru, Suzuki, and Toyota.

1. Petitions for Reconsideration of the Effective Date for EWR Reporting

Both petitioners seek clarification for the effective date of the new EWR requirements. The EWR rule requires manufacturers to submit EWR reports for each calendar quarter of the year and requires, in general, that manufacturers submit their reports within 60 days of the end of the quarter. 49 CFR 579.28(b). The final rule provided for an effective date of August 20, 2014, which is within the middle of the third calendar quarter. The Alliance and Global commented that having an effective date in the middle of the third quarter creates confusion for manufacturers regarding the appropriate report to submit at the end of the third quarter, i.e., to use the pre-final rule templates and component codes or the amended templates and component codes. In subsequent conversations with the Alliance, it pointed out that its members would need several months of lead time to implement and test the new EWR templates to ensure that their reporting systems would capture the new component categories.

The agency agrees that an effective date of August 20, 2014, creates confusion and does not provide clear instruction as to which template or component codes apply for third quarter reporting. We also agree that manufacturers need sufficient time to ensure that their amended EWR systems are capturing and reporting the information properly. The agency did not intend to begin using the new templates and component codes to report EWR data in the middle of the third quarter. Moreover, we do not want to create a situation where manufacturers have not completed their testing and implementation of their updated EWR reporting systems. Accordingly, we will amend the effective date to January 1, 2015, to clarify that manufacturers should use the new templates and component codes and minimize any undue burden to implement the amendments in a timely manner. Accordingly, these reports will be due no later than 60 days after the last day of the first quarter of 2015.

2. Petition for Reconsideration To Use the Attribution ''UN'' for Reporting Vehicle Type and Fuel/Propulsion Type Is Unknown

The Alliance also petitioned the agency to amend the regulatory text in 579.21(b)(2) and (c) to permit manufacturers to specify that the vehicle type or specific fuel or propulsion system associated with a

specific claim or consumer complaint is unknown. The Alliance notes that while the preamble discussed the use of ''UN'' for unknown vehicle type the final rule did not add regulatory language addressing the use of the 'UN' (sic) code in § 579.21. The Alliance requests NHTSA amend the text of § 579.21(b)(2) and (c) to specify the use of 'UN' when the vehicle type and/or fuel/propulsion type is unknown.

As noted in the preambles to the final rule and the NPRM, the agency contemplated using the designation ''UN'' for vehicle type when the VIN of the vehicle is unavailable to determine the vehicle's type. *See* 78 FR 51388 and 77 FR 55606, 55612, respectively. We recognize that there may be instances where a manufacturer receives a notice or claim of a death or injury, or receives a consumer complaint that meets minimum specificity [3] to trigger reporting under EWR, but the VIN is not made available to the manufacturer. The make, model and model year are, therefore, available, but the manufacturer may not know whether the vehicle is two wheel drive or four wheel drive model to determine the appropriate type code. No commenter objected to the use of ''UN'' by manufacturers when the VIN is unavailable. In addition, in the preamble to the final rule, the agency responded to comments about how to report fuel and propulsion systems that are unknown by reporting ''unknown.'' *See* 78 FR 51389. Although in both these instances the agency discussed in the preamble how to report incidents when vehicle type and fuel/propulsion systems are unknown, we omitted to make the necessary amendments to the regulatory text. Accordingly, we will amend the regulatory text to be consistent with our previously stated intent. For consistency with the attributes permitted under the rule for reporting vehicle type, we will use the two-letter attribute ''UN'' for unknown vehicle type. For consistency with the attributes allowed for fuel and/or propulsion type in the August 20, 2013 final rule, we will use the three-letter attribute ''UNK'' when the fuel and/or propulsion type is not known.

B. Petitions Regarding Public Availability of Motor Vehicles Recall Information

The Alliance, Global and CAS submitted petitions for reconsideration related to 49 CFR 573.15, Public Availability of Motor Vehicles Recall Information.

[3] Minimal specificity for a vehicle means the make, model, and model year. 49 CFR 579.4.

1. Recall Completion Search Criteria

The Alliance commented that the newly added recall information look-up requirements contained in § 573.15(b)(3) require manufacturers to offer recall search functionality by vehicle ''make and model,'' in addition to requiring the VIN. The Alliance noted that recall results applicable to a particular vehicle cannot be obtained by using only the vehicle's make and model information. Further, the Alliance stated that ''there is no way for a manufacturer to know whether a recall has been completed on a particular vehicle in the absence of the VIN.'' The Alliance requested that NHTSA verify that manufacturers must only offer recall results based on a specific VIN.

We confirm that the manufacturers subject to the requirements of § 573.15 need only to provide search utility based on a VIN. We concur that a search function based on only vehicle make and model is not typically sufficient to identify whether a recall applies to a particular vehicle within a make and model, since most recalls only address a portion of any particular make, model, and model year vehicle. In other words, it is rarely the case that a safety recall covers each and every vehicle manufactured within a particular make, model, and model year, and so any search function based on these minimal criteria is not capable of identifying whether a specific vehicle has an incomplete safety recall. The inability to identify a safety recall on a specific vehicle would not meet the intent behind MAP–21's requirement to provide recall information that has not been completed for each vehicle.[4]

A VIN sequence, however, identifies not only the make, model, and model year of the vehicle, but a host of additional information specific to a vehicle that manufacturers use to keep a record of what technology, among other things, that the vehicle contains. In the event of a safety recall, manufacturers use this information to pinpoint the specific vehicles affected and to then notify the affected owners based on vehicle registration data. The make, model, and model year elements are incorporated within the VIN sequence, such that a search using those elements is redundant to the VIN level search required by the statute. MAP–21's requirement that uncompleted safety recall information be made publicly available online and searchable by vehicle make and model and VIN is met through the submission of a VIN. Accordingly, in the agency's view, incomplete recall information that is made publicly available and searchable by means of a VIN meets the statutory intent of MAP–21 and the regulatory requirements of § 573.15.

[4] Section 31301(a) requires that motor vehicle safety recall information—(1) be available to the public on the Internet; (2) be searchable by vehicle make and model and vehicle identification number; (3) be in a format that preserves consumer privacy; and (4) includes information about each recall that has not been completed for each vehicle. Public Law 112–114; 126 Stat. 405 (July 6, 2012).

2. Requirement To Report the Part 573 Date

The Alliance petitioned NHTSA to remove the requirement for manufacturers to provide the Part 573 report date with recall results in their VIN look-up tools. *See* 49 CFR 573.15(b)(8). The Alliance contends this requirement was never proposed in the Notice of Proposed Rulemaking (NPRM) and the date is of minimal value to consumers. Also, the Alliance claims these dates are not typically found within a manufacturer's recall database. The Alliance requests that this requirement be deleted from Subsection (b)(8) of § 573.15.

We disagree that the Part 573 date is of minimal value to consumers. We believe the Part 573 date provides an important contextual reference to vehicle owners and prospective purchasers. This particular date is important as it marks the beginning of the safety recall process. NHTSA chose this particular date as it would inform an owner as to how long their vehicle has been subject to an important safety recall. We think it is reasonable that when advising consumers of an uncompleted safety recall that they also be made aware of how long the recall campaign has been open. It may provide consumers with added incentive to take the appropriate steps to have the vehicle remedied. While this data may or may not be located in a manufacturer's recall database, we understand it will require minimal effort to add these dates to a database, where needed.

Also, NHTSA is willing to assist any manufacturer with a list of Part 573 report dates applicable to their past safety recalls, should a manufacturer not already have these dates recorded electronically. Part 573 report dates, as well as other pertinent recall information, are located in an electronic database file found on NHTSA's safercar.gov Web site. This information is, therefore, accessible and a manufacturer may use it to supplement its own data files if incomplete.

The agency's original proposal contemplated providing recall information to a consumer to determine if his or her vehicle is subject to a recall and whether a recall has been launched.

A subset of this information is the date the manufacturer submitted its notice to NHTSA. 77 FR 55619. We also stated in the preamble that any alternative manufacturer hosted Web site (as an alternative to NHTSA hosting a recall look-up tool) would need to post the same information as on NHTSA's Web site. 77 FR 55622. The preamble also noted that after reviewing comments the agency reserved the flexibility to develop and adopt the alternative approach to a NHTSA hosted recall look-up tool based upon logical outgrowths of the proposal and comments received. In our view, for the reasons stated above, this requirement is a logical outgrowth of our alternative proposal to require manufacturers to host VIN look-up tools on their own Web sites, subject to certain performance based criteria. Accordingly, we decline to accept the request to remove this requirement.

3. Requirement To Report the Defect or Noncompliance Description and Statement of Risk

The Alliance petitioned NHTSA to change the regulatory text of 49 CFR 573.15(b)(8) regarding a description of the safety defect or noncompliance, and the safety risk, in a manufacturer's VIN look-up tool. Specifically, the Alliance requested that the phrase ''manufacturer's information report'' be modified to read ''manufacturer's information report or owner notification letter.'' The group explained that the language used in a manufacturer's Part 573 report is often technical in nature, as opposed to the more concise and plain language used in owner notification letters.

The Alliance also petitioned that the same modification be made to the description of the safety risk that is also required by 49 CFR 573.15(b)(8). Currently, paragraph (b)(8) requires manufacturers to provide a description of the risk to safety ''in the terms required by parts 573 and 577.'' A suggested change from the Alliance would have paragraph (b)(8) read, ''manufacturer's information report or owner notification letter.''

Section 573.15(b)(8) requires manufacturers to provide ''a brief description of the safety defect or noncompliance identified in the manufacturer's information report filed pursuant to this Part,'' and to ''describe the risk to safety consistent with the manufacturer's description given in the terms required by parts 573 and 577.'' 49 CFR 573.15(b)(8). By using the language ''brief description,'' the agency intended to ensure that safety defect and noncompliance descriptions incorporated into each manufacturer's online search tool would be succinct and clear to the public. We agree, however, that it is common for Part 573 reports to contain more technical detail and use engineering and industry or trade terminology that may not be used or understood outside of the automotive industry.

Accordingly, we will grant the Alliance's petition and amend the relevant text of Part 573.15(b)(8) to read, ''provide a brief description of the safety defect or noncompliance, including the risk to safety, identified in the manufacturer's information report or owner notification letter filed pursuant to this part.''

4. Requirement To Report the Date of Available Recall Information

The Alliance requested clarification regarding the information required by 49 CFR 573.15(b)(10). Currently, § 573.15(b)(10) requires a manufacturer's recall look-up tool to ''[s]tate the earliest date for which recall completion information is available, either on the search page or on the results page, and provide information for all owner notification campaigns after that date.'' By way of context and background, the preceding paragraph, (b)(9), requires each manufacturer to provide online search capability of at least 15 years' worth of recall completion data. *See* 49 CFR 573.15(b)(9). The purpose of paragraph (b)(10) is to inform online users of how far back the manufacturer's recall look-up tool reaches. For example, a manufacturer may choose to comply with the minimum time period specified in paragraph (b)(9) that provides for an online search capability for recalls dating back fifteen (15) years. In that case, under paragraph (b)(10), the manufacturer would inform the customer that the recall search tool provides recall data for the last 15 years and provide all incomplete safety recalls from that point forward for the specific vehicle. On the other hand, if a manufacturer's recall look-up tool reaches back 50 years, it would specify as much.

Regardless of whether a particular manufacturer chooses to offer 15 years or 50 years' worth of search capability, or somewhere in between, paragraph (b)(10) requires the manufacturer to inform users either on the search page where the VIN is entered or on the results page (or on both) of how far back its search engine will search. This is so a user can quickly and easily understand any time limitations with respect to the results they receive. For example, by informing a user of how far back the manufacturer's search engine will go, users of that manufacturer's VIN search tool will be informed that safety recalls of an older vintage (15 years or more, manufacturer-dependent) will not be detected by the search engine. They will have the information that will tell them not to rely on the search to produce a trustworthy response as to their vehicle, particularly if the vehicle is older or a vintage product. And, of course, a manufacturer could also advise to contact it or a local dealer for more complete information.

5. Request for Modification of Effective Date for the Manufacturer Recall Look-up Tool and Interface With NHTSA

Pursuant to the final rule, certain large volume light vehicle and motorcycle manufacturers have until August 20, 2014, to provide publicly accessible vehicle safety recall completion information on their Web sites (or through redirects from those Web sites to a third party's Web site). They also have until August 20, 2014, to ensure, through adherence with technical specifications NHTSA sets, the secure electronic transfer of that recall completion information to NHTSA for its use in upgrading its current safety recalls search function housed on *www.safercar.gov* to allow for VIN-based searching. The Alliance and Global Automakers petitioned NHTSA to change the effective date of these requirements from August 20, 2014, to one year from the date the NHTSA establishes and shares with covered manufacturers the technical specification for the NHTSA-manufacturer safety recall completion information interface.

In support of the petition for extension, the Alliance said that ''some/many'' manufacturers do not have a web-based API that provides all the information that NHTSA would require. It said the interface will need to be designed and built, but cannot be designed and built until the requirements are available to the manufacturers. According to the Alliance, these interfaces could take up to nine (9) months to build and then three (3) months of testing might be required, and said this is a comparable period of time for testing that was performed for NHTSA's Artemis system.

Global echoed a similar sentiment in their petition. That group said that some manufacturers, particularly the smaller ones, are likely to rely on third-party vendors to provide the VIN look-up tool required, and that they would need to develop the tool from the ''ground up,'' rather than making minor modifications to a current system. Ground up

development will require significant time and money and, according to Global' s understanding, the third-party vendors that may be retained are not able to provide estimates of costs and time to those manufacturers without the technical specification from NHTSA.

We have considered the Alliance's and Global's arguments, but do not believe a change in the effective date is necessary. First, as to the manufacturers' safety recall completion look-up tools to be placed on their respective Web sites (or links to a tool on a third party site), and that do not concern an exchange of information between NHTSA and the manufacturer, all performance requirements were set forth in the final rule. Manufacturers have time to build out their systems to meet the recall look-up tool's requirements. Neither the Alliance nor Global argues that the requirements are so vague or unlimited that their member companies are unable to comply or start building or modifying the tools. Moreover, neither presents any details as to why it would take manufacturers with existing recall look-up tools longer than the year provided by the agency. Also, by August 20, 2014, every manufacturer will have had up to one year that the Alliance said its members would need to comply.

Turning to the requirements concerning the exchange of recall completion information with NHTSA, it is true that the agency did not publish the technical specification enumerating the specific, technical directions for a manufacturer to support and send completion information to our Web site at the time of the final rule. As we stated in the final rule, the agency would publish technical specifications after we published the final rule. Those specifications were published in December 2013. As noted above, however, we did enumerate each item of information a manufacturer would need to produce—whether on its Web site or to NHTSA. We also supplied more than sufficient technical detail as to how the transfer of information would need to occur so that a manufacturer (or its vendor) could reasonably initiate design and production of a system, even if from the ground up.

In our view, the enumerated information in the final rule about the exchange of information between NHTSA and manufacturers laid the foundation for which manufacturers could begin working towards meeting the August 20, 2014 deadline. While technical information was not provided in the final rule, certain information was not critical for a manufacturer to begin the process and work towards the deadline. Much of this information is information that we could not produce publicly. For example, we did not provide the location of the uniform resource identifier (URI) where an exchange of information with a manufacturer would occur. Nor did we define the identification and key combinations that NHTSA and a particular manufacturer would use to authenticate systems and ensure secure transfer of information. We do not believe manufacturers require these sorts of administrative details that relate strictly to the mechanics of transfer and not to the substance of the information itself—which was defined in the August 2013 Final Rule—an entire year in advance. Manufacturers were given and/or allowed access to the technical specification in December 2013, giving them almost nine months lead time. Also, a public workshop was held in January 2014 to discuss the technical requirements of the recalls information exchange. This workshop allowed manufacturers' staff to better understand the technical requirements, ask questions, and exchange ideas with NHTSA staff. In response to the workshop, NHTSA published updated technical specifications in March 2014. NHTSA continues to work closely with manufacturers to ensure systems are ready by the August 2014 deadline. Indeed, a number of the Alliance's members are actively engaged in testing exchanges with NHTSA at this time. Accordingly, we are denying the petitions to extend the effective date for the VIN look-up tool.

6. Failures of Manufacturers To Provide VIN Look-up Services

Global Automakers commented that a manufacturer's electronic reporting system or public Web site can experience temporary malfunctions, as with any electronic system. It noted that these disruptions could occur for any number of reasons, despite all reasonable efforts by a manufacturer to prevent a disruption. Accordingly, Global requested that we state affirmatively that such temporary system malfunctions that prevent compliance with our reporting or public information requirements will not be subject to civil penalties, provided that manufacturers take reasonable steps to minimize the occurrence of such events and respond expeditiously to any system malfunctions.

We understand the concern, but do not believe it is necessary to make an affirmative statement that temporary system malfunctions will not be subject civil penalties. As in the past, we intend to responsibly exercise our enforcement discretion concerning instances of manufacturer failures to comply and to conduct investigations, as necessary, to determine the facts of a particular situation. We plan to use the facts and circumstances of each matter to guide a decision whether to pursue an enforcement action, including one for penalties.

7. Timing of NHTSA's Workshops

In the final rule, we committed to hosting workshops for both the recalls portal and the VIN-based safety recalls search tool to be housed on our Web site *www.safercar.gov*. For the latter, we indicated we anticipated hosting a workshop in early 2014. The Alliance requested we schedule the workshops as soon as possible and before the end of 2013.

We considered this request and scheduled the workshop to discuss the technical specification for the VIN-based safety recalls search tool for January 2014. Notice of this meeting was provided in a **Federal Register** Notice published December 26, 2013 (78 FR 248).

As to the recalls portal, we remain committed to hosting workshops and to providing advance notice of them. On May 27, 2014, we published a notice in the **Federal Register** announcing multiple training workshops to be held July 28, 2014, through August 8, 2014. Participants must register in advance and registration instructions are provided in the notice. 79 FR 30234. These workshops will offer robust, instructor-led remote training, as opposed to in-person training that may require considerable travel and expense for many. The recalls portal workshops will be more training-based, as opposed to design-based, and so there is not an immediate need for the industry workshops or their scheduling.

C. Petitions Related to Amendments to Part 573 and Part 577

1. Requirement for Recall Notification Envelope Label

As part of the final rule, we amended the text of 49 CFR 577.5(a) to require that the envelope in which a manufacturer notifies owners and purchasers of a safety recall have imprinted on the front a label, one by three inches in size. 78 FR 51422. We specified in the regulatory text that the label would be available at a specific address and secure location on our Web site. NHTSA stated that in the event of a change or an update to the label, NHTSA would provide notice through the online Recall Portal. 78 FR 51409. The Alliance disagrees with this approach and contends that NHTSA

must specify all the content and formatting for the label within the regulatory text of part 577 itself, or as an Appendix or Figure incorporated within part 577. In its view, changes or updates to the label would not be possible without providing notice and comment on the revisions, as well as modifying the regulatory text of part 577 accordingly.

After further consideration, we agree with the Alliance regarding an opportunity for notice and comment should we decide to amend the label. Accordingly, we are today incorporating an image of the required label, together with the specific color, text, and formatting requirements, into the regulatory text by adding new § 577.14. While the label will remain available to manufacturers for at least the near term online through the *safercar.gov* Web site, we are today removing the regulatory text specifying its online location. A specific online location is no longer necessary in view of the change to regulatory text and may become a housekeeping burden as online content changes and progresses over time.

2. Requirement To Utilize NHTSA's Online Recalls Portal

In NHTSA's NPRM, we proposed the creation of a new, online recalls portal where a manufacturer would submit its information required under part 573. 77 FR 55638. Included with our proposal were examples of part 573 report form templates through which manufacturers would provide the required notification to NHTSA and supply information that is required pursuant to federal regulation, either in the first notification or in a subsequent report.

Our proposal was well received, with most commenters supporting the submission of part 573 information through an online portal. The Alliance agreed that electronic submission of part 573 information using standardized forms would better help NHTSA administer safety recalls. In addition, manufacturers submitted a number of constructive suggestions regarding the content and formatting of the form templates. We also received comments requesting that the agency make clear the difference between fields that were required to be completed, and those that were not required. In the final rule, we implemented a number of suggestions, including clearly indicating the required fields. We agreed that we would use an asterisk to denote mandatory information within a part 573 form, and attached an Appendix demonstrating this change. 78 FR 51404.

While not raised in its comments to the NPRM, the Alliance now petitions that NHTSA must include the templates themselves within the text of part 573 (or as an Appendix or Figure incorporated therein). It contends that the templates could be changed without opportunity for notice and comment. The Alliance argues that the agency is obligated to specify the mandatory elements of the template in the regulatory text (or as Appendix or Figure) and cannot change those mandatory elements without amending the regulatory text after notice and comment. It asserts this is a requirement of the Administrative Procedure Act (APA), as well as mandated by the Paperwork Reduction Act (PRA) that require OMB approval of any form, printed or online.

We note that this argument was not raised during the notice and comment period for this rulemaking. The idea of an online notification to NHTSA and reporting of information required pursuant to part 573 through the use of a template was detailed at length in the NPRM, together with proposed forms for several vehicle types and items of motor vehicle equipment. We received multiple industry comments supporting this approach and commenters provided constructive advice on how to improve the concept. As the Alliance acknowledges in its petition, it concurred with this approach.

In general, we agree that an agency must specify the mandatory elements of information to be provided to the agency (here, information required to be submitted in a Defect or Noncompliance Report pursuant to part 573), and must do so in regulatory text. We also agree that pursuant to the APA any changes to those mandatory elements must be made through notice and comment rulemaking. We also understand our PRA obligations require that we must submit for OMB's review and approval an analysis of the burdens associated with any new reporting requirements or changes to existing requirements.

We do not agree, however, that the agency is obligated to incorporate the templates into the regulatory text of part 573 when the information that is noted as ''required'' in the templates is merely reflective of information required to be submitted by the regulatory text of part 573. With respect to the templates, they are the mechanisms for a manufacturer to deliver the information required under part 573 to NHTSA, and nothing more. The delivery mechanism is no different than a letter or even an email from a manufacturer submitting a part 573 report. The information that is required to be reported does not change based on the vehicle for delivery. We note that we marked elements of the reporting templates as ''required'' in response to comments requesting that the agency differentiate between the elements that are required under Part 573 from those that are voluntary. We also note that some commenters requested that the agency provide greater flexibility with the templates to include voluntary information.

If we were to adopt the Alliance's view and make the template part of the regulatory text, we would arguably need to conduct a rulemaking and seek notice and comment on every adjustment to the form, no matter its relationship to content or format in order to bring to current the visual depiction. We do not agree that the APA is so restrictive.

With respect to OMB approval, the PRA is concerned about the burden placed upon the third party by collections of information. The definition of ''collection of information'' includes any form or format including electronic form. In the NPRM and final rule, NHTSA adequately addressed the information collection for the required templates. 77 FR 55635. OMB has issued a valid control number of 2127–0004.

Accordingly, we are denying the Alliance's petition. We understand, however, the Alliance's concern that dramatic changes to the templates may require manufacturers to change processes and incur costs. Outside of ministerial changes to the templates, NHTSA will not make wholesale changes to the templates without manufacturer input.

3. Requirement To Notify Owners Within 60 Days

The Center for Auto Safety (CAS) petitioned the agency to modify the regulatory text concerning new changes to owner notifications. In the final rule, NHTSA amended 49 CFR 577.7 to require manufacturers to notify affected owners within sixty (60) days of notifying NHTSA of the defect or noncompliance. By amending this text, the phrase ''within a reasonable time'' was removed. The CAS notes that the omission of this phrase means that manufacturers might not be timely with their second owner notification in cases where only an interim notification was sent to owners within sixty (60) days. The Center believes this omission could ''encourage foot dragging in the issuance of second 577 notices announcing availability of the remedy.''

We agree with the petitioner that the phrase ''within a reasonable time'' should be included in § 577.7, as it was included originally. We will amend § 577.7 to add this language so that notifications announcing the availability

of the recall remedy are sent in a timely fashion.

III. Technical Corrections

Many aspects of the August 20, 2013 final rule amended the safety recall requirements found in parts 573 and 577. In making those amendments, we omitted amending related procedural provisions. The following two technical corrections will be made to ensure continuity between the existing regulation text and the newly introduced requirements.

A. Technical Correction for Submitting Recall Communications

As discussed above, the final rule requires that manufacturers submit all recall reports through a new, online Web site. *See* 49 CFR 573.9. However, we omitted to amend the language in § 573.6(c)(10) (submission of copies of notices bulletins and other communications related to the defect or noncompliance) to be consistent with the requirement to submit through the recall portal under § 573.9. In order to clarify that all documents required by § 573.6 must be submitted through the new recalls portal, we are amending § 573.6(c)(10) to ensure that all recall documentation be submitted through NHTSA's new recalls portal.

B. Technical Correction for Quarterly Reporting

The August 2013 final rule established a 60-day timeframe, beginning from the date NHTSA is notified, for manufacturers to notify owners of a safety recall on their vehicle, even in cases where the remedy is not yet available. In finalizing this notification requirement, however, we overlooked an adjustment to the quarterly completion reporting requirement to make clear that recall completion reports were expected to start in the quarter that the manufacturer starts its remedy campaign, and not when it first notifies owners about the defect or noncompliance. As noted in the NPRM and our final rule, these two actions often do not occur simultaneously. In many cases, a manufacturer may experience parts delays or other circumstances which delay a prompt launch of its free remedy campaign.

Currently, § 573.7 requires manufacturers to start quarterly reporting on recalls ''beginning with the quarter in which the campaign was initiated (i.e., the date of initial mailing of the defect or noncompliance notification to owners) or corrective action has been completed on all defective or noncomplying vehicles or items of replacement equipment involved in the campaign, whichever occurs first.'' With the new requirement to notify consumers within 60 days of the filing of a part 573 report, even if a remedy is unavailable, the language in § 573.7 is inconsistent with the new notification requirement. Because the purpose of completion reporting is, of course, to monitor and assess the success of a manufacturer's recall campaign, it's logical to start that reporting and assessment only once the manufacturer has launched its remedy campaign.

Accordingly, we will correct § 573.7 to clarify that quarterly reporting begins with the quarter in which the remedy program is first made available to owners.

IV. Rulemaking Analyses and Notices

This rule responding to petitions for reconsideration makes several minor changes to the regulatory text of 49 CFR parts 573, 577 and 579, and does not increase the regulatory burden of manufacturers. The agency has discussed the relevant requirements of the Vehicle Safety Act, Executive Order 12866, Executive Order 13563, the Department of Transportation's regulatory policies and procedures, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Unfunded Mandates Reform Act, Executive Order 12988 (Civil Justice Reform), the Paperwork Reduction Act, Executive Order 13045, Executive Order 13609, and the National Environmental Policy Act in the August 2013 final rule cited above. Those discussions are not affected by these changes.

Privacy Act

Please note that any one is able to search the electronic form of all documents 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 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.dot.gov/privacy.html*.

Regulatory Text

In consideration of the foregoing, NHTSA requests that 49 CFR parts 573, 577, and 579 be amended as set forth below:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–30121, 30166, Pub. L. 112–141, 126 Stat. 405; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

■ 2. Revise § 573.6(c)(10) to read as follows:

§ 573.6 Defect and noncompliance information reports.

* * * * *

(c) * * *

(10) A representative copy of all notices, bulletins, and other communications that relate directly to the defect or noncompliance and are sent to more than one manufacturer, distributor, dealer or purchaser. These copies shall be submitted to NHTSA's Recall Management Division (NVS–215) (RMD), not later than 5 days after they are initially sent to manufacturers, distributors, dealers, or purchasers. Submission shall be made pursuant to § 573.9 of this part.

* * * * *

■ 3. Revise § 573.7(a) to read as follows:

§ 573.7 Quarterly reports.

(a) Each manufacturer who is conducting a defect or noncompliance notification campaign to manufacturers, distributors, dealers, or owners shall submit to NHTSA a report in accordance with paragraphs (b), (c), and (d) of this section. Unless otherwise directed by the NHTSA, the information specified in paragraphs (b)(1) through (5) of this section shall be included in the quarterly report, with respect to each notification campaign, for each of six consecutive quarters beginning with the quarter in which the campaign was initiated (i.e., the date the manufacturer notifies its purchasers of the availability of a remedy) or corrective action has been completed on all defective or noncomplying vehicles or items of replacement equipment involved in the campaign, whichever occurs first.

* * * * *

■ 4. Revise § 573.15(b)(8) to read as follows:

§ 573.15 Public availability of motor vehicle recall information.

* * * * *

(b) * * *

(8) Where the search results in identification of a recall that has not been completed, state the recall campaign number NHTSA assigned to the matter; state the date the defect or

noncompliance was reported pursuant to Part 573; provide a brief description of the safety defect or noncompliance, including the risk to safety, identified in the manufacturer's information report or owner notification letter filed pursuant to this part; and describe the remedy program;

* * * * *

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

■ 5. The authority citation for part 577 continues to read as follow:

Authority: 49 U.S.C. 30102, 30103, 30116–121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

■ 6. Revise § 577.5(a) to read as follows:

§ 577.5 Notification pursuant to a manufacturer's decision.

(a) When a manufacturer of motor vehicles or replacement equipment determines that any motor vehicle or item of replacement equipment produced by the manufacturer contains a defect that relates to motor vehicle safety, or fails to conform to an applicable Federal motor vehicle safety standard, or the manufacturer files a defect or noncompliance information report under 49 CFR part 573, the manufacturer shall provide notification in accordance with § 577.7(a), unless the manufacturer is exempted by the Administrator (pursuant to 49 U.S.C. 30118(d) or 30120(h)) from giving such notification. The notification shall contain the information specified in this section. The information required by paragraphs (b) and (c) of this section shall be presented in the form and order specified. The information required by paragraphs (d) through (h) of this section may be presented in any order. Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter, including any provisions or attachments related to reimbursement, to NHTSA's Recall Management Division (NVS–215) no fewer than five (5) Federal Government business days before it intends to begin mailing it to owners. The manufacturer shall mark the outside of each envelope in which it sends an owner notification letter with a notation that includes the phrase ''SAFETY RECALL NOTICE,'' all in capital letters and in a type that is larger than that used in the address section, and is also distinguishable from the other type in a manner other than size. It shall also imprint on the outside of this envelope a label in accordance with § 577.14. Except where the format of the envelope has been previously approved by NHTSA's Recall Management Division (NVS–215), each manufacturer must submit the envelope format it intends to use to that division at least five (5) Federal Government business days before mailing the notification to owners. Submission of envelopes and proposed owner notification letters shall be made by the means identified in 49 CFR 573.9. Notification sent to an owner whose address is in the Commonwealth of Puerto Rico shall be written in both English and Spanish.

* * * * *

■ 7. Amend § 577.7(a)(1) by revising the second sentence to read as follows:

§ 577.7 Time and manner of notification.

(a) * * *

(1) * * * In the event that the remedy for the defect or noncompliance is not available at the time of notification, the manufacturer shall issue a second notification within a reasonable time and in accordance with the requirements of this part once that remedy is available. * * *

* * * * *

■ 8. Add § 577.14 to read as follows:

§ 577.14 Labeling for owner notification letter envelope.

(a) *Purpose and scope*—The purpose of this section is to supply vehicle and equipment manufacturers, including manufacturers of tires and child safety seats, with the label required to be shown on the envelopes of safety recall notification letters mailed to owners pursuant to § 577.5. This label shall not be used for any purpose other than compliance with § 577.5 by any entity outside of the Department of Transportation.

(b) *Required label information and format.* (1) The label depicted in this section must be printed on the front of the safety recall owner notification envelope. The content, format, and sequence of this label are depicted in Figure 1 of this section. A Spanish version of this label, for owners located in the Commonwealth of Puerto Rico or the Canal Zone, can be found in Figure 2 of this section.

(2) The text ''IMPORTANT SAFETY RECALL INFORMATION'' must be printed in capital letters, have a minimum font size of 10 point, and be printed in white text on a red background. Also, this text must be centered horizontally and located near the top of the label. The text ''Issued in Accordance With Federal Law'' must have a minimum font size of 10 point, be printed in black text on a white background, and be located directly beneath the preceding text, also centered horizontally within the label.

(3) The logo of the U.S. Department of Transportation must be located at the bottom, left-hand corner of the label. The logo of the National Highway Traffic Safety Administration must be located at the bottom, right-hand corner of the label. Each logo should be printed in black color with a white background.

(c) *Required label size*—The label depicted in this paragraph must be 1 inch in height and 3 inches in length.

Figure 1 to Sec. 577.14
Sample Safety Recall Information Label

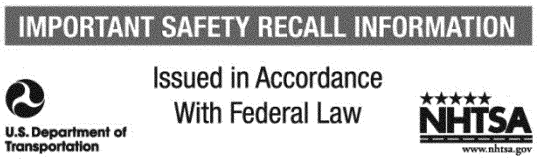

Figure 2 to Sec. 577.14
Sample Safety Recall Information Label, Spanish Version

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 9. The authority citation for part 579 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

■ 10. Amend § 579.4(c) by adding, in alphabetical order, the following definition of ''Fuel and/or propulsion system type'' to read as follows:

§ 579.4 Terminology.

* * * * *

(c) * * *

Fuel and/or propulsion system type means the variety of fuel and/or propulsion systems used in a motor vehicle, as follows: compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel-cell power (FCP); hybrid electric vehicle (HEV); hydrogen combustion power (HCP); plug-in hybrid (PHV); spark ignition fuel (SIF); other (OTH), and unknown (UNK).

* * * * *

■ 8. Amend § 579.21 by:

■ a. Revising the first sentence of paragraph (a);

■ b. Adding a third sentence to paragraph (b)(2); and

■ c. Adding a sixth sentence to paragraph (c)

The revisions read as follows:

§ 579.21 Reporting requirements for manufacturers of 5,000 or more light vehicles annually.

* * * * *

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, the platform, the fuel and/or propulsion system type coded as follows: CNG (compressed natural gas), CIF (compression ignition fuel), EBP (electric battery power), FCP (fuel-cell power), HEV (hybrid electric vehicle), HCP (hydrogen combustion power), PHV (plug-in hybrid), SIF (spark ignition fuel), OTH (Other), and UNK (unknown) and the number of vehicles produced. * * *

(b) * * *

(2) * * * If a vehicle manufacturer is unaware of the vehicle type at the time it receives the incident, the manufacturer shall use the abbreviation ''UN'' in its report to indicate that the vehicle type is unknown. * * *

(c) * * * For each report, the manufacturer shall separately state the vehicle type and fuel and/or propulsion system type if the manufacturer stated more than one vehicle type or fuel and/or propulsion system type for a particular make, model, model year in paragraph (a) of this section. If a vehicle manufacturer is unaware of the vehicle type at the time it receives the property damage claim, consumer complaint, warranty claim or field report, the manufacturer shall use the abbreviation ''UN'' in its report to indicate that the vehicle type is unknown.

* * * * *

Nancy L. Lewis,

Associate Administrator for Enforcement.

[FR Doc. 2014–17497 Filed 7–25–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120926497–4576–02]

RIN 0648–BC62

Fisheries of the Exclusive Economic Zone Off Alaska: Pacific Halibut and Sablefish Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS publishes regulations to amend the hired master provisions of the Individual Fishing Quota Program (IFQ Program) for the fixed-gear commercial Pacific halibut and sablefish fisheries in the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA). The IFQ Program allows initial recipients of catcher vessel halibut and sablefish quota share (QS) to hire a vessel master to harvest an annual allocation of individual fishing quota

(IFQ) derived from the QS. This rule prohibits an initial QS recipient from using a hired master to harvest IFQ derived from catcher vessel QS received by transfer after February 12, 2010, with a limited exception for small amounts of QS. This final rule is necessary to maintain progress toward a predominantly owner-onboard fishery. In addition, this action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the Fishery Management Plan for Groundfish of the BSAI, the Fishery Management Plan for Groundfish of the GOA, and other applicable laws.

DATES: Effective December 1, 2014.

ADDRESSES: Electronic copies of this rule, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the proposed rule prepared for this regulatory amendment are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The Final Supplemental Environmental Impact Statement/Environmental Impact Statement for the individual Fishing Quota Management Alternative for Fixed Gear Sablefish and Halibut Fisheries (IFQ Program FSEIS) is available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586–7228.

SUPPLEMENTARY INFORMATION: This final rule amends the hired master regulations for management of the IFQ Program for the fixed-gear commercial fisheries for Pacific halibut and sablefish in waters off Alaska. NMFS published a proposed rule for this action in the **Federal Register** on April 26, 2013 (78 FR 24707). The 30-day comment period on the proposed rule ended May 28, 2013. NMFS received 15 comment letters on the proposed rule from 15 unique persons. A summary of these comments and NMFS' responses are provided in the ''Comments and Responses'' section of this preamble.

A detailed review of this action is provided in the proposed rule and a brief summary is provided here.

Background

The IFQ Program is a limited access system for managing the fixed-gear halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries off Alaska. The IFQ Program was recommended by the North Pacific Fishery Management Council (Council) in 1992 and implementing rules were published by NMFS on November 9, 1993 (58 FR 59375). Fishing under the program began on March 15, 1995.

The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 300, subpart E, and 50 CFR part 679 under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in addition to, and not in conflict with, approved International Pacific Halibut Commission (IPHC) regulations. Such regulations may be implemented by NMFS only after approval by the Secretary of Commerce.

The IFQ Program for the sablefish fishery is implemented by the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMPs and general regulations governing the IFQ Program appear at 50 CFR part 679.

The IFQ Program was intended primarily to reduce excessive fishing capacity in the commercial halibut and sablefish fixed-gear fisheries. The Council and NMFS designed the IFQ Program to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. Access to the halibut and sablefish fisheries is limited to those persons holding QS. The QS holder is the person authorized to exercise the harvesting privilege in specific regulatory areas. NMFS initially issued QS to qualified applicants (initial recipients) who owned or leased a vessel that made fixed-gear landings of halibut or sablefish during the qualifying period from 1984 to 1990 for halibut, and from 1985 to 1990 for sablefish. A person who received QS as an initial recipient was either (1) an individual or natural person, or (2) a non-individual entity or person, such as a corporation, partnership, or association. Initial recipients received QS allocations based on their harvest during the qualifying period, the area of the harvest, and the type of vessel used to land the harvest. Quota shares are individual harvesting privileges that are given effect on an annual basis through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of IFQ halibut or sablefish in a regulatory area.

All QS are categorized according to the size of the vessel (category B, C, or D, individually and collectively referred to as ''catcher vessel QS'') from which IFQ halibut and sablefish may be fished and whether that IFQ halibut or sablefish may be processed on board the vessel (category A). The vessel categories were designed to ensure that the IFQ Program did not radically change the structure of the fleet in place at the time the IFQ Program was implemented. A description of the specific vessel size categories is provided in regulation at 50 CFR part 679 and is not repeated here.

Quota share is transferrable from one person to another. The Council recommended and NMFS implemented limits on the transfer (sale and purchase) and use of QS to limit consolidation and maintain diversity of the IFQ fleet. For example, the IFQ Program only allows persons who were originally issued catcher vessel QS (category B, C, and D halibut QS and category B and C sablefish QS), or persons who qualify as IFQ crew members, to hold and transfer catcher vessel QS.

As the IFQ Program developed, the Council recommended, and NMFS implemented, provisions such as QS use caps, vessel use caps, and blocks of QS to limit QS acquisitions. These provisions were intended to maintain a diverse owner-onboard fleet and to prevent excessive consolidation of QS. Further discussion of these program elements can be found in the proposed rule published on April 26, 2013 (78 FR 24707). The block provision has direct application in this final rule. All initially issued QS that yielded relatively small amounts of IFQ annually was ''blocked'' or issued as an inseparable unit. Quota share blocks preserve small amounts of QS in blocked units that are available at a relatively low cost to promote purchase of QS by crew members and new entrants to the IFQ fisheries. The block program also includes a ''sweep-up'' (consolidation) provision designed to minimize the number of very small blocks of QS that yield such small

amounts of IFQ that they are economically disadvantageous to harvest. The consolidation provision allows small individual QS blocks to be permanently consolidated into larger QS blocks as long as the resulting QS block does not exceed consolidation limits specified in regulation.

The IFQ Program also requires IFQ holders to be on board the catcher vessel during harvest and offloading to promote a predominantly ''owner-onboard'' fishery with a narrow exemption for vessel category A QS holders and initial recipients of QS category B, C, and D QS. Vessel category A QS (catcher/processor QS) are not subject to the owner-onboard requirement. A primarily owner-onboard catcher vessel fleet was an initial fundamental objective of the IFQ Program.

The requirement that individual holders of catcher vessel QS (vessel categories B, C, or D) be on board the vessel during all IFQ fishing ensures that QS remain largely in the hands of active fishermen. However, the IFQ Program allows all initial recipients of QS, including individuals and non-individual entities, to hire masters to fish the IFQ derived from their QS. This exception was allowed because some individual fishermen had conducted their fishing businesses by hiring masters to skipper their fishing vessels prior to the implementation of the IFQ Program. The IFQ Program continues to allow initial recipients of catcher vessel QS to employ hired masters to fish their IFQ, but only if the initial recipient maintains a minimum 20% ownership interest in the vessel on which the IFQ halibut and sablefish are harvested. By limiting this exception to initial recipients, the Council anticipated that individual and non-individual initial recipients would eventually be replaced by new entrants. The Council anticipated that eventually catcher vessel QS would be transferred to new entrants required to be on board the vessel during IFQ fishing, resulting in an entirely owner-onboard fishery. An owner-onboard fishery is consistent with the Council's goal to promote stewardship by providing active fishermen with a vested interest in the long-term productivity of the halibut and sablefish resources. The owner-onboard requirement also supports the Council's goal to provide entry-level opportunities for new fishermen as initial recipients of catcher vessel QS leave the fishery.

Rationale for and Effects of This Final Rule

In February 2010, the Council became aware that some QS initial recipients were increasingly using hired masters rather than continuing to be personally on board their vessels when fishing with QS. Increased use of hired masters was attributed to initial recipients purchasing increasing amounts of QS, and the IFQ derived from that QS was being fished by hired masters. The Council was concerned that initial recipients were consolidating QS to be fished by hired masters and were reducing opportunities for new entrants to the fishery. The Council determined that the transition to a predominately owner-onboard fishery has been unreasonably delayed because the ability to hire a master applies to the QS holder and not the QS itself. This allows initial recipients to hire masters to harvest IFQ derived not only from their initially issued QS, but also IFQ derived from any QS received by transfer after initial issuance. As a result, QS have become consolidated among fewer initial recipients of QS that use hired masters. Quota share are remaining in the hands of initial recipients who hire masters to fish the resulting IFQ instead of being transferred, which delays the progress toward the Program objective of an owner-onboard fishery and decreases opportunities for new entrants to the IFQ fishery.

At subsequent meetings, the Council examined IFQ Program data detailing the use of hired masters, changes in QS holdings of initial recipients, QS transfers, and the rate of new entry into the fishery. As discussed in detail in the proposed rule for this action, (78 FR 24707, April 26, 2013), the use of hired masters has increased significantly above levels that existed at the start of the IFQ Program. This is demonstrated by significant increases in the numbers of individual initial recipients who hire masters in the halibut and sablefish IFQ fisheries and the number of landings made in these fisheries by hired masters. Data analysis also shows that QS are being consolidated among fewer individual and non-individual initial recipients who hire masters to fish the resulting IFQ. In addition, some initial recipients that had not previously hired a master are now doing so, and some that had previously hired a master have increased the amount of QS they hold for use by a hired master or are using masters for a higher percentage of their landings. Finally, the rates at which initial recipients of halibut and sablefish QS are divesting themselves of QS and exiting the fishery have declined over the last 5 years.

After receiving public testimony and reviewing the analysis at its April 2011 meeting, the Council determined that it is likely that several factors are inhibiting new entrants from acquiring QS and slowing progress toward a predominantly owner-onboard fishery. These factors include the increased use of hired masters, increased holdings of QS by initial recipients who may use a hired master to harvest the resulting IFQ, and decreased numbers of initial QS recipients divesting their QS holdings. The Council determined that evolution to an owner-onboard program is occurring at a slower pace than was originally envisioned and is therefore inhibiting achievement of the Council's goals for the IFQ Program. The Council determined that the absence of a limitation on the use of hired masters could further delay this progress. To address this problem, the Council recommended, and this final rule implements, regulations that prohibit the use of a hired master to fish IFQ halibut or sablefish derived from catcher vessel category B, C, or D QS received by transfer after February 12, 2010, with some exceptions described later in this final rule.

The Council was concerned that QS purchases occurring before implementation of this final rule would hinder rather than support progress toward an owner-onboard catcher vessel fleet. Therefore, the Council chose February 12, 2010, as the date after which holders of QS received by transfer would not be able to hire a master to harvest the resulting IFQ because that is the date that the Council announced its interest in addressing this issue and adopted its problem statement for this action. The Council concluded that this date would reduce an initial recipient's incentive to purchase additional QS to be fished by hired masters prior to implementation of this final rule. The Council determined that the elapsed time between its recommendation and the implementation of this final rule would provide a sufficient grace period for initial QS recipients to make any necessary changes to their business plans.

The Council considered and rejected several alternative dates, such as the effective date of the final rule, because dates after February 12, 2010, could allow initial recipients to further consolidate their holdings of QS and exacerbate the problems the Council was addressing with this action. Additional acquisition of QS for harvest by hired masters obstructs the objective

of the Council for a predominantly owner-onboard catcher vessel fleet. Instead, the Council wanted to prevent further increases in the amount of IFQ harvested by hired masters.

NMFS and the Council recognized that additional QS may be consolidated into blocks by both individual and non-individual initial recipients until this action takes effect. Tracking a new block of QS is administratively burdensome because NMFS cannot differentiate what portion of that QS block should be attributed to QS with the hired master privilege as opposed to that without the hired master privilege. To avoid the administrative burden of reversing these consolidations, this final rule affects catcher vessel QS transferred to an initial recipient and consolidated into a QS block after February 12, 2010, as follows:

- If catcher vessel QS are consolidated into a QS block between February 12, 2010, and the effective date of this final rule (see **DATES**), the IFQ resulting from that consolidated QS block can be fished by a hired master, and
- If catcher vessel QS are consolidated into a QS block after the effective date of this final rule (see **DATES**), the IFQ resulting from that consolidated QS block cannot be fished by a hired master, and the QS holder is required to be on board the vessel harvesting the IFQ derived from those QS.

Under this final rule, initial QS recipients have options for using QS received by transfer after February 12, 2010. As noted above, QS that is consolidated into blocks before the effective date of this rule may be fished by a hired master. Moreover, initial recipients who received catcher vessel QS after February 12, 2010, may sell those QS to other halibut and sablefish IFQ fishery participants, or to new entrants into the fishery. Other than selling the QS, the options and associated impacts differ between individual and non-individual initial recipients. An individual initial recipient who receives catcher vessel QS after February 12, 2010, may fish the IFQ derived from that QS as an owner-onboard. A non-individual initial recipient that received catcher vessel QS by transfer after February 12, 2010, may fish the resulting IFQ using a hired master, but only until the effective date of this final rule. After the effective date, a non-individual initial recipient will be prohibited from fishing QS received by transfer after February 12, 2010, using a hired master, but may, as noted above, sell those QS. Alternatively, a non-individual initial recipient may continue to hold that QS, but the resulting IFQ cannot be used because a non-individual entity must hire a master to harvest the IFQ.

The Council recognized that this rule may reduce the economic incentive for initial recipients to increase their QS holdings above the amount they held as of February 12, 2010. This supports the IFQ program objective of a predominantly owner-onboard catcher vessel fishery by (1) preventing further increase in the use of hired masters while minimizing disruption to operations of small businesses that have historically used hired masters, and (2) discouraging further consolidation of QS among initial recipients for harvest by hired masters. The Council did not expect this action to disrupt existing hired master arrangements because persons who currently qualify for the hired master exemption can continue to use a hired master for catcher vessel QS held on or before February 12, 2010.

This final rule will not apply under the following circumstances in the IFQ Program:

- Category A (catcher/processor) QS are excluded from this action because this vessel category of QS is not subject to owner-operator requirements.
- Individual (persons who, for example, are not corporations or partnerships) initial recipients in IPHC Area 2C (halibut) and the Southeast region (sablefish) are excluded from this action because existing regulations at § 679.42(i)(3) prohibit individuals who are initial recipients from using hired masters to harvest their IFQ halibut or sablefish in these areas.
- Allocations of halibut and sablefish issued to Community Development Quota (CDQ) groups are excluded from this action. CDQ groups are not subject to owner-operator requirements.

Summary of Regulations Implemented by This Final Rule

Three regulatory amendments are necessary to implement the Council's recommendation for final action. The first two amendments add regulations at § 679.42(i)(8) and (j)(10) to specify that a hired master cannot be used to fish IFQ halibut or sablefish derived from catcher vessel QS that was received by transfer after February 12, 2010, unless the QS was consolidated into a block prior to the effective date of this final rule. The third amendment adds regulations under § 679.41(c)(11) specifying that NMFS will not approve a transfer of catcher vessel QS to a corporation, partnership, association, or other non-individual entity at any time. These regulatory changes are consistent with the Council's intent to discourage further acquisition of catcher vessel QS by initial recipients for harvest by hired masters.

Under this final rule, IFQ derived from catcher vessel QS received by transfer after February 12, 2010, cannot be harvested by a hired master. Because a non-individual entity must hire a master to harvest its IFQ, the change to § 679.41(c)(11) prevents non-individual entities, such as corporations, from receiving additional catcher vessel QS by transfer after the effective date, with one exception. That exception, found at § 679.41(g)(3), provides that an individual initial catcher vessel QS recipient may transfer initially issued QS to a corporation that is solely owned by the same individual. Otherwise, individuals may not transfer QS received after initial issuance into a solely-owned corporation. NMFS makes no changes to this existing exception. This exception allows individuals to transfer initially received QS to a solely-owned corporation for tax purposes, limiting liability, or for other business purposes.

To implement this final rule, NMFS will redesignate catcher vessel QS as ''eligible to be fished by a hired master'' if the QS was (1) held by an initial recipient on or before February 12, 2010, or (2) received by transfer and consolidated into a QS block held by an initial recipient prior to the effective date of this final rule. All other catcher vessel QS that does not meet these requirements will be designated ''not eligible to be fished by a hired master'', including (1) individual initial recipient QS designated for areas 2C (halibut) and Southeast (sablefish), (2) individual and non-individual QS not held by an initial recipient, (3) unblocked QS transferred to an initial recipient after February 12, 2010, and (4) blocked QS transferred to an initial recipient after the effective date of this final rule. Following the redesignation of QS, two types of annual IFQ permits will be issued by NMFS. Quota share designated as eligible to be fished by a hired master will yield IFQ that can be harvested by a hired master. Quota share designated as not eligible to be fished by a hired master will yield IFQ that cannot be harvested by a hired master. NMFS will redesignate QS and issue the new types of IFQ permits prior to the beginning of the IFQ fishing year following the date this final rule becomes effective and each year thereafter as transfers require.

Comments and Responses

NMFS received 15 comment letters during the public comment period for the proposed rule. Of the 15 comment letters received, one letter was from a

representative of a fishing industry organization, one letter was from a non-profit organization, and the remaining letters were from individual IFQ fishery participants and members of the public. One letter recommended broad changes to fisheries management that are outside the scope of this action. The remaining 14 letters contained 24 unique comments. A summary of the comments and NMFS' responses follow.

Comment 1: Three commenters supported the proposed rule because the original intent of the IFQ Program was to maintain the owner-onboard character of the fixed-gear fleet and promote an equitable transition to an owner-onboard fishery through the use of vessel size categories, vessel IFQ use caps, and the hired master exemption only for initial recipients of QS.

Response: NMFS acknowledges the commenters' support of the proposed rule.

Fairness and Consistency With Applicable Law

Comment 2: NMFS states that the proposed rule will further the owner-onboard IFQ fishery. However, the purpose of the original IFQ Program was to resolve problems that stemmed from the ''open access'' regulatory regime, not to promote an owner-onboard halibut and sablefish IFQ fishery.

Response. The Council and NMFS identified 10 objectives for the original IFQ Program. Section 2.3 of the IFQ Program FSEIS identifies and describes these objectives (see **ADDRESSES**). NMFS agrees that one objective of the IFQ Program was to address the conservation and management problems associated with the ''open access'' management regime. The Council also identified an objective to maintain the existing business relationships among vessel owners, crews, and processors and ensure that those directly involved in the halibut and sablefish IFQ fishery benefit from the IFQ program by further ensuring that fishery is dominated by owner-onboard operations. However, the Council recognized the tension between many of its objectives, and therefore selected a set of program elements that provided a reasonable balance of competing objectives.

With respect to the objectives discussed above, the balance that the Council struck in the IFQ Program: (1) Established the owner-onboard requirement to further the objective of owner-onboard fisheries; and (2) exempted initial recipients of QS, many of whom actively participated in harvesting activities on board their vessels and some of whom employed hired masters, from the owner-onboard requirement. The purposes of the exemption were to further the objective of maintaining existing business relationships and to avoid sudden disruption of business operations to those fishermen who had hired masters to fish for them. Because initial recipients could not transfer their exemption from the owner-onboard requirement, the Council and NMFS expected that in the future all catcher vessel QS would be held by individuals that had to be on board their vessels for the harvest of their IFQ. NMFS stated in the final rule to implement the IFQ Program that eventually, as the individuals and firms that received initial allocations were replaced by new QS holders, all catcher vessel QS would be transferred to individuals in keeping with the Council's basic objective of requiring QS holders to be on board the vessels during fishing operations (58 FR 59375, November 9, 1993).

Contrary to the commenter's assertion, the record of the IFQ Program development confirms that an objective of the IFQ Program was for owners of catcher vessel QS to be on board in the IFQ fishery. For example, the Council noted in Section 2.3.6 of the IFQ Program FSEIS (see **ADDRESSES**) that it desired that QS remain in the hands of active fishermen who would use them. That Analysis also explained that other restrictions on who may control or use catcher vessel QS and IFQ are intended to assure that those directly involved in the fishery benefit from the IFQ Program and that the fisheries continue to be dominated by owner-onboard operations. The Council intended that active harvesters, and not investment speculators, remain as the ''stock holders'' in the fishery under limited access IFQ management (57 FR 57130, December 3, 1992). In the final rule implementing the IFQ Program, NMFS noted in response to comment that the Council's basic policy is to require catcher vessel QS holders to be on board during fishing operations and sign required landing reports. The Council provided for an exception to this policy in its motion language and FMP amendment text for persons who receive initial catcher vessel QS except for holders of catcher vessel QS usable in Southeast Alaska and holders of catcher/processor QS. The Council noted that eventually, as the individuals and firms that received initial allocations are replaced by new ones, all catcher vessel QS would be transferred to individuals in keeping with the Council's basic objective of requiring QS holders to be on board the vessel during fishing operations (58 FR 59375, November 9, 1993).

Comment 3: NMFS states that a purpose of the proposed rule is to prevent consolidation of the ownership of QS by preventing initial recipients from acquiring additional QS that is not subject to the owner-onboard requirement. A fundamental purpose of the IFQ Program was to encourage consolidation because the fishery was overcapitalized. To say that a goal of the IFQ Program was to prevent consolidation is to ignore the history and intended purpose of the program.

Response: The commenter is correct that one problem the IFQ Program addressed was excess harvesting capacity in the IFQ fisheries (58 FR 59375, November 9, 1993). However, the Council and NMFS were concerned that the IFQ Program might result in too much consolidation in the ownership of QS. In addition to the objectives identified in response to Comment 2, the Council identified the objective in Section 2.3 of the IFQ Program FSEIS (see **ADDRESSES**) to limit the concentration of QS ownership and IFQ usage that was expected to occur over time. Also, Section 2.3.3 of the IFQ Program FSEIS notes that the IFQ Program contained many features to prevent undue consolidation, including ownership caps on QS. The impetus for this final action to further restrict the owner-onboard exemption for initial QS recipients results from the Council's determination that allowing those initial recipients of QS who hire masters to acquire additional QS up to the ownership caps could impede the development of owner-onboard IFQ fisheries. Section 5.2 of the RIR/IRFA for this final action (see **ADDRESSES**) recognizes that individual initial recipients may increase their QS holdings, for which they may hire masters, up to the use cap. It is this capacity to increase the use of hired masters, instead of a more timely transition to an owner-onboard fleet, which concerns the Council.

Comment 4: The proposed action violates the Administrative Procedure Act (APA) because NMFS did not publish a timely notice of proposed rulemaking in the **Federal Register** regarding the applicability of the February 12, 2010, date. Therefore, it would be unlawful to prohibit persons who purchased QS between February 12, 2010, and the date of publication of the proposed rule from hiring a master to fish that QS unless those persons had actual notice of the Council's action. Moreover, the rule has an effective date of February 12, 2010, which precedes publication of the final rule. Because the

rule has an effective date preceding the final rule's publication, the rule violates the APA's requirement that rules take effect not less than 30 days after the final rule's publication.

Response: The APA does not require NMFS to have published a notice of the Council's action in the **Federal Register** prior to the notice of proposed rulemaking. NMFS published the notice of proposed rulemaking for this action on April 26, 2013 (78 FR 24707), with comments invited through May 28, 2013. This final rule will become effective 30 days following publication in the **Federal Register** (see DATES) consistent with the APA, and will apply to all persons participating in the sablefish and halibut IFQ fisheries.

The administrative record for this rule adequately describes the rationale for curtailing the hired master exemption for QS acquired after February 12, 2010:

- The supporting analysis notes that the Council acknowledged that a number of QS units were in the process of being transferred by NMFS, and more QS would continue to be transferred while the Council continued to work on the regulatory amendment;
- The supporting analysis states that the rule will only curtail further transfer of QS for use by hired masters, rather than eliminate the hired master provision altogether as had been suggested by stakeholders in previous program reviews;
- Under the Council's preferred alternative, QS transferred after February 12, 2010, would no longer be eligible to be used by hired masters in order to counter a trend of the increased use of hired masters;
- The objective of the Council's preferred alternative is to cap the potential use of hired masters by eligible initial QS recipients to levels in existence as of February 12, 2010, the date that the Council began developing this regulatory amendment to curtail the trend of increasing use of hired masters in the sablefish and halibut IFQ fisheries. The Council selected this date to discourage persons from rushing to acquire even more QS, thereby exacerbating the very problem the Council was trying to address with this action.

Comment 5: The proposed rule is arbitrary and capricious by taking away the privilege of initial recipients to hire masters to fish QS acquired after February 12, 2010. The commenter emphasizes that the original IFQ rule allowed initial recipients of QS to acquire additional QS by transfer and allowed initial recipients to be exempt from the owner-onboard requirement with respect to all QS that they acquired by transfer.

Response: The commenter is correct that the final rule to implement the IFQ Program included an exemption from the owner-onboard requirement for initial recipients of catcher vessel QS outside of Southeast Alaska. The commenter is also correct that the IFQ Program final rule expressly extended the exemption from the owner-onboard requirement to QS that initial recipients acquired by transfer after implementation of the IFQ Program. The commenter is also correct that this final rule amends the exemption such that QS acquired after February 12, 2010, are no longer exempt from the owner-onboard requirement. However, the regulatory amendment implemented in this final rule is not arbitrary and capricious. The purpose of this action is to promote the development of an owner-onboard IFQ fishery, which has been an objective of the IFQ Program since its inception. See NMFS's Response to Comment 2.

The RIR/IRFA for this final action demonstrates that the Council and NMFS evaluated a substantial amount of data on the IFQ Program (see **ADDRESSES**). Tables 9–11 and 17–20 in the RIR/IRFA include the number of individual halibut and sablefish QS holders from 1995 to 2009, the number of non-individual QS holders over those years, and their use of hired masters to fish their IFQ. Tables 21–22 in the RIR/IRFA include the number of IFQ halibut and sablefish pounds held by persons who may hire masters. In addition, Tables 33–40 in the RIR/IRFA include information on annual prices for QS and transfer rates for QS.

Data from Tables 9 and 11 in the RIR/IRFA show that, although the number of initial recipients holding QS has decreased, the number of individual initial recipients who hire masters in the halibut fishery increased from 110 in 1998 to 210 in 2009 (a 91 percent increase), while in the sablefish fishery the number increased from 46 to 91 (a 98 percent increase). Table 16 in the RIR/IRFA shows the percentage of halibut IFQ landed by hired masters increased from 7.9 percent of the total IFQ landings in 1998 to 19.3 percent in 2009. Similarly, the percentage of sablefish IFQ landed by hired masters increased from 7.7 percent of the total IFQ landings in 1998 to 15.0 percent in 2009.

The Council and NMFS also recognized that without a change in regulations, initial recipients of QS could continue to increase their holdings of QS that are exempt from the owner-onboard requirement up to the QS ownership use caps in current regulation. This potential for increased consolidation of QS for harvest by hired masters was the crux of the problem the Council faced. The Council and NMFS have clearly explained their rationale for preventing initial recipients from acquiring more QS that would be exempt from the owner-onboard requirement. As noted in the responses to comments above, the Council has supported the objective of an owner-onboard fishery since the inception of the IFQ Program. This final rule furthers that objective by preventing initial recipients from acquiring more QS that can be fished without the QS holder being on board the vessel during the harvest of the IFQ. (see Response to Comment 2.)

The Council acknowledged that the use of hired masters is an existing practice in some halibut and sablefish business models and arrangements for both individual and non-individual initial recipients of QS. The Council considered and rejected an alternative to eliminate the hired master exemption from the IFQ Program. However, the Council determined, and NMFS agrees, that eliminating the hired master exemption would not sufficiently accommodate the existing business plans of hired masters or initial recipients that use a hired master to harvest IFQ (see Section 6 of the RIR/IRFA). Therefore, this action balances the interests of initial recipients of halibut and sablefish QS with the interests of new entrants to the fisheries, as well as furthering the Council's IFQ Program objective to move more expeditiously towards an owner-onboard catcher vessel IFQ fishery (see Section 5.2 of the RIR/IRFA).

Comment 6: It is arbitrary and capricious for NMFS to take action to increase the speed of transition to owner-onboard fisheries in the IFQ fisheries. First, the Council and NMFS did not establish a timetable for the transition when the original IFQ Program was established. Second, NMFS provides no evidence the proposed action will achieve the stated objectives to encourage new entrants to the fishery and hasten the transition to an owner-onboard fleet.

Response: Although the Council and NMFS did not originally establish a timetable for the complete transition to an owner-onboard IFQ fishery, the lack of a timetable does not prevent the Council and NMFS from taking action now to hasten progress toward the objective of an owner-onboard IFQ fishery. NMFS must examine the relevant data and articulate a satisfactory explanation for its action.

As noted in response to Comment 5, the Council examined relevant data from the IFQ Program and concluded that, among the competing objectives of maintaining business relationships and promoting an owner-onboard fishery, it needed to modify the exemption of initial recipients from the owner-onboard requirement to improve progress toward the objective of a predominantly owner-onboard fishery and prevent further acquisition of QS by fishermen who would hire masters to fish the IFQ derived from that QS. Thus, the administrative record reflects a rational basis for increasing the pace of the transition to owner-onboard fishery. In short, the Council and NMFS have evaluated the IFQ Program as it has developed and have modified the program in light of experience with that program.

NMFS disagrees with the commenter's assertion that it has not provided evidence that this action will achieve the stated objectives to encourage new entrants to the fishery and hasten the transition to an owner-onboard fleet. The Council determined, and NMFS agrees, that QS consolidation among initial recipients and increased use of hired masters likely has reduced the opportunity for new entrants to purchase QS and enter the fishery. As discussed in Section 5.2 of the RIR/IRFA, this action is likely to encourage new entrants to the fishery in two ways. First, the action has the effect of placing an upper limit on the amount of IFQ that may be fished by a hired master. This likely will result in initial recipients transferring more QS than they would have if initial recipients were to retain the ability to hire a master for IFQ derived from QS received by transfer after February 12, 2010. It is difficult to predict with precision the impacts of this action on QS transfers or QS availability for new entrants because the response of each QS holder will be different. Some QS holders may be unable or choose not to purchase additional QS, some may choose to purchase more QS and be on board the vessel to harvest the IFQ, while others may finance QS purchases by crew or other eligible QS recipients who must be on board the vessel when the IFQ is harvested. However, it is likely that additional QS will be placed on the market and available for purchase by new entrants to the fishery and active fishermen who will be on board the vessel to harvest IFQ.

Second, this action reduces the incentive for initial QS recipients who use hired masters to purchase additional QS, which could alleviate some of this upward pressure on QS price and provide more opportunities for new entrants and active fishermen—including fishermen currently employed as hired masters—to purchase QS.

Comment 7: The proposed action violates section 504(a) the Rehabilitation Act of 1973, 29 U.S.C. 794(a), because it has a discriminatory impact on disabled persons. The comment is from a trade association that states that it has members who are initial recipients of QS that have acquired QS after February 12, 2010, or that wish to acquire additional QS, and who, because of a disability, cannot be on board a vessel during the harvest of this additional QS. The commenter claims that the rule has a discriminatory impact on disabled persons in violation of the Rehabilitation Act. The commenter observes that many individual initial recipients of QS can no longer serve on board a vessel due to disability, adding that the rule prevents these individuals from increasing their QS holdings and using a hired skipper. The commenter proposes that a reasonable accommodation for this rule would exempt initial individual QS holders who have disabilities, thus allowing these individuals to continue hiring masters to fish their QS indefinitely.

Response: The Rehabilitation Act provides that no disabled person, by reason of the disability, shall be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program conducted by any Executive agency. 29 U.S.C. 794(a). To prove a government violation of the Rehabilitation Act, an applicant to a government program must show that he or she is an individual with a disability as defined under the Act; that apart from the disability, the individual is otherwise qualified to receive the program benefit; that the individual is denied the benefit solely by reason of the disability; and that the program receives federal financial assistance. *See Toney* v. *U.S. Healthcare, Inc.,* 840 F.Supp. 357 (E.D. Pa. 1993), *aff'd.* 37 F.3d 1489 (3d. Cir. 1994). If the above is shown, then the government must provide a reasonable accommodation to the disabled individual, thus allowing the individual to participate in the program. However, if providing the accommodation would undermine a fundamental purpose or goal of the program, there is no Rehabilitation Act violation and no accommodation need be provided. *See Southwestern Community College v. Davis,* 442 U.S. 397, 410, 413 (1979) (the Rehabilitation Act does not require fundamental, major or substantial program modifications).

The Department of Commerce (Department) published regulations implementing the Rehabilitation Act and prohibiting discrimination in its programs on the basis of handicap. 15 CFR part 8c. The regulations provide that handicapped individuals qualified for a Department program will not be excluded from the program on the basis of the handicap. 15 CFR 8c.30. The Rehabilitation Act and the Department regulations apply to the IFQ Program. 15 CFR 8c.2. The regulations protect an ''individual with handicaps,'' which is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or is regarded as being impaired by the Department. 15 CFR 8c.3. Although the regulations protect an individual who is disabled and qualified for the program, such a person must demonstrate that he or she can achieve the purpose of the program ''[w]ithout modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature''. 15 CFR 8c.3.

NMFS has determined that the final rule is consistent with the Rehabilitation Act and Department regulations. Notwithstanding that some QS holders may be able to show they are qualified individuals with handicaps who, as a result of their disabilities, will be unable to be physically on board their vessels while fishing QS acquired after February 12, 2010, these persons would, under the regulations, have to show that they could meet or achieve the purposes of the IFQ Program without modifications in the program or activity that would result in a fundamental alteration in its nature. In this case, the record of the IFQ Program FEIS amply demonstrates that a fundamental objective of the IFQ Program was an owner-onboard IFQ fishery; that is, one of the program's fundamental purposes is that QS owners be on board vessels while fishing their QS. Further extending the exemption from the owner-onboard requirement would fundamentally alter that purpose. Therefore, neither the Rehabilitation Act nor Department regulations require that NMFS alter the owner-onboard provision to accommodate handicapped QS holders in this instance.

Comment 8: The proposed action is a prohibited retroactive application of law. Further, the Magnuson-Stevens Act does not expressly authorize the Council or NMFS to issue a retroactive rule; therefore, NMFS is prohibited from issuing this retroactive rule. Initial recipients of QS had entered into contracts for the transfer of QS that were

binding before the Council adopted the retroactive date of February 12, 2010, in March of 2011. These legal contracts would be improperly changed by the proposed rule without NMFS having the express statutory authority to take such retroactive actions.

Response: A rule has impermissible retroactive effects when it changes the past legal consequences of past conduct without express statutory authority for such a rule. In contrast, a rule does not have impermissible retroactive effect merely because it applies to conduct preceding the rule's promulgation or upsets expectations based in prior law. NMFS has determined that this rule does not have an impermissible retroactive effect as that term has been defined in relevant jurisprudence. This rule does not change the past legal consequences of past conduct. The rule will not cancel or invalidate QS transfers occurring on or after February 12, 2010, or make those transfers illegal. While the rule may impact persons who contracted for QS on or after February 12, 2010, and upset investment expectations with respect to hiring masters to fish that QS, the rule does not invalidate those QS transfers.

Furthermore, this rule does not penalize the use of a hired master to harvest QS acquired on or after February 12, 2010, and before the effective date, nor does this rule invalidate, alter, or penalize the past use of QS and hired masters. The rule's effect is prospective; it affects and limits future hired master use, not past use. Moreover, even if the commenter were correct that the rule has retroactive effect, the Magnuson-Stevens Act expressly authorizes the Council and NMFS to revoke, limit, or modify QS at any time. 16 U.S.C. 1853a(b).

The Council evaluated alternative dates to February 12, 2010, in consideration of those initial QS recipients who may have been unaware of the Council's action in February 2010 and who acquired QS after that date for harvest by hired masters. However, the Council recognized that any date it selected would affect some persons who may have been unaware of the Council's action. The Council determined, and NMFS agrees, that it could not address every one of these circumstances by choosing a different date without compromising the intent of this action (see Section 5.2 of the RIR/IRFA).

Comment 9: The proposed regulatory amendments are arbitrary and capricious because they treat similarly situated persons differently. The proposed action would treat corporations holding catcher vessel QS differently than the corporations that participate in the halibut and sablefish fisheries through the Community Quota Entity (CQE) and Community Development Quota (CDQ) programs.

Response: As discussed in the final rule implementing the IFQ Program (58 FR 59375, November 9, 1993) and in the proposed rule for this action (78 FR 24707, April 26, 2013), the IFQ Program was developed to meet multiple objectives for different types of participants in the halibut and sablefish IFQ fisheries. As discussed in the response to Comment 6, the Council and NMFS have articulated a legitimate fishery objective for this action. Furthermore, as explained below, there are reasons supporting any differences in the way fishery participants, including corporations, may be treated.

The Council and NMFS have articulated legitimate objectives for the CDQ and CQE halibut and sablefish fisheries that are consistent with the overall goals of the IFQ Program. The CDQ Program was proposed and implemented in conjunction with the IFQ Program to help develop commercial fisheries in communities on the Bering Sea coast by allowing them exclusive access to specified amounts of halibut and sablefish in the Bering Sea and Aleutian Islands (57 FR 57141, December 3, 1992). The CDQ Program provides a long-term asset to use for the community's benefit. The CQE Program modified the IFQ Program to provide additional opportunities for residents of fishery dependent communities to participate in halibut and sablefish fisheries by allowing eligible Gulf of Alaska communities to establish non-profit entities to purchase and hold QS for use by community residents (69 FR 23681, April 30, 2004). CQE Program QS cannot be sold unless it improves the community's ability to enhance or expand its participation in the CQE Program. Thus, the CQE Program is for community benefit as well as individual benefit. The CDQ and CQE Programs are intended to insure that some level of QS access remains for community residents in the long term. In contrast, non-individual, for-profit, corporations could leave the community, sell their QS, or otherwise act in their own best interest, rather than in the best interest of the community.

Section 5.2 of the RIR/IRFA describes that the CDQ and CQE programs are premised on the concept of allowing harvest privileges to be held by a community entity and then leased to individual residents of the community. These programs do not include a vessel ownership requirement or owner-onboard provision because these are unnecessary for programs in which harvest privileges are non-transferable (CDQ program) or may be used only by the community fishery participants (CQE program) and are intended for long-term use by eligible communities. The concept of absentee ownership does not apply in the CDQ and CQE programs because QS are held by the community entity and tied to that community. These community-based programs are intended as stepping stones to individual ownership of QS, which, once acquired by individuals, will be subject to the owner-onboard requirement.

Comment 10: The proposed rule violates the fair and equitable test required by National Standard 4 of the Magnuson-Stevens Act and the Halibut Act. It is unfair to initial QS recipients who chose to purchase QS after February 12, 2010, and shows bias among the IFQ Program participants. Additionally, the proposed rule would impose significant disadvantages and hardships without offsetting the positive benefits of the existing IFQ Program.

Response: This action is consistent with National Standard 4 of the Magnuson-Stevens Act at 16 U.S.C. 1851(a)(4) and similar standards set forth in the Halibut Act at 16 U.S.C. 773c(c). National Standard 4 of the Magnuson-Stevens Act provides that conservation and management measures shall not discriminate between residents of different states. This action does not discriminate between residents of different states. Further, if it becomes necessary to allocate or assign fishing privileges among U.S. fishermen, such allocation shall be (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The Halibut Act at 16 U.S.C. 773c(c) states that if it becomes necessary to allocate or assign halibut fishing privileges among various U.S. fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in Federal law, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of halibut fishing privileges. The ''fair and equitable'' requirement in the Halibut Act is substantially the same as the ''fair and equitable'' requirement found in National Standard 4 of the Magnuson-Stevens Act, the only difference being the addition of the word ''halibut'' before ''fishing privileges.'' Because of this similarity, the National Standard 4

guidelines promulgated by NMFS and found at 50 CFR 600.325 help to illustrate why this action meets the statutory requirement.

NMFS has determined that this action is not subject to the statutory provisions regarding the fair and equitable allocation of fishing privileges because it is not a direct and deliberate distribution of the opportunity to participate in the fishery among identifiable discrete user groups or individuals. Any management measure can have incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of National Standard 4. (50 CFR 600.325(c)(1)). This action limits the use of hired masters to harvest a fishing privilege, which in this case is the QS that has been allocated or assigned to IFQ halibut and sablefish fishermen. Any distributional effect of this rule on IFQ fishermen and hired masters is an incidental allocative effect.

Even though this action does not result in the direct distribution of fishing privileges, this action is fair and equitable. As described in the response to Comment 6, the Council and NMFS have articulated a legitimate objective for this action—decreasing the use of hired masters by QS holders over time in order to hasten progress toward a predominantly owner-onboard catcher vessel halibut and sablefish IFQ fishery. Further, the guidelines to National Standard 4 (50 CFR 600.325(c)(3)(i)(A)) acknowledge that inherent in an allocation is the advantaging of one group to the detriment of another. The motive for any particular allocation should be justified in terms of fishery management objectives; otherwise, the disadvantaged user groups or individuals will suffer without cause. The fishery management objective of a predominantly owner-onboard catcher vessel fishery has been articulated by the Council and NMFS starting with the 1995 implementation of the IFQ Program and continuing through this final rule. As summarized in Section 1 of the RIR/IRFA and in Comment 2, the owner-onboard requirement is designed such that QS remains largely in the hands of active fishermen rather than absentee owners or investment speculators in order to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. As previously noted, the Council and NMFS determined this action was necessary to prevent initial recipients of QS from continuing to acquire additional QS for harvest by hired masters, thereby prolonging the transition to an owner-onboard fishery.

The guidelines to National Standard 4 state that an allocation may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. ''An allocation need not preserve the status quo in the fishery to qualify as 'fair and equitable,' if a restructuring of fishing privileges would maximize overall benefits'' (50 CFR 600.325(c)(3)(i)(B)). The Council and NMFS found that the total benefits to the IFQ halibut and sablefish fishery resulting from this action will be increased relative to the status quo as this action should result in additional QS placed on the market for purchase by new entrants (see Section 5.2 of the RIR/IRFA).

Comment 11: The proposed rule will likely prevent achievement of optimum yield and violate National Standard 1 of the Magnuson-Stevens Act because initial recipients of QS will be prevented from transferring QS to address IFQ Program harvest limitations resulting from vessel use caps and allocations by geographic area.

Response: National Standard 1 of the Magnuson-Stevens Act at 16 U.S.C. 1851(a)(1) states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The term ''optimum'', with respect to the yield from a fishery, means in pertinent part the amount of fish which will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery. 16 U.S.C. 3(33). As described in the National Standard 1 guidelines promulgated by NMFS at 50 CFR 600.310(e)(3)(i)(B)(ii), optimum yield is the long-term average amount of desired yield from a stock, stock complex, or fishery. The determination of optimum yield should consider overall benefit to the nation, and any relevant economic, social, or ecological factors.

The Council considered the effects of this action on total harvest of halibut and sablefish IFQ and determined that it would not impede harvest of the total allowable catch. The Council determined, and NMFS agrees, that harvesting activities will not significantly change under this action. Section 5.2 of the RIR/IRFA notes that while it is unknown what portion of halibut and sablefish IFQ pounds would not be harvested by hired masters under this action, those IFQ pounds may be harvested and landed by (1) the current individual QS holder; (2) another individual initial recipient upon transfer of the QS; (3) a crew member upon transfer of the QS; or (4) a new entrant QS holder upon transfer of the QS. The Council recognized that this action will reduce the use of hired masters and prevent initial recipients of QS from acquiring additional QS for harvest by hired masters. As a result the action will have distributional effects on both QS holders who use hired masters and persons who work as hired masters. Given the number of options for initial QS recipients to maintain active and viable businesses in the halibut and sablefish fisheries, however, NMFS does not anticipate that this action will prevent participants from fully harvesting IFQ or the halibut and sablefish fisheries from achieving optimum yield.

Comment 12: The proposed rule is arbitrary and capricious because there is no analysis of the economic impact of the proposed rule on the initial recipients of QS that are directly affected by the proposal, as well as other fishery participants.

Response: Prior to recommending this action, the Council reviewed the RIR/IRFA, which used the best available information to analyze the impacts of the action on affected IFQ fishery participants. The RIR/IRFA included a significant amount of information to help the Council determine the likely economic impacts of the action, including discussions of (1) the kinds of business models and relationships that have developed around the use of the hired master provision; (2) changes in the way IFQ is harvested by all types of QS holders over time relative to the program goal of progress towards an owner-onboard fleet; (3) IFQ Program elements and factors outside the program that provide incentives or disincentives for QS holders to retire from the fishery; (4) changes in QS held over time by different types of QS holders; and (5) transfers of catcher vessel QS after February 12, 2010.

As noted in Section 5.2 of the RIR/IRFA, it is not possible to quantify the economic impacts or predict the outcomes of this action with certainty because the response of each QS holder to the action will be different. The Council acknowledged that this action

could have negative economic impacts on some IFQ fishery participants, particularly for QS holders who use hired masters and persons who work as hired masters. The RIR/IRFA notes that while this action will require some businesses to change their business models, a number of options remain for initial recipients to maintain active and viable businesses in the halibut and sablefish fisheries without significant disruptions to existing business models. As described in the response to Comment 6, after reviewing the RIR/IRFA and receiving public testimony, the Council determined, and NMFS agrees, that this action is necessary to balance the interests of initial recipients of halibut and sablefish QS against the interests of new entrants to the fisheries and meet the original goals of the IFQ program to move towards an owner-onboard catcher vessel fishery.

Comment 13: Small businesses, corporations, partnerships, and limited liability companies should be exempt from the proposed rule because they are not individuals and cannot meet the owner-onboard requirement. It is unfair to treat non-individual QS holders differently than individual QS holders.

Response: As discussed in the response to Comment 6, the fishery management objective of a predominantly owner-onboard catcher vessel fishery has been articulated by the Council and NMFS since the inception of the IFQ Program in 1995. The Program requires catcher vessel QS holders to be on board the vessel when the resulting IFQ is harvested in order to promote an owner-onboard catcher vessel fishery, with a narrow exception for initial QS recipients. This requirement is intended to ensure that catcher vessel QS are held by professional, active fishermen, rather than absentee owners or investment speculators. The preamble to the proposed rule describes that by limiting this exception to initial recipients, the Council anticipated that individual initial recipients would eventually retire from fishing and that non-individual initial recipients would dissolve or change composition over time. Eventually, QS would be transferred to other qualified individuals and the IFQ fisheries would become almost entirely owner-operated.

As discussed in Section 5.2 of the RIR/IRFA, the Council considered the impacts of this action on affected participants, including small businesses, partnerships, corporations, and other non-individual QS holders. Based on the information in the RIR/IRFA and provided in public testimony, the Council and NMFS considered the effect of this action on non-individual initial recipients who must hire a master and individual initial recipients whose business model is to hire a master. As noted in Comment 10, NMFS has considered the distributional effect of this rule on IFQ fishermen and hired masters.

Comment 14: Several commenters opposed the owner-onboard objective for the IFQ Program. One commenter asserted that a person may be an active fisherman in the IFQ fishery without being on board the vessel. Instead, for example, persons can actively manage IFQ fishing operations from shore. Other commenters proposed that it would be more appropriate to rescind the hired master privilege for QS holders who have no ownership interest in a vessel.

Response: As described in the response to Comment 6, the fishery management objective of promoting a predominantly owner-onboard catcher vessel fishery has been articulated by the Council and NMFS since the inception of the IFQ Program in 1995. Revisions to the IFQ Program, such as those suggested in these comments, would substantially change policy adopted by the Council and approved by the Secretary of Commerce and outside the scope of this action.

Comment 15: The Council and NMFS fail to account for the fact that a significant number of QS units are held by corporations that must hire masters, many of whom hold and fish their own QS. Thus, when examining the total number of masters hired by corporations, the agency should remove from consideration those who independently hold their own QS.

Response: NMFS agrees that corporate or non-individual QS holders must hire masters to harvest their IFQ. The RIR/IRFA acknowledges that some of these hired masters hold QS/IFQ, some are part owners of the vessels on which they were hired to fish the non-individual's QS/IFQ, and some are shareholders or partners of shareholders of the owners of the non-individual QS holding entity that hires them. The RIR/IRFA considered whether to adjust the data on non-individual QS holders that hire masters that hold their own QS but, it wasn't feasible. Section 5.1 of the RIR/IRFA explains that ownership could only be examined to the ''first level of affiliation'' (i.e., principal corporate owners) because ownership relationships are often complex, spanning multiple levels of investment and ownership for any person and vessel NMFS does not collect the detailed data. As a result, vessel and entity ownership and hired master QS holdings are likely underestimated. The data underrepresent the number of hired masters that are second (shareholder), third (partner of shareholder), or lower level owners of the business that hired them, or of vessels on which they fished. Specifically, more hired skippers than can be documented are actually fishing their own IFQ because they are already part of the non-individual QS holders.

The Council and NMFS considered the information included in Section 5.1 of the RIR/IRFA. This information shows changes of QS holdings from 2000 through 2010, by type of QS holder, including individual initial recipients, hired masters who hold QS, and persons other than initial recipients who received their QS through purchase or other transfers. The Council and NMFS considered QS holdings by hired masters when determining that this action was needed to improve progress toward the objective of a predominantly owner-onboard catcher vessel halibut and sablefish IFQ fishery by preventing further increases in the amount of IFQ fished by hired masters.

Comment 16: The action would displace crew who want to become hired masters, hired masters who may have made investments in some amount of QS and vessel ownership, and hired masters who do not want to take on the financial responsibility and risk of owning QS and vessels. The action will result in more consolidation of QS, fewer vessels engaged in the fishery, loss of crew member and hired master jobs, and damage to the established fishery infrastructure. Contrary to the intent of the action, it would decrease involvement of second-generation participants in the IFQ fishery.

Response: After the effective date of this final rule (see DATES), initial recipients of QS may still hire masters to harvest IFQ derived from QS held on or before February 12, 2010. Thus, opportunities for crew members and new entrants to gain experience by being a hired master continue under this rule. Hired masters who currently participate in the IFQ fishery will not be removed from the IFQ fishery, but will be allowed to fish IFQ derived from QS that were (1) held by an initial recipient on or before February 12, 2010, or (2) transferred into a QS block between February 12, 2010, and the effective date of this rule. The Council and NMFS acknowledge that this action will require some QS holders and IFQ fishery participants to change their business models. NMFS anticipates that QS consolidation by initial recipients will decline and result in more opportunities for new entrants, hired masters, and crew members to purchase

QS and participate in the IFQ Program. Data are not available to analyze the specific effects of this rule on these participants, but as discussed in the response to Comment 6, the Council and NMFS anticipate that this action will provide more opportunities for active fishermen and new entrants to purchase QS.

Comment 17: The proposed action is not needed because (1) the use of hired masters will eventually phase out as initial QS recipients leave the fishery, and (2) the IFQ Program already has a number of QS, IFQ, and vessel use caps that control consolidation.

Response: Section 5.1 of the RIR/IRFA notes that without this action, the use of hired masters to harvest catcher vessel IFQ will eventually be phased out as initial QS recipients retire from the fishery and are replaced by new entrants who are required by current regulations to be on board their vessels when the IFQ is harvested. Until that occurs, however, the Council was concerned that an increasing percentage of annual IFQ will be harvested by hired masters. Section 5.2 of the RIR/IRFA examined QS consolidation among individual and non-individual initial recipients and found that over the past 10 years the number of initial recipients has decreased while the average QS holding of those QS holders have increased. Thus, QS has consolidated among fewer QS holders who hire masters to fish their QS. As discussed in the response to Comments 5 and 6, this is contrary to the Council's objective for a predominantly owner-onboard catcher vessel IFQ fishery.

NMFS agrees that IFQ regulations at § 679.42(e), (f), and (g) include provisions for QS use caps, vessel use caps, and a block program to limit QS acquisitions and maintain a diverse owner-onboard fleet. However, as described in the response to Comments 5 and 6, the Council determined, and NMFS agrees, that the apparent QS consolidation among initial recipients and increased use of hired masters has delayed progress toward an owner-onboard fishery and likely has reduced the opportunity for new entrants to purchase QS and enter the fishery.

Economic Impacts

Comment 18: The proposed action adds another variable to the complicated IFQ Program by increasing the risks to lenders in the IFQ fishery and creating uncertainty about entry into the IFQ Program.

Response: NMFS does not anticipate this action will increase the risk to lenders for QS purchases. Currently, all persons who purchase catcher vessel QS and who are not initial recipients of QS may not hire masters and must be on board the vessels used to harvest the resulting IFQ. This action will prevent further increases in the portion of catcher vessel QS yielding IFQ that may be harvested by a hired master.

Section 5.1 of the RIR/IRFA discusses the bond, loan, and grant programs that may be used by new entrants in the IFQ fishery to purchase QS, equipment, and vessels, depending on their individual circumstances. The RIR/IRFA notes that due to the increased price of QS and other market realities, it has proven difficult for new entrants to obtain financing. However, as described above, NMFS does not anticipate that this action will increase the risk to lenders in the IFQ fishery or affect the ability of new entrants to use available financing programs.

Comment 19: The proposed restriction will have a number of negative economic impacts on QS holders. It would affect choices to buy and sell halibut and sablefish QS, reduce the value of QS, and impact investment choices and retirement and estate planning. The proposed action also would limit competition and result in financial impacts that could lead to a loss of investment in the IFQ fishing fleet.

Response: Section 5.2 of the RIR/IRFA indicated that this action is not likely to have a significant effect on QS supply or price. As discussed in the response to Comment 6, this action could alleviate some of the upward pressure on QS price by creating a more level playing field for QS purchases among initial recipients, active fishermen who hold QS but who were not initial recipients, crew members, and potential new entrants. Additionally, initial recipients of catcher vessel QS may continue to hire a master to harvest IFQ derived from QS held on or before February 12, 2010; therefore, NMFS does not anticipate the value of this QS is likely to decline and negatively impact investment choices and retirement and estate planning.

As noted in Section 5.2 of the RIR/IRFA and in the response to Comment 12, it is not possible to quantify the economic impacts or predict the outcomes of this action with certainty. The Council recommended this action based on the best available information in the RIR/IRFA on the use of hired masters, changes in QS holdings of initial recipients, QS transfers, and the rate of new entry into the fishery. Given the opportunities for initial recipients to continue to use hired masters for catcher vessel QS held before February 12, 2010, NMFS does not expect this action to significantly disrupt existing business operations. In addition, NMFS anticipates increased opportunities for new entrants to the catcher vessel fishery and, therefore, increased competition and potential for investment in the IFQ fishery.

Comment 20: Fishermen and investors should not be further restricted at this time when severe total allowable catch reductions are probable. The increase in costs of supplies such as bait, fuel, food, repairs, insurance, and the additional costs of vessel monitoring systems and human observers, combined with drops in fishery catch limits have created an even greater need for partnerships and expense sharing among fishermen than has transpired over time with the use of hired masters.

Response: NMFS acknowledges the cost and benefits of combining business plans to offset the expenses of supplies and monitoring. While this approach may be more desirable at lower IFQ fishery catch limits, the potential increase in the use of hired masters conflicts with the Council's objective for an owner-onboard catcher vessel fishery. As discussed in the response to Comments 5 and 6, the Council considered data from the RIR/IRFA evaluating impacts of this action on affected fishery participants. The Council determined, and NMFS agrees, that this action is necessary to meet the IFQ Program objective for a predominantly owner-onboard catcher vessel halibut and sablefish IFQ fishery.

Other Issues

Comment 21: The rule will be ineffective because an initial recipient of QS can place his or her QS in the name of another individual, place a lien on the QS, and then draw up an agreement to resolve the lien. In effect, the initial recipient would stay on shore while the IFQ is fished to satisfy the lien agreement.

Response: The transaction described in the comment would require the parties to apply to NMFS for a QS transfer. Under this final rule, catcher vessel QS that was transferred to another person after February 12, 2010, will require that the QS recipient be on board the vessel when the IFQ derived from the QS is fished, unless the QS are consolidated into a block before the effective date of this final rule (see **DATES**).

Comment 22: The proposed rule indicates that category A QS and Community Development Quota (CDQ) allocations are not eligible to be fished by a hired master. This is incorrect; hired masters may be used to harvest

category A IFQ and CDQ allocations under the IFQ Program. The proposed rule should have stated that category A QS and CDQ allocations are excluded from the proposed action.

Response: NMFS agrees. Page 24710 of the preamble to the proposed rule for this action correctly indicated that category A (catcher/processor) QS and CDQ allocations would be excluded from this action (78 FR 24707, April 26, 2013). However, a subsequent paragraph incorrectly stated that to implement the proposed action, NMFS would designate category A QS and CDQ allocations as not eligible to be fished by a hired master. NMFS has corrected this statement in the ''Rationale for and Effects of This Final Rule'' section in this final rule to clarify that this action does not affect category A QS and the halibut and sablefish allocation to CDQ groups.

Comment 23: The proposed action would create a new and separate category of QS in the IFQ Program with additional unknown administrative and enforcement burdens. NMFS must acknowledge the burden that will cause.

Response: The commenter is correct that NMFS will implement this action by redesignating catcher vessel QS as ''eligible to be fished by a hired master'' if the QS was (1) held by an initial recipient on or before February 12, 2010, or (2) received by transfer and consolidated into a QS block held by an initial recipient prior to the effective date of this final rule (see **DATES**). All other catcher vessel QS that does not meet these requirements will be designated ''not eligible to be fished by a hired master''.

Following the redesignation of catcher vessel QS, NMFS will issue two types of annual IFQ permits. Quota share designated as eligible to be fished by a hired master will yield IFQ that may be harvested by a hired master. Quota share designated as not eligible to be fished by a hired master will yield IFQ that may not be harvested by a hired master. NMFS will redesignate QS and issue the new types of IFQ permits prior to the beginning of the IFQ fishing year following the effective date of this final rule. If QS designated as eligible to be fished by a hired master is subsequently transferred, it will be redesignated as not eligible to be fished by a hired master. The designation task will not delay timely IFQ issuance by NMFS' Restricted Access Management Division. This change in QS and IFQ designation will not affect the recordkeeping and reporting burden for IFQ fishery participants. NMFS does not anticipate any appreciable additional burden on enforcement. As described in the proposed rule preamble and in section 5.2 of the RIR/IRFA, implementing the action at the beginning of the IFQ fishing season is necessary to avoid a large administrative and enforcement burden for NMFS and affected participants.

Comment 24: The proposed regulation revokes a non-individual QS holder's eligibility to receive catcher vessel QS by transfer. This transfer eligibility is as valuable as QS, and our business will cease to function without it.

Response: NMFS agrees that the regulation implemented by this rule at § 679.41(c)(11) will prohibit a non-individual QS holder from receiving catcher vessel QS by transfer after the effective date of this rule (see **DATES**). As described in the response to Comment 13, the Council and NMFS considered the impacts of this action on affected participants, including small businesses, partnerships, corporations, and other non-individual QS holders. As discussed in the response to Comment 19, given the opportunities for initial recipients to continue to use hired masters for catcher vessel QS held before February 12, 2010, NMFS does not expect this action to significantly disrupt existing business operations.

Changes From the Proposed Rule to the Final Rule

NMFS made one minor change from the proposed rule to the final rule to accommodate revisions to § 679.42(i) that were approved under separate rulemaking prior to publication of this final rule. On February 20, 2014 (78 FR 9995), NMFS published a final rule adding § 679.42(i)(6) and (7) to the regulations. These regulatory additions revise vessel ownership requirements in the IFQ Program that apply to initial individual recipients of catcher vessel QS who want an exemption from the owner-onboard requirement. To accommodate the addition of § 679.42(i)(6) and (7) to the regulations under a separate rule, this final rule implements a regulation at § 679.42(i)(8) to prohibit an individual initial QS recipient from using a hired master to harvest IFQ derived from catcher vessel QS that they receive by transfer after February 12, 2010. NMFS did not change the text of the regulation implemented by this final rule at § 679.42(i)(8) from the text that was proposed at § 679.42(i)(6) on April 26, 2013 (78 FR 24707).

Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the IFQ halibut and sablefish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act, Halibut Act, and other applicable laws.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis (FRFA), the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall also explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Executive Order 12866

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

Final Regulatory Flexibility Analysis

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to the comments, and a summary of the analyses completed to support the action. The IRFA was summarized in the ''Classification'' section of the preamble to the proposed rule. NMFS published the proposed rule on April 26, 2013 (78 FR 24707), with comments invited through May 28, 2013. NMFS received three comments on general economic impacts of the action on affected fishery participants (See Response to Comments 18–20). NMFS received two comments that addressed the impacts of this action on small entities. These comments and NMFS' responses are summarized in Comments 10 and 11 in the preamble to this final rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here.

The FRFA describes the impacts on small entities; these impacts are defined in the IRFA and proposed rule for this action and not repeated here. Analytical requirements for the FRFA are described in the Regulatory Flexibility Act,

sections 604(a)(1) through (5), and summarized below.

The FRFA must contain:

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

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

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

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

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

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the final rule. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Rule

This final rule is necessary to amend regulations to prohibit the use of hired masters with initial recipient QS transferred after February 12, 2010. The objective of this action is to discourage any further consolidation of initial recipient QS for harvest by hired masters and meet the intent of the Council for an owner-onboard catcher vessel fishery.

Number and Description of Small Entities Regulated By the Final Rule

The entities directly regulated by this action are individuals and non-individuals initially issued catcher vessel QS in the halibut and sablefish fisheries. There are a maximum of 1,447 entities holding halibut QS and sablefish QS that are eligible to hire masters. However, the actual number of such entities that may be directly regulated is expected to be much smaller because many of these participants fish their own IFQ without a hired master, and most have not and will not acquire additional QS.

The Small Business Administration has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013. (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. Id. at 37400 (Table 1).

Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20 final rule, a final regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards and determined that the new size standards do not affect the analyses prepared for this action. Under the former, lower, size standards, all entities subject to this action were considered small entities; thus they all would continue to be considered small under the new standards.

Small entities regulated by this action may be divided into two mutually exclusive groups to estimate their size relative to the $19 million threshold. There are operations that harvest both halibut and groundfish (sablefish is considered a groundfish species, while halibut is not) for which gross revenue data exist. There are also operations that harvest halibut, but not groundfish, for which gross receipts data exist. The analysis for this action estimates that in 2009 the total gross revenues for fixed-gear catcher vessels by entity, from all sources off Alaska, were not more than $4 million in gross revenues, which has been the case since 2003. The average gross revenue for the small fixed-gear catcher vessels has been about $500,000. Thus, all of the entities that harvest both halibut and groundfish are under the threshold. This includes all of the entities that harvest any sablefish. Since the IFQ Program limits the amount of annual IFQ that any single vessel may use to harvest halibut and sablefish and the maximum number of QS units an entity may use, NMFS believes that few vessels that harvest halibut, but not groundfish, would exceed the $19 million threshold, either. Based upon gross receipts data for the halibut fishery, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no entity (or at most a *de minimis* number) directly regulated by these restrictions could have been used to land fish worth more than $19.0 million in combined gross receipts in 2010. Therefore, all halibut and sablefish vessels have been assumed to be ''small entities'' for purposes of this FRFA. This simplifying assumption may overestimate the number of small entities, since it does not take into account vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships in the halibut and sablefish IFQ fisheries.

Recordkeeping and Reporting

No additional recordkeeping and reporting by directly regulated entities will be required by this action. NMFS will issue permit holders an annual permit that distinguishes their QS holding as eligible or not eligible to use a hired master.

Description of Significant Alternatives to the Final Rule

A FRFA requires a description of any significant alternatives to the preferred alternative that accomplish the stated objectives, are consistent with applicable statutes and that would minimize any significant economic impact of the rule on small entities. The range of potential actions included Alternative 1, the status quo, and Alternative 2, the preferred alternative. A detailed description of these alternatives is provided in Section 4.0 of the analysis for this action (see **ADDRESSES**).

The status quo alternative would have maintained the current regulations that allow all initial recipients of catcher vessel QS to hire masters to harvest their IFQ permits for any catcher vessel QS they hold. Current regulations enable initial QS recipients to continue to acquire QS up to IFQ Program use caps and harvest accumulated IFQ with a hired master. This has resulted in increased amounts of IFQ being consolidated by initial recipients and harvested by hired masters, which is contrary to the Council's goals and objectives for the IFQ Program.

Under the preferred alternative, initial QS recipients will not be allowed to use hired masters to harvest IFQ derived from catcher vessel QS that they received by transfer after February 12, 2010, with a limited exception for small amounts of QS. The Council considered alternative dates after which the use of hired masters would be prohibited. Although those alternative dates could have allowed more small entities to use hired masters, or to use hired masters for more of the QS they now hold or could acquire before another date, the use of hired masters is not necessary to harvest halibut and sablefish IFQ derived from QS held by individuals.

The preferred alternative may change fishing opportunities for hired masters in the IFQ fishery. There is potential that the demand for hired masters will decline once initial recipients are no longer allowed to use hired masters to harvest IFQ pounds. The alternative does not limit the ability of small entities to receive QS by transfer and fish the resulting IFQ as owner-onboard. Changes resulting from this alternative will have distributional effects on initial recipients and hired masters, but will not affect production from the fisheries. The preferred alternative may increase net benefits to the nation to the extent that the Council's objectives for an owner-onboard fishery are more fully realized through this action.

The Council also considered and rejected an alternative to eliminate the hired master exemption from the IFQ Program, but determined that it did not sufficiently accommodate the existing business plans of initial catcher vessel QS recipients that use hired masters to harvest IFQ or their hired masters. The Council did not identify any other significant alternatives that would have been substantially less burdensome and would have achieved the Council's objectives for the action. The Council chose to recommend, and this final rule implements, the preferred alternative because it best meets the goals and objectives of the IFQ Program and minimizes the potential negative impacts to directly regulated small entities. Based on the best scientific information, none of the alternatives to the preferred alternative appear to have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in this action), while minimizing any significant adverse economic impact on small entities beyond those achieved under this action.

Collection-of-Information Requirement

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0272. The IFQ Program requirements are mentioned in this final rule; however, the public reporting burden for this collection-of-information is not directly affected by this final rule. The public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 23, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.41, add paragraph (c)(11) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(11) The person applying to receive QS assigned to vessel category B, C, or D is not a corporation, partnership, association, or other non-individual entity, except as specified in paragraph (g)(3) of this section.

* * * * *

■ 3. In § 679.42, add and reserve paragraphs (i)(6) and (i)(7), and add paragraphs (i)(8) and (j)(10) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(i) * * *

(8) Paragraphs (i)(1) and (i)(4) of this section do not apply to any QS assigned to vessel category B, C, or D received by transfer by any person described in paragraph (i)(1) after February 12, 2010, except a hired master may be used to harvest IFQ derived from QS blocks that were consolidated under § 679.41(e)(2) or (e)(3) after February 12, 2010, and before December 1, 2014.

(j) * * *

(10) Paragraphs (j)(1) and (j)(9) of this section do not apply to any QS assigned to vessel category B, C, or D received by transfer after February 12, 2010, by an entity described in paragraph (j)(1) except a hired master may be used to harvest IFQ derived from QS that were consolidated under § 679.41(e)(2) or (e)(3) after February 12, 2010, and before December 1, 2014.

* * * * *

[FR Doc. 2014–17658 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 144
Monday, July 28, 2014

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104579–13]

RIN 1545–BM09

Rules Regarding the Health Insurance Premium Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations under section 36B of the Internal Revenue Code (Code) relating to the health insurance premium tax credit. The regulations provide guidance to individuals who enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges) and claim the premium tax credit, and Exchanges that make qualified health plans available to individuals and employers. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by October 27, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104579–13), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Taxpayers also may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–104579–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Arvind Ravichandran, (202) 317–4718; concerning submission of comments or to request a hearing, Oluwafunmilayo Taylor, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) relating to section 36B and section 162(l) of the Code. The final and temporary regulations provide guidance for individuals who enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges) and claim the premium tax credit, and Exchanges that make qualified health plans available to individuals and employers. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains the amendments.

Proposed Effective Date

These regulations are proposed to apply for taxable years ending after December 31, 2013. *See* § 1.36B–1(o). Taxpayers must apply the final and temporary regulations until publication of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under **ADDRESSES** heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Arvind Ravichandran, Shareen Pflanz and Steve Toomey of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.36B–2 is amended by revising paragraphs (b)(2) and (c)(3)(v)(C), and adding paragraph (d) to read as follows:

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(b) * * *

(2) [The text of the proposed amendment to § 1.36B–2(b)(2) is the same as the text of § 1.36B–2T(b)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) * * *

(3) * * *

(v) * * *

(C) [The text of the proposed amendment to § 1.36B–2(c)(3)(v)(C) is the same as the text of § 1.36B–2T(c)(3)(v)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) [The text of the proposed amendment to § 1.36B–2(d) is the same as the text of § 1.36B–2T(d) published elsewhere in this issue of the **Federal Register**].

■ **Par. 3.** Section 1.36B–3 is amended by revising paragraph (g)(1) and adding paragraph (m) to read as follows:

§ 1.36B–3 Computing the premium assistance credit amount.

* * * * *

(g) * * *

(1) [The text of the proposed amendment to § 1.36B–3(g)(1) is the same as the text of § 1.36B–3T(g)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(m) [The text of the proposed amendment to § 1.36B–3(m) is the same as the text of § 1.36B–3T(m) published elsewhere in this issue of the **Federal Register**].

■ **Par. 4.** Section 1.36B–4 is amended by:

■ 1. Revising paragraph (a)(1)(ii).

■ 2. Adding paragraph (a)(3)(iii).

■ 3. In paragraph (a)(4), revising *Example 4* and adding *Examples 10, 11, 12, 13,* and *14.*

■ 4. Revising paragraphs (b)(3) and (b)(4).

■ 5. Removing paragraph (b)(5).

■ 6. Redesignating paragraph (b)(6) as paragraph (b)(5), and revising *Example 9,* and adding *Example 10* to newly redesignated paragraph (b)(5).

■ 7. Adding paragraph (c).

§ 1.36B–4 Reconciling the premium tax credit with advance credit payments.

(a) * * *

(1) * * *

(ii) [The text of the proposed amendment to § 1.36B–4(a)(1)(ii) is the same as the text of § 1.36B–4T(a)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(iii) [The text of the proposed amendment to § 1.36B–4(a)(3)(iii) is the same as the text of § 1.36B–4T(a)(3)(iii) published elsewhere in this issue of the **Federal Register**].

(4) [The text of the proposed amendment to § 1.36B–4, *Example 4, Example 10, Example 11, Example 12, Example 13,* and *Example 14* of paragraph (a)(4) is the same as the text of § 1.36B–4T(a)(4), *Example 4, Example 10, Example 11, Example 12, Example 13,* and *Example 14* published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * *

(3) [The text of the proposed amendment to § 1.36B–4(b)(3) is the same as the text of § 1.36B–4T(b)(3) published elsewhere in this issue of the **Federal Register**].

(4) [The text of the proposed amendment to § 1.36B–4(b)(4) is the same as the text of § 1.36B–4T(b)(4) published elsewhere in this issue of the **Federal Register**].

(5) *Examples.* * * *

[The text of the proposed amendment to § 1.36B–4, *Example 9* and *Example 10* of paragraph (b)(5) is the same as the text of § 1.36B–4T, *Example 9* and *Example 10* of paragraph (b)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) [The text of the proposed amendment to § 1.36B–4(c) is the same as the text of § 1.36B–4T(c) published elsewhere in this issue of the **Federal Register**].

■ **Par 5.** Section 1.162(l)–1 is added to read as follows:

§ 1.162(l)–1. Deduction for health insurance costs of self-employed individuals.

[The text of the proposed amendment to § 1.162(l)–1(a) through (c) is the same as the text of § 1.162(l)–1T(a) through (c) published elsewhere in this issue of the **Federal Register**].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2014–17696 Filed 7–24–14; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107012–14]

RIN 1545–BM04

Method of Accounting for Gains and Losses on Shares in Certain Money Market Funds; Broker Returns With Respect to Sales of Shares in Money Market Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide a simplified method of accounting for gains and losses on shares in money market funds (MMFs) that distribute, redeem, and repurchase their shares at prices that reflect market-based valuation of the MMFs' portfolios and more precise rounding than has been required previously (floating net asset value MMFs, or floating-NAV MMFs). The proposed regulations also provide guidance regarding information reporting requirements for shares in MMFs. The proposed regulations respond to Securities and Exchange Commission (SEC) rules that change how certain MMF shares are priced. The proposed regulations affect floating-NAV MMFs and their shareholders. This document also contains requests for comments and provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 27, 2014. Outlines of topics to be discussed at the public hearing scheduled for November 19, 2014, must be received by October 27, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–107012–14), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–107012–14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking portal at *www.regulations.gov* (IRS REG–107012–14). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grace E. Cho at (202) 317–6895; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 (Income Tax Regulations) under sections 446 and 6045 of the Internal Revenue Code (Code). These proposed regulations provide a method of accounting for gain or loss on shares in floating-NAV MMFs. The proposed regulations are intended to simplify tax compliance for holders of shares in MMFs affected by SEC regulations that change how certain MMF shares are priced. See Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 33–9616, Investment Advisers Act Release No. IA–3879, Investment Company Act Release No. IC–31166, Financial Reporting Codification No. FR–84 (SEC MMF Reform Rules).

An MMF is a type of investment company registered under the Investment Company Act of 1940 (1940 Act) and regulated as an MMF under

Rule 2a–7 under the 1940 Act (17 CFR 270.2a–7). Unlike other types of mutual funds, MMFs have historically sought to keep stable (typically at $1.00) the prices at which their shares are distributed, redeemed, and repurchased.

To hold itself out to investors as an MMF, an investment company must meet the requirements specified in Rule 2a–7, which, among other things, establishes limitations as to the maturity, quality, diversification, and liquidity of an MMF's investments. Generally, an MMF must hold a diversified portfolio of short-term, low-risk, liquid securities. The securities that an MMF holds generally result in no more than minimal fluctuations in the MMF's net asset value per share (NAV).

Until the SEC MMF Reform Rules change how certain MMFs price their shares, Rule 2a–7 permits any MMF meeting the other requirements of Rule 2a–7 to compute its price per share for purposes of distribution, redemption, and repurchase by using either or both of (a) the amortized cost method of valuation, and (b) the penny-rounding method of pricing. Under the amortized cost method, an MMF's NAV is determined by valuing the fund's portfolio securities at their acquisition cost, adjusted for amortization of premium or accretion of discount. Under the penny-rounding method, an MMF's NAV is rounded to the nearest one percent in computing the price per share for purposes of distribution, redemption, and repurchase. These methods have enabled MMFs to maintain constant share prices except in situations in which the ''deviation [of the current net asset value per share calculated using available market quotations] from the money market fund's amortized cost price per share exceeds ½ of 1 percent'' (commonly called ''breaking the buck''). 17 CFR 270.2a–7(c)(8)(ii)(B).

The perceived safety and simplicity of MMFs have led to their widespread use for cash management purposes. It is therefore common for investors to purchase and redeem MMF shares frequently. An MMF is often used as an account into which, or from which, cash is automatically deposited, or withdrawn, on a daily basis (commonly referred to as a sweep arrangement). MMFs generally declare dividends daily and distribute them monthly. MMF shareholders typically reinvest these distributions automatically in the MMF.

In June 2013, the SEC proposed rules that would change how certain MMF shares are priced. See Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 33–9408, Investment Advisors Act Release No. IA–3616, Investment Company Act Release No. IC–30551, 78 FR 36834 (June 19, 2013) (SEC MMF Reform Proposal). The SEC MMF Reform Rules adopt the general approach of the SEC MMF Reform Proposal, but include various modifications in response to comments and combine the two principal reform alternatives. (These alternatives were Floating Net Asset Value and Standby Liquidity Fees and Gates. See SEC MMF Reform Proposal at 36849 and 36878. The proposal included a number of other possibilities, including a combination of these two.) The SEC MMF Reform Rules generally bar the use of the amortized cost method of valuation and the use of the penny-rounding method of pricing, except by government MMFs and retail MMFs. A government MMF is an MMF that ''invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully.'' SEC MMF Reform Rules, § 270.2a–7(a)(16). A retail MMF is an MMF that ''has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.'' *Id.* § 270.2a–7(a)(25). In the case of an MMF that is neither a government MMF nor a retail MMF, the SEC MMF Reform Rules require the MMF to value its portfolio securities using market-based factors and to ''compute its price per share for purposes of distribution, redemption and repurchase by rounding the fund's current net asset value per share to a minimum of the fourth decimal place in the case of a fund with a $1.0000 share price or an equivalent or more precise level of accuracy for money market funds with a different share price (*e.g.* $10.000 per share, or $100.00 per share).'' *Id.* § 270.2a–7(c)(1)(ii). (This method of computing the price per share is referred to hereafter as ''basis point rounding.'')

An MMF that uses market factors to value its securities and uses basis point rounding to price its shares for purposes of distribution, redemption, and repurchase has a share price that is expected to change regularly, or ''float.'' (This fact explains the origin of the term ''floating-NAV MMF.'') Floating-NAV MMFs therefore resemble in some respects other mutual funds that are not MMFs, but they remain subject to the risk-limiting conditions in Rule 2a–7 and are expected to continue to fulfill MMFs' unique role. In the absence of the simplified method of accounting proposed in this document, current law would require shareholders to compute gain or loss on every redemption of shares in a floating-NAV MMF.

Stable share prices simplify the taxation of transactions in MMF shares because a shareholder does not realize gain or loss when a share is redeemed for an amount equal to its basis. Shareholders typically will realize gain or loss, however, on redemptions of floating-NAV MMF shares. Comments received by the SEC in response to the SEC MMF Reform Proposal expressed concern about tracking and reporting gains and losses from shares in floating-NAV MMFs. The commenters observed that the frequent purchase and redemption of MMF shares combined with relatively small changes in share values could result in tax compliance burdens that, in the opinion of these commenters, would be disproportionate to the amounts of gain or loss at issue.

Explanation of Provisions

1. Simplified Method of Accounting for Floating-NAV MMF Shares (NAV Method)

Section 446(b) provides that, if no method of accounting has been regularly used by the taxpayer, taxable income shall be computed under a method that, in the opinion of the Secretary, clearly reflects income. The term ''method of accounting'' includes a taxpayer's overall method of accounting and the accounting treatment of any item. § 1.446–1(a)(1).

In response to concerns regarding the tax compliance burdens associated with frequent redemptions of shares in floating-NAV MMFs, these proposed regulations describe a permissible, simplified method of accounting for gain or loss on shares in a floating-NAV MMF (the net asset value method, or NAV method). The NAV method, in the opinion of the Commissioner of Internal Revenue, is a method of accounting that clearly reflects income from gain or loss on shares in floating-NAV MMFs. Under this method, gain or loss is based on the change in the aggregate value of the shares in the floating-NAV MMF during a computation period (which may be the taxpayer's taxable year or certain shorter periods) and the net amount of the purchases and redemptions during the period. More specifically, the taxpayer's net gain or loss from shares in a floating-NAV MMF for a computation period generally equals the value of the taxpayer's shares in the MMF at the end of the period, minus the value of the taxpayer's shares in the MMF at the end of the prior period, minus the taxpayer's net investment in the MMF during the period. The NAV method does not change the tax treatment of, or broker

reporting requirements for, dividends from floating-NAV MMFs.

The proposed method simplifies tax computations by basing them on the aggregate of all transactions in a period and on aggregate fair market values. Every floating-NAV MMF must compute these fair market values for non-tax purposes regardless of how—or even whether—the MMF's shareholders are taxed on transactions in the MMF shares. The NAV method takes into account changes in value of floating-NAV MMF shares without regard to realization.

Under the NAV method, the character of a shareholder's net gain or loss depends on the character of the underlying MMF shares in the shareholder's hands. If all of a taxpayer's floating-NAV MMF shares in an account would yield capital (or ordinary) gain or loss, then net gain or loss under the NAV method is also capital (or ordinary). When shareholders recognize a net capital gain or loss under the NAV method, the proposed regulations provide that this gain or loss is short term. This holding period convention is necessary because the aggregation that is part of the method makes normal holding period determinations impracticable.

Under the NAV method, any basis adjustment imposed under internal revenue law with respect to shares in floating-NAV MMFs will generally give rise to gain or loss in the year of the adjustment. For example, if the basis of shares in a floating-NAV MMF is reduced under section 108(b)(2)(E) as a result of a discharge of indebtedness or under section 301(c)(2) as a result of receipt of a distribution that, in whole or in part, is not a dividend, then the gain on the shares in the MMF would be increased (or the loss would be decreased) by the amount of the adjustment. Comments are requested on the appropriate treatment of these or any other basis adjustments that might be imposed under internal revenue law with respect to shares in floating-NAV MMFs.

Taxpayers may adopt the NAV method pursuant to rules under § 1.446–1(e) by use of the NAV method in the Federal income tax return for the first taxable year in which the taxpayer holds shares in a floating-NAV MMF. See Rev. Rul. 90–38 (1990–1 CB 57). Once a taxpayer has adopted a method of accounting for gains and losses on shares in floating-NAV MMFs, any change from that method (including a change to or from the NAV method) is a change in method of accounting to which the provisions of section 446 and the accompanying regulations apply. The proposed regulations provide that the change is implemented on a cut-off basis.

In addition to requiring some MMFs to become floating-NAV MMFs, the SEC MMF Reform Rules also provide that, in appropriate circumstances, MMFs may impose liquidity fees. When a liquidity fee is in place, the proceeds received by any shareholder that redeems shares are reduced by the liquidity fee even though the redeemed shares may be in an MMF that uses penny-rounding to price its shares (a stable-value MMF). Because the cost of each stable-value MMF share redeemed (generally $1.00) will exceed the net amount of proceeds received for that share ($1.00, minus the liquidity fee), these redemptions would produce recognized losses under standard tax accounting. If the acquisition of other shares causes a redemption to be a wash sale under section 1091, then under section 1091(d), the acquired shares will have a basis greater than $1.00.

Because of the rarity of gains and losses on the shares in stable-value MMFs, both the MMFs themselves and their shareholders may lack the systems necessary to record the losses and to track the basis of any shares whose basis exceeds $1.00. In these circumstances, if the NAV method were available to the stable-value MMF shareholders, use of that method would reduce the shareholders' tax compliance burden. Accordingly, comments are requested regarding whether the NAV method should be available to shareholders of a stable-value MMF that has imposed a liquidity fee.

2. Information Reporting for Floating-NAV MMF Shares

Sections 6045, 6045A, and 6045B establish certain reporting requirements relating to securities. Section 1.6045–1(c)(3)(vi) provides an exception to the broker reporting requirement under section 6045 for shares in an MMF ''that computes its current price per share for purposes of distributions, redemptions, and purchases so as to stabilize the price per share at a constant amount that approximates its issue price or the price at which it was originally sold to the public.'' Sections 1.6045A–1(a)(1)(v) and 1.6045B–1(a)(5) cross-reference § 1.6045–1(c)(3)(vi) to provide similar exceptions from the requirements of sections 6045A and 6045B, respectively. Comments received by the SEC in response to the SEC MMF Reform Proposal expressed concern that the existing exception would not apply to floating-NAV MMFs and suggested that requiring transaction-by-transaction information reporting would impose significant new costs on floating-NAV MMFs and intermediaries. The Treasury Department and the IRS believe that imposing broker reporting requirements on floating-NAV MMFs would result in administrative burdens that are not justified in light of the expected relative stability of floating-NAV MMF share prices. Therefore, the proposed regulations revise § 1.6045–1(c)(3)(vi) to clarify that the exceptions under sections 6045, 6045A, and 6045B continue to apply to all MMFs, including floating-NAV MMFs.

3. Wash Sale Rules

When the SEC MMF Reform Proposal was issued, commenters expressed concern about the difficulty of applying the wash sale rules of section 1091 to floating-NAV MMFs, especially the difficulty of tracking the basis under section 1091(d) of acquired shares. Use of the NAV method will eliminate those difficulties. Under the NAV method, net gain or loss is determined for each computation period, and no gain or loss is determined for any particular redemption of a taxpayer's shares in a floating-NAV MMF. Without a determination of loss, a particular redemption does not implicate the wash sale rules.

A shareholder of a floating-NAV MMF that does not use the NAV method, however, may experience frequent wash sales. For a shareholder with a substantial volume of transactions in floating-NAV MMF shares, tracking wash sales of MMF shares could present significant practical challenges. On July 29, 2013, the IRS published Notice 2013–48 (2013–31 IRB 120) in response to the SEC MMF Reform Proposal. The notice proposed a revenue procedure providing that the IRS would not treat a loss realized upon a redemption of a floating-NAV MMF share as subject to the wash sale rules if the amount of the loss was not more than one half of one percent of the taxpayer's basis in that share. The IRS received comments indicating that the proposed revenue procedure would not significantly reduce the tax compliance burdens associated with applying the wash sale rules to floating-NAV MMFs because shareholders would still have to track all wash sales to determine whether the amount of any particular wash sale exceeds the 0.5% *de minimis* test. The comments requested that floating-NAV MMFs be exempted entirely from the wash sale rules in section 1091.

Concurrently with these proposed regulations, the Treasury Department and the IRS are releasing a final revenue procedure providing that the wash sale rules will not be applied to redemptions of shares in floating-NAV MMFs. This

revenue procedure will apply to redemptions of shares in floating-NAV MMFs on or after the effective date of the SEC MMF Reform Rules (expected to be 60 days after their publication in the **Federal Register**).

Proposed Effective/Applicability Dates

These regulations concerning the NAV method are proposed to apply to taxable years ending on or after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations. Shareholders of floating-NAV MMFs, however, may rely on the rules in the regulations concerning the NAV method for taxable years ending on or after July 28, 2014 and beginning before the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations.

These regulations concerning information reporting are proposed to apply to calendar years beginning on or after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations. Taxpayers and brokers (as defined in § 1.6045–1(a)(1)) may rely upon the rules in the regulations concerning information reporting for calendar years beginning before the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. Comments are specifically requested on the appropriate treatment of basis adjustments that might be imposed under sections 108(b)(2)(E), 301(c)(2), or any other provision of internal revenue law with respect to shares in floating-NAV MMFs. Comments are also requested regarding whether the NAV method should be available to shareholders of a non-floating-NAV MMF that has imposed a liquidity fee under § 270.2a–7(c)(2) of the SEC MMF Reform Rules. All comments will be available for public inspection and copying at *www.regulations.gov* or upon request.

A public hearing has been scheduled for November 19, 2014, at 10:00 a.m., in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written (signed original and eight (8) copies) or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by October 27, 2014. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the proposed regulations is Grace E. Cho, IRS Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.446–7 also issued under 26 U.S.C. 446. * * *

■ **Par. 2.** Section 1.446–7 is added to read as follows:

§ 1.446–7 Net asset value method for certain money market fund shares.

(a) *In general.* This section provides a permissible method of accounting for gain or loss on shares in a floating-NAV MMF (the net asset value method, or NAV method).

(b) *Definitions.* For purposes of this section—

(1) *Computation period.* The *computation period* is the period that a taxpayer selects for computing gain and loss under the NAV method for a floating-NAV MMF. The computation period may be the taxpayer's taxable year or a shorter period, such as a month, or a number of months, weeks, or days, provided that—

(i) Computation periods must be of approximately equal duration (except for initial or final computation periods in a taxable year);

(ii) Every day during the taxable year must fall within one, and only one, computation period; and

(iii) Each computation period must contain days from only one taxable year.

(2) *Ending value.* The *ending value* of a taxpayer's shares in a floating-NAV MMF for a computation period is the aggregate fair market value of the taxpayer's shares at the end of that computation period.

(3) *Floating-NAV MMF.* A *floating-NAV MMF* is an MMF that distributes, redeems, and repurchases its shares at prices that are computed by rounding the MMF's current net asset value per share to a minimum of the fourth decimal place in the case of an MMF with a share price at or about $1.0000 or an equivalent or more precise level of accuracy for an MMF with a different share price.

(4) *Money market fund (MMF).* A *money market fund (MMF)* is a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a–7 under the Investment Company Act of 1940.

(5) *Net investment*—(i) *In general.* The *net investment* in an MMF for a computation period may be a positive amount, a negative amount, or zero, and is equal to—

(A) The aggregate cost of shares in the MMF purchased during the computation period (including purchases through reinvestment of dividends); minus

(B) The aggregate amount received during the computation period in redemption of (or otherwise in exchange for) shares in the MMF if the transaction is one in which gain or loss would be recognized.

(ii) *Adjustments*—(A) *Dispositions in which gain or loss is not recognized.* If, during the computation period, any shares in an MMF are disposed of in transactions in which gain or loss would not be recognized, the net investment in the MMF for the computation period is decreased by the fair market value of each such share at the time of its disposition.

(B) *Acquisitions other than by purchase.* If, during the computation period, any shares in an MMF are acquired other than by purchase, the net investment in the MMF for the computation period is increased by the adjusted basis (for purposes of determining loss) of each such share immediately after its acquisition. If the adjusted basis referred to in the preceding sentence would be determined by reference to the basis of one or more shares in an MMF that are being disposed of by the taxpayer in a transaction that is governed by paragraph (b)(5)(ii)(A) of this section, then the basis of each such disposed share is treated as being the fair market value of that share at the time of its disposition.

(6) *Starting basis.* The *starting basis* of a taxpayer's shares in a floating-NAV MMF for a computation period is—

(i) Except as provided in paragraph (b)(6)(ii) of this section, the ending value of the taxpayer's shares for the immediately preceding computation period.

(ii) For the first computation period in a taxable year, if the taxpayer did not use the NAV method for the immediately preceding taxable year, the aggregate adjusted basis of the taxpayer's shares in the floating-NAV MMF at the end of the immediately preceding taxable year.

(c) *NAV method*—(1) *Scope.* A taxpayer may use the NAV method described in this section to determine the gain or loss for the taxable year on the taxpayer's shares in each MMF that, at any time during the taxable year, was a floating-NAV MMF at a time when the taxpayer owned shares in the MMF. If a taxpayer uses the NAV method for shares in any floating-NAV MMF for a taxable year, the taxpayer must use the NAV method for that taxable year for the shares in every floating-NAV MMF in which the taxpayer holds shares. See paragraph (c)(6) of this section for rules applicable to accounting method changes.

(2) *Net gain or loss for a taxable year*—(i) *Determination for each computation period.* Subject to any adjustment under paragraph (c)(2)(ii) of this section, the net gain or loss for each computation period on the shares in a floating-NAV MMF to which the NAV method applies equals the ending value, minus the starting basis, minus the net investment in the floating-NAV MMF for the computation period. If the computation produces a result that is greater than zero, the taxpayer has a gain for the computation period with respect to shares in the MMF; if the computation produces a result that is less than zero, the taxpayer has a loss for the computation period on shares in the MMF; and if the computation produces a result that is equal to zero, the taxpayer has no gain or loss for the computation period on shares in the MMF.

(ii) *Adjustment of gain or loss to reflect any basis adjustments.* If, during a computation period, there is any downward (or upward) adjustment to the taxpayer's basis in the shares in the floating-NAV MMF under any provision of internal revenue law, then the net gain or loss for the computation period on shares in the floating-NAV MMF determined under paragraph (c)(2)(i) of this section is increased (or decreased) by the amount of the adjustment.

(iii) *Determination of net gain or loss for each taxable year.* The taxpayer's net gain or loss for a taxable year on shares in a floating-NAV MMF is the sum of the net gains or losses on shares in the floating-NAV MMF for the computation period (or computation periods) that comprise the taxable year.

(3) *Character*—(i) *In general.* If a taxpayer uses the NAV method for shares in a floating-NAV MMF and each of those shares otherwise would give rise to capital gain or loss if sold or exchanged in a computation period, then the gain or loss from the shares in the MMF is treated as capital. If a taxpayer uses the NAV method for shares in a floating-NAV MMF and each of those shares otherwise would give rise to ordinary gain or loss if sold or exchanged in a computation period, then the gain or loss from the shares in the MMF is treated as ordinary.

(ii) *Mixed character.* If a taxpayer uses the NAV method for shares in a floating-NAV MMF and those shares would otherwise give rise to both ordinary gain or loss and capital gain or loss if sold or exchanged in a computation period, then all gain or loss from the shares in this MMF is treated as capital gain or loss.

(iii) *Multiple accounts.* See paragraph (c)(5) of this section for the treatment of multiple accounts.

(4) *Holding period.* Capital gains and losses determined under the NAV method are treated as short-term capital gains and losses.

(5) *More than one account.* If a taxpayer holds shares in a floating-NAV MMF through more than one brokerage account, the taxpayer must treat its holdings in each account as a separate floating-NAV MMF for purposes of the NAV method and must separately apply the method to each such account.

(6) *Accounting method changes.* A change to or from the NAV method is a change in method of accounting to which the provisions of section 446 and the accompanying regulations apply. A taxpayer seeking to change to or from the NAV method must secure the consent of the Commissioner in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to change the taxpayer's accounting method. Any such change will be made on a cut-off basis. Because there will be no duplication or omission of amounts as a result of such a change to or from the NAV method, no adjustment under section 481(a) is required or permitted.

(d) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) Fund is an MMF. Shareholder is a person whose taxable year is the calendar year. On January 1 of Year 1, Shareholder owns 5,000,000 shares in Fund in a single account with an adjusted basis of $5,000,000.00. On that date, Fund prices its shares using penny rounding under Rule 2a–7(c) under the Investment Company Act of 1940. On February 1 of Year 1, Fund becomes a floating-NAV MMF. During Year 1, Shareholder receives $32,158.23 in taxable dividends from Fund and makes 120 purchases of additional shares in Fund (including purchases through the reinvestment of those dividends) totaling $1,253,256.37 and 28 redemptions totaling $1,124,591.71. The fair market value of Shareholder's shares in Fund at the end of Year 1 is $5,129,750.00. All of Shareholder's shares in Fund are held as capital assets. There is no adjustment to the basis in Shareholder's shares in Fund under any provision of internal revenue law during Year 1.

(ii) Shareholder adopts the NAV method with its taxable year as the computation period. Shareholder's net investment in Fund for Year 1 equals $128,664.66 (the $1,253,256.37 in purchases, minus the $1,124,591.71 in redemptions). Shareholder's gain therefore is $1,085.34, which is the ending value of Shareholder's shares ($5,129,750.00), minus the starting basis of Shareholder's shares ($5,000,000.00), minus Shareholder's net investment in the fund for the taxable year ($128,664.66). The gain of $1,085.34 is treated as short-term capital gain. Shareholder's starting basis for Year 2 is $5,129,750.00. Shareholder must also include the $32,158.23 in dividends in its income for Year 1 in the same manner as if Shareholder did not use the NAV method.

(iii) If Shareholder had instead adopted the calendar month as its computation period, it would have used the NAV method for January of Year 1, even though Fund was not yet a floating-NAV MMF.

(e) *Effective/applicability date.* This section applies to taxable years ending on or after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations. Taxpayers may rely on this section for taxable years ending on or after July 28, 2014 and beginning before the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations.

■ **Par. 3.** Section 1.6045–1 is amended by revising paragraph (c)(3)(vi) to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(c) * * *

(3) * * *

(vi) *Money market funds*—(A) *In general.* No return of information is required with respect to a sale of shares in a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a–7 under the Investment Company Act of 1940.

(B) *Effective/applicability date.* Paragraph (c)(3)(vi)(A) of this section applies to sales of shares in calendar years beginning on or after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations. Taxpayers and brokers, however, may rely on paragraph (c)(3)(vi)(A) of this section for sales of shares in calendar years beginning before the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations.

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2014–17689 Filed 7–23–14; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[REG–123286–14]

RIN 1545–BM26

Branded Prescription Drug Fee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the branded prescription drug fee. This fee was enacted by section 9008 of the Patient Protection and Affordable Care Act, as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010, and the Health Care and Reconciliation Act of 2010 (collectively the ACA). The proposed regulations modify the definition of controlled group for purposes of the branded prescription drug fee. The proposed regulations affect persons engaged in the business of manufacturing or importing certain branded prescription drugs. The text of the temporary regulations also serves as the text of the proposed regulations.

DATES: Comments and requests for a public hearing must be received by October 27, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–123286–14), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–123286–14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–123286–14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Celia Gabrysh, (202) 317–6855; concerning submissions of comments and request for a hearing, Oluwafunmilayo Taylor, (202) 317–6901 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend §§ 51.2(e)(3) and 51.11(c) of the Branded Prescription Drug Fee Regulations, 26 CFR Part 51. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendment.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory flexibility assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. Comments are requested on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury

Department participated in their development.

List of Subjects in 26 CFR Part 51

Drugs, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 51 is proposed to be amended as follows:

PART 51—BRANDED PRESCRIPTION DRUGS

■ **Paragraph 1.** The authority citation for part 51 continues to read in part as follows:

Authority: Authority: 26 U.S.C. 7805; sec. 9008, Public Law 111–347 (124 Stat. 119).

* * * * *

■ **Par. 2.** Section 51.2 is amended by revising paragraph (e)(3) to read as follows:

§ 51.2 Explanation of terms.

* * * * *

(e) * * *

(3) [The text of proposed § 51.2(e)(3) is the same as the text of § 51.2T(e)(3) published elsewhere in this issue of the **Federal Register**.]

■ **Par. 3.** Section 51.11 is amended by revising paragraph (c) to read as follows:

§ 51.11 Effective/applicability date.

* * * * *

(c) [The text of proposed § 51.11(c) is the same as the text of § 51.11T(c) published elsewhere in this issue of the **Federal Register**.]

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2014–17698 Filed 7–24–14; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 104

[Docket ID: DoD–2013–OS–0091]

RIN 0790–AJ00

Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This rule updates established policy, assigned responsibilities, and procedures for informing Service members and individuals who apply for uniformed service of their civilian employment and reemployment rights, benefits, and obligations. The purpose of this regulatory action is to support the non-career uniformed service by taking appropriate actions to inform and assist uniformed Service members and former Service members and individuals who apply for uniformed service of their rights, benefits, and obligations under Uniformed Services Employment and Reemployment Rights Act (USERRA).

DATES: Comments must be received by September 26, 2014.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Curtis Bell, 571–372–0695.

SUPPLEMENTARY INFORMATION: This proposed rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

I. Executive Summary

a. Purpose

The purpose of this regulatory action is to support the non-career uniformed service by taking appropriate actions to inform and assist uniformed Service members, former Service members, and individuals who apply for uniformed service of their rights, benefits, and obligations under USERRA.

b. Legal Authority

38 U.S.C. chapter 43.

The purposes of this chapter are:

(1) To encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

II. Summary of the Major Provisions

This regulatory action:

a. Establishes procedures to maintain oversight of an effective program to ensure that uniformed Service members, former Service members, and individuals who apply for uniformed service are aware of their rights, benefits, and obligations under USERRA.

b. Describes policies that serve to promote and inform uniformed Service members, former Service members, and individuals of their rights who apply for unformed service of their rights under USERRA.

III. Costs and Benefits

Based on the estimated costs of $3000 per USERRA case that DOL spends to formally investigate a claim, DoD ESGR saves the Federal government over $8 million dollars annually. ESGR operates and maintains a Customer Service Center (CSC) that acts as the initial entry point for USERRA complaints, inquiries, and information requests. The CSC provides prompt, expert telephonic and email responses to Service members and employers on all USERRA related matters. During Fiscal Year 2012 (FY (12)), ESGR received 21,521 contacts by telephone and email. Of those contacts, 2,793 resulted in actual USERRA cases for mediation purposes. There is no cost to the general public, including the Service member. The approximate cost of $3000 is the estimated cost for the DOL to investigate formal complaints if ESGR's mediation program was not in place. The benefits of using ESGR services are Service members receive a timely response without additional cost.

IV. Background

This rule is designed to provide information about the USERRA to Service members, former service members, individuals who apply, and their employers through an informal mediation program run by the Employer

Support of the Guard and Reserve (ESGR). ESGR is a DoD operational agency whose mission is to gain and maintain employer support for Guard and Reserve service by advocating relevant initiatives, recognizing outstanding support, increasing awareness of the law, and resolving conflict between employers and Service members. As such, ESGR is the principal agency within DoD dedicated to providing its customers and stakeholders with an awareness about USERRA.

ESGR has provided outreach and USERRA assistance to Reserve Component (RC) Service members and their employers since its inception in 1972. Hundreds of thousands of RC Service members and employers have benefited from ESGR services. Considering the National Guard and Reserve forces make up nearly 50 percent of our military strength and ongoing global operations coupled with humanitarian response, civilian employers' support is critical to our National Defense now more than ever.

The Ombudsman Services Program provides education, information, and neutral third-party mediation services in order to resolve employee/employer USERRA conflicts. ESGR is not an enforcement agency, and does not participate in formal litigation processes.

ESGR signed an updated Memorandum of Understanding (MOU) in 2010 with the Department of Labor that continued organizational cooperation and improved services provided to all customers regarding USERRA compliance. More than 650 volunteer ombudsmen help to resolve USERRA compliance issues throughout the Nation.

More than 4,900 volunteers support ESGR's mission and serve on ESGR State Committees maintaining employer support programs, providing informative briefings and mediation, and recognizing employers who go above and beyond in their dedication to employees who pledge to be both a citizen and protector of our Nation. Since ESGR's creation four decades ago, thousands of employers have been honored for their commitment to stand beside those who serve. As the use of our military evolves, many Guard and Reserve members will return from present-day conflicts, changing out of their boots and reintegrating into life at home. ESGR is committed to continue assisting the returning Service members by ensuring America's heroes have meaningful civilian employment when they come home. The benefit is that ESGR relieves DOL of the extra cases that may be filed by providing information which the inquirer can decide whether to pursue further action with the DOL.

Regulatory Procedures

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

DoD consulted with the Office of Management and Budget (OMB) and determined this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by *Executive Order 13563,* and was subject to OMB review.

Sec. 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This document will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

We certify this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This proposed rule does not create any new, or affect any existing collections, and therefore, does not require OMB approval under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This document will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 104

Government employees, Military personnel.

Accordingly 32 CFR part 104 is proposed to be revised to read as follows:

PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS FOR SERVICE MEMBERS, FORMER SERVICE MEMBERS AND APPLICANTS OF THE UNIFORMED SERVICES

Sec.

104.1 Purpose.
104.2 Applicability.
104.3 Definitions.
104.4 Policy.
104.5 Responsibilities.
104.6 Procedures.

Authority: 38 U.S.C. chapter 43.

§ 104.1 Purpose.

This part updates established policy, assigned responsibilities, and procedures for informing Service members and individuals who apply for uniformed service of their civilian employment and reemployment rights, benefits, and obligations pursuant to 38 U.S.C. chapter 43 (referred to in this part as the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994).

§ 104.2 Applicability.

This part applies to:

The Office of the Secretary of Defense, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components'').

§ 104.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part.

Critical mission. An operational mission that requires the skills or resources available in a Reserve Component or components.

Critical requirement. A requirement in which the incumbent possesses unique knowledge, extensive experience, and specialty skill training to successfully fulfill the duties or responsibilities in support of the mission and operation or exercise. Also, a requirement in which the incumbent must gain the necessary experience to qualify for key senior leadership

positions within his or her Reserve Component.

Impossible or unreasonable. For the purpose of determining when providing advance notice of uniformed service to an employer is impossible or unreasonable, orders by competent military authority to report for uniformed service within 48 hours of notification, and reasons of military necessity are sufficient justification for not providing advance notice of pending uniformed service to an employer, as well as the unavailability of an employer or employer representative to whom notification can be given.

Military necessity. For the purpose of determining when providing advance notice of uniformed service is not required, a mission, operation, exercise, or requirement that is classified, or a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge is sufficient justification for not providing advance notice to an employer.

Non-career service. The period of active uniformed service required to complete the initial uniformed service obligation; a period of active duty or full-time National Guard duty that is for a specified purpose and duration with no expressed or implied commitment for continued active duty; or participation in a Reserve Component as a member of the Ready Reserve performing annual training, active duty for training, or inactive duty training. Continuous or repeated active uniformed service or full-time National Guard duty that results in eligibility for a regular retirement from the Armed Forces is not considered non-career service.

Officer. For determining those Service officials authorized to provide advance notice to a civilian employer of pending uniformed service by a Service member or an individual who has applied for uniformed service, an officer will include all commissioned officers, warrant officers, and non-commissioned officers authorized by the Secretary concerned to act in this capacity.

Uniformed services. The Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time national Guard duty, and any other category of persons designated by the President in time of war or national emergency. (See 38 U.S.C. chapter 43.)

§ 104.4 Policy.

It is DoD policy to support non-career uniformed service by taking appropriate actions to inform and assist uniformed Service members and former Service members and individuals who apply for uniformed service of their rights, benefits, and obligations in accordance with 38 U.S.C. chapter 43.

§ 104.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) In addition to the responsibilities in paragraph (d) of this section, the USD(P&R) has overall responsibility for DoD policy pertaining to civilian employment and reemployment rights, benefits, and obligations.

(2) Develops and oversees the implementation of DoD policy pertaining to civilian employment and reemployment rights, benefits, and obligations.

(b) Under the authority, direction, and control of USD(P&R), the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), with input from the Department of Labor's Veterans Employment and Training Service (DOL–VETS) and the Office of Personnel Management (OPM), advises the USD(P&R) on policies and procedures to promote and inform non-career uniformed Service members and employers on civilian employment and reemployment rights, benefits and obligations in accordance with USERRA.

(c) Under the authority, direction, and control of the USD(P&R), the Director, Department of Defense Human Resources Activity (DoDHRA), oversees the Employer Support of the Guard and Reserve (ESGR).

(d) The OSD and DoD Component heads develop and implement procedures within their respective Components that are appropriate and in accordance with public law and DoD policy pertaining to civilian employment and reemployment rights, benefits, and obligations.

§ 104.6 Procedures.

(a) *Service member information and assistance.* (1) The Heads of the DoD Components and the Commandant of the Coast Guard will:

(i) Inform the personnel in paragraph (a)(1)(i)(A) and (B) of this section of their general employment and reemployment rights, benefits, and obligations as described in USERRA.

(A) Civilian employees who apply for uniformed service.

(B) Civilian employees who are current members of the uniformed services who perform or participate on a voluntary or involuntary basis in active duty, inactive duty, or full-time National Guard duty.

(ii) Provide subject-matter experts to serve as points of contact (POCs) to assist applicants for and members of the uniformed service in matters related to employment and reemployment rights, benefits, and obligations.

(iii) Provide initial and annual refresher training for all Human Resources officials, supervisors, employees, and uniformed Service members.

(2) The Secretaries of the Military Departments and the Commandant of the Coast Guard will:

(i) Provide an annual review of USERRA information to employees of the uniformed services.

(ii) Upon completion of a period of active duty extending beyond 30 days, and before separation from active duty, advise Active and Reserve Component Service members covered by USERRA of their employment and reemployment rights, benefits, and obligations as provided under USERRA.

(iii) Advise members of the uniformed services that as employees they must fulfill certain obligations in order to achieve eligibility for reemployment rights as specified in USERRA. At a minimum, advice given will include the following USERRA notification and reporting requirements for returning to civilian employment:

(A) *Advance notification of military service.* To be eligible for reemployment rights as specified in USERRA, employees must provide advance notice of absence due to uniformed service to their civilian employers except when giving such notice is prevented by military necessity, or otherwise impossible or unreasonable under all the circumstances.

(*1*) DoD recommends persons applying for and/or performing uniformed service to provide advance notice in writing to their civilian employers of pending absence.

(*2*) Although oral notice is allowed pursuant to USERRA, written notice of pending uniformed service provides documentary evidence that this basic prerequisite to retaining reemployment rights was fulfilled by the Service member and serves to avoid unnecessary disputes.

(*3*) Regardless of the means of providing advance notice, whether oral or written, it should be provided as early as possible. The DoD recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when feasible, based upon the time the Service member receives confirmation of upcoming uniformed service duty. Other acceptable methods of providing notice include:

(*i*) Giving notice on behalf of the employee by an appropriate officer in

the uniformed Service member's chain of command. Written notice is preferred.

(*ii*) Providing the employer a copy of the unit's annual training schedule for the duty served on those dates, or by providing the employer in advance with a signed standardized letter with blanks in which the Service member has filled in the appropriate military duty dates.

(*iii*) Providing advance notification letters. Sample letters are provided by the ESGR, DoD's primary office for all matters concerning employer support of the National Guard and Reserve. ESGR information is provided in § 104.6(c) of this part.

(B) *Reemployment reporting requirements.* As described in USERRA, when notifying employers of their intent to return to work after completing uniformed service, employees must meet specific time-lines. Depending on the length of service, these time-lines span from less than 24 hours up to 90 days after completing uniformed service.

(*1*) Sample return notification letters are provided by ESGR.

(*2*) When absence from civilian employment due to uniformed service exceeds 30 days, the Service member is required to provide documentation of service performed if requested by the employer.

(*i*) As a matter of policy the Military Departments will require Service members to provide verification of absence due to uniformed service to civilian employers regardless of the duration of service-related absence. Failure of an employee to comply with this policy requirement, which exceeds the requirement of USERRA, is not intended to, and should not, affect the legal responsibilities of the employer under USERRA including prompt reemployment to the Service member employee.

(*ii*) Types of documentation satisfying this requirement are detailed in 20 CFR part 1002.

(C) *Five-Year Service Limit.* USERRA imposes a 5-year cumulative limit on absences from each place of civilian employment, due to uniformed service.

(D) *Character of service.* Service members must not have been separated from service under a disqualifying discharge.

(iv) Determine and certify in writing periods of service exempt from USERRA's 5-year cumulative limit. Established exempt periods must be reviewed and recertified via policy memorandum, at a minimum, every 2 years. Failure to comply with this administrative requirement does not affect the continued validity of exempt periods certified in a writing that is more than 2 years old.

(A) Determine and certify in writing those additional training requirements not already exempt from USERRA 5-year cumulative service limit, that are necessary for the professional development or skill training or retraining for members of the National Guard or Reserve. When the Secretary concerned certifies those training requirements, performance of uniformed service to complete a certified training requirement is exempt from USERRA 5-year cumulative service limit.

(B) Determine and certify in writing those periods of active duty when a Service member is ordered to, or retained on, active duty (other than for training) under any provision of law because of a war or national emergency officially declared by the President or Congress. Such orders with the purpose of direct or indirect support of the war or national emergency will be annotated accordingly since these periods of service are exempt from USERRA 5-year cumulative service limit.

(C) Determine, and certify in writing, those periods of active duty performed by a member of the National Guard or Reserve that are designated by the Secretary concerned as a critical mission or critical requirement, and for that reason are exempt from USERRA 5-year cumulative service limit.

(*1*) The authority for determining what constitutes a critical mission or requirement will not be delegated below the Assistant Secretary level. The designation of a critical requirement to gain the necessary experience to qualify for specific key senior leadership positions will be used judiciously, and the necessary experience and projected key leadership positions fully documented in the determination and certification.

(*2*) This authority must not be used to grant exemptions to avoid USERRA 5-year cumulative service limit or to extend individuals in repeated statutory tours.

(v) Issue orders that span the entire period of service when ordering a member of the National Guard or Reserve to active duty for a mission or requirement, and reflect USERRA 5-year cumulative exemption status as appropriate.

(A) Order modifications will be initiated, as required, to ensure continuous active duty should the period required to complete the mission or requirement change. Order modifications will be completed, as required, to reflect qualifying 5-year exemption, as applicable; or an official Statement of Service must be generated, indicating original qualifying orders as exempt under proper authority, and retained in the Service member's personnel file.

(B) Orders must indicate exemption under USERRA from the 5-year cumulative service limit on uniformed service absence from employment, when applicable. Specify the statutory or Secretarial authority for those orders when such authority meets one or more of the exemptions from USERRA 5-year cumulative service limit. Orders qualifying for exemption should include a status reflecting the exemption status and authority.

(vi) Document the length of a Service member's initial period of military service obligation performed on active duty.

(vii) Document those circumstances that prevent a Service member from providing advance notification of uniformed service to a civilian employer because of military necessity or when advance notification is otherwise impossible or unreasonable.

(viii) Designate those officers who are authorized by the Secretary concerned to provide advance notification of service to a civilian employer on behalf of a Service member or applicant for uniformed service.

(ix) Provide documentation, upon request from a Service member or former Service member that may be used to satisfy the Service member's entitlement to statutory reemployment rights and benefits. Appropriate documentation may include, as necessary:

(A) The inclusive dates of the initial period of military service obligation performed on active duty.

(B) Any period of service during which a Service member was required to serve because he or she was unable to obtain a release from active duty through no fault of the Service member.

(C) The cumulative length of all periods of active duty performed.

(D) The authority under which a Service member was ordered to active duty when such service was exempt from USERRA 5-year cumulative service limit.

(E) The date the Service member was last released from active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training, or full-time National Guard duty. This documentation establishes the timeliness of reporting to, or submitting application to return to, a position of civilian employment.

(F) A statement indicating service requirements prevented providing a civilian employer with advance

notification of pending service, when applicable.

(G) Proof that the Service member's entitlement to reemployment benefits has not been terminated because of the character of service as provided in section 4304 of USERRA.

(H) A statement that sufficient documentation verifying a particular period of service, does not exist, when appropriate.

(x) Establish a central point of contact (POC) at each Reserve Component headquarters or Reserve regional command and each National Guard State headquarters who can render assistance to:

(A) Members of the National Guard or Reserve about employment and reemployment rights, benefits, and obligations.

(B) Employers of National Guard and Reserve members about duty or training requirements arising from a member's uniformed service or service obligation.

(xi) Inform Reserve Component Service members of services provided by ESGR. ESGR's subject-matter expert POCs can render assistance with issues regarding employment and reemployment rights, benefits, and obligations under USERRA. More information about ESGR is contained in paragraph (c) of this section.

(b) *Employer information and assistance.* The Military Departments will:

(1) Provide verification of absence due to uniformed service to civilian employers upon request regardless of the duration of service-related absence.

(2) Provide verification of discharge status upon employer request.

(3) Designate Reserve Component representatives who must consider, and accommodate, requests from civilian employers of National Guard and Reserve members by adjusting Service member absences from civilian employment due to uniformed service, when such service has an adverse impact on the employer and does not conflict with military requirements. The designated representatives may make arrangements other than adjusting the period of absence to accommodate such requests when it serves the best interest of the military and is reasonable to do so.

(c) *Agencies providing USERRA assistance*—(1) *ESGR.* ESGR is a component of the DoDHRA, a DoD Field Activity under the authority, direction, and control of the USD(P&R).

(i) ESGR is the primary DoD office for all matters concerning employer support of the National Guard and Reserve, and serves as the lead proponent for USERRA matters within DoD.

(ii) ESGR informs Service members and their civilian employers regarding their rights and responsibilities governed by USERRA.

(iii) ESGR does not have enforcement authority for USERRA, but serves as a free resource for Service members and employers.

(iv) ESGR's trained ombudsmen provide neutral, informal alternative dispute mediation services between Service members and employers for issues relating to compliance with USERRA. Headquarters ESGR Ombudsman Services representatives can be contacted by calling 1–800–336–4590.

(v) ESGR's Web site (available at *http://www.esgr.mil)* provides local and State contact information. Additionally, the Web site provides links to multiple resources for both Service members and employers.

(2) *DOL–VETS.* (i) A person may file a complaint with the DOL–VETS or initiate private legal action, if alleging that an employer, including any Federal Executive Agency or the OPM, has failed or refused, or is about to fail or refuse, to comply with employment or reemployment rights and benefits under USERRA.

(ii) Using ESGR's mediation services is not a prerequisite for filing a complaint with DOL–VETS. The complaint may be filed in writing, or electronically. Instructions and the forms can be accessed at the DOL–VETS Web site (available at *http://www.dol.gov/elaws/vets/userra/1010.asp*).

(iii) The DOL–VETS investigates each complaint and, if it is determined that the allegation(s) occurred, makes reasonable efforts to ensure compliance. If these efforts are unsuccessful, DOL–VETS then will notify the complainant of the results and advise the complainant of his or her entitlement to pursue enforcement by requesting the complaint be referred to the Department of Justice (DOJ), if the complaint involves a state or private employer, or to the Office of Special Counsel (OSC), for complaints involving Federal Executive Agencies.

(3) *DOJ.* (i) DOJ is the agency under the Attorney General that enforces USERRA matters involving State and local government employers and private-sector employers. DOJ receives USERRA cases referred by DOL–VETS.

(ii) DOJ reviews USERRA cases to determine if representation is appropriate. In cases found to have merit, the Attorney General will commence court action on behalf of the Service member, to be prosecuted by DOJ attorneys.

(4) *OSC.* (i) OSC is an independent, Federal, investigative and prosecutorial agency. OSC's enforcement responsibilities apply in Federal sector USERRA cases. OSC receives USERRA Federal cases referred by DOL–VETS.

(ii) If, after reviewing the complaint and investigative file, OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, OSC may act as attorney for the claimant and initiate an action before the Merit Systems Protection Board (MSPB), also an independent, Federal agency, serving as the guardian of Federal merit systems. If OSC declines representation, the claimant may still file an appeal with the MSPB.

Dated: July 22, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–17635 Filed 7–25–14; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2013–0791; FRL–9914–23–Region–5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Bellefontaine Area to Attainment of the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 29, 2013, the Ohio Environmental Protection Agency (OEPA) submitted a request for the Environmental Protection Agency (EPA) to redesignate the Bellefontaine nonattainment area to attainment for the 2008 national ambient air quality standards (NAAQS) for lead. EPA is proposing to determine that the Bellefontaine area meets the requirements for redesignation and is also proposing to approve several additional related actions. EPA is proposing to approve, as revisions to the Ohio state implementation plan, the state's plan for maintaining the 2008 lead NAAQS through 2025 for the area. EPA is proposing to approve the 2010 emissions inventory for the Bellefontaine area, which meet the comprehensive emissions inventory requirement of the Act. EPA is proposing to approve these actions in accordance with the Clean Air Act and EPA's implementation regulations regarding the 2008 lead NAAQS.

DATES: Comments must be received on or before August 27, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0791, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 11, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–17610 Filed 7–25–14; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 79, No. 144
Monday, July 28, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 22, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program—Store Applications

OMB Control Number: 0584–0008

Summary of Collection: Section 9(a) of the Food and Nutrition Act of 2008 as amended, (7 U.S.C. 2018 et seq.) requires that the Food and Nutrition Service (FNS) provide for the submission of applications for approval by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants that wish to participate in the Supplemental Nutrition Program (SNAP). FNS is responsible for reviewing the application in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem SNAP benefits. FNS will collect information using forms FNS–252, Supplemental Nutrition Assistance Program Application for Store, FNS–252–E, On line Supplemental Nutrition Assistance Program Application for Store, FNS 252–2, Supplemental Nutrition Assistance Program for Meal Service Application, FNS–252–C, Corporate Supplemental Application, and FNS 252–R, Supplemental Nutrition Assistance Program for Stores Reauthorization and FNS–252FE, Supplemental Nutrition Assistance Program Farmer's Market Application.

Need and Use of the Information: FNS will collect information to determine the eligibility of retail food stores, wholesale food concern, and food service organizations applying for authorization to accept and redeem SNAP benefits and to monitor these firms for continued eligibility, and to sanction stores for noncompliance with the Act, and for Program management. Disclosure of information other than Employer Identification Numbers and Social Security Numbers may be made to Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal or State laws, or regulations issued under those laws. Without the information on the application or reauthorization application, the consequence to the Federal program is the Agency's reduced ability to effectively monitor accountability for program compliance and to detect fraud and abuse would be severely jeopardized.

Description of Respondents: Business or other for-profit, Not-for-profit, Farms.

Number of Respondents: 150,030.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,986.

Food and Nutrition Service

Title: Report of Supplemental Nutrition Assistance Program Issuance and Report of Commodity Distribution for Disaster Relief.

OMB Control Number: 0584–0037.

Summary of Collection: Food Distribution in disaster situations is authorized under Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as amended; Section 416 of the Food and Agriculture Act of 1949 (7 U.S.C. 1431), as amended; Section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), as amended; Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note), as amended; and by Sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180). Surplus foods are made available by State distributing agencies for relief purposes to victims of natural disasters such as hurricanes, floods, tornadoes, etc. Participating local organizations use surplus foods for both central feeding operations and for distribution to families in homes cut off from normal sources of food supply. Disaster assistance through the Supplemental Nutrition Assistance Program (SNAP) is authorized by sections 402 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and the temporary emergency provisions contained in Section 5 of the Food and Nutrition Act of 2008, and in 7 CFR part 280 of the SNAP regulations.

Need and Use of the Information: FNS will collect information through the use of form FNS–292–A and B, which is used by the FNS Administrator, the Food Distribution Division, and the three SNAP divisions to monitor program activity, assess coverage provided to needy recipients, and assure the validity of requested commodity reimbursement and to prepare budget requests. If the information were not collected, FNS would be unable to monitor the issuance of SNAP benefits and the distribution of surplus foods

during disaster situations, ensure integrity and reimburse States appropriately for their disaster relief efforts.

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

Number of Respondents: 55.

Frequency of Responses: Recordkeeping; On occasion.

Total Burden Hours: 9.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–17623 Filed 7–25–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs: National Average Payments/Maximum Reimbursement Rates

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

ACTION: Notice; correction.

SUMMARY: This document contains a correction to the notice published in the **Federal Register** on July 16, 2014 entitled, ''National School Lunch, Special Milk, and School Breakfast Programs: National Average Payments/ Maximum Reimbursement Rates.''

DATES: *Effective Date:* These rates are effective from July 1, 2014 through June 30, 2015.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service published a document in the **Federal Register** (79 FR 41532) on July 16, 2014. The third sentence in the Background section regarding the Special Milk Program for Children states that for the period July 1, 2014 through June 30, 2015, the rate of reimbursement for a half-pint of milk served to a non-needy child in a school or institution which participates in the Special Milk Program is 20.30 cents. This number is a typographical error and should state the Special Milk Program reimbursement rate is 23.00 cents. It should be noted that this number is correct in the table on page 41535. This document corrects the error.

Correction

In notice document 2014–16719, published on July 16, 2014 at 79 FR 41532, make the following correction: On page 41533, in the first column, in the third sentence under **SUPPLEMENTARY INFORMATION**, Background, *Special Milk Program for Children,* change ''20.30'' to ''23.00''.

Dated: July 18, 2014.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2014–17683 Filed 7–25–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest: Alaska, Kake to Petersburg Transmission Line Intertie

AGENCY: Forest Service, USDA.

ACTION: Corrected Notice of Intent To Prepare an Environmental Impact Statement; Correction

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement (EIS) on a proposal to construct, operate and maintain a new electrical transmission line intertie that would extend west across the Tongass National Forest from the Petersburg area to the community of Kake. The proposed action is to construct a new transmission line, and associated features, that would transmit power at either 69 or 138 kilovolt (kV) and consist of single wood-pole structures with horizontal post insulators, with average span of lengths between poles of 350 to 400 feet. The proposed project would also include a 24-strand fiber optic communication cable. Construction access would be via existing roads, temporary shovel trails and matting panels, and temporary access spurs, with helicopter support as needed. The proposed project would cross National Forest System (NFS) lands in the Petersburg Ranger District of the Tongass National Forest. The length of the proposed electrical transmission line is approximately 60 miles and would follow a route identified as a Transportation and Utility Systems (TUS) land use designation (LUD) corridor; labeled ''Potential Power Transmission Corridor'' on the 2008 Tongass National Forest Land and Resource Management Plan (Forest Plan) LUD map. An estimated 59 percent, or 35.2 miles, of the overhead portion of the proposed transmission line would follow existing roads. No new road segments would be built; existing roads would be used for long-term maintenance access where possible.

DATES: Comments concerning the scope of the analysis must be received by August 27, 2014. The draft environmental impact statement is expected September 2014 and the final environmental impact statement is expected May 2015.

ADDRESSES: You may comment on the project in the following ways: Send written comments to Petersburg Ranger District, Tongass National Forest, P.O. Box 1328, Petersburg, AK. 99833 ATTN: Kake-Petersburg Intertie Project or hand-delivered to 12 N. Nordic Drive, Petersburg, AK. Comments may also be sent via email to *comments-alaska-tongass-petersburg@fs.fed.us*, with ''Kake-Petersburg Intertie Project'' in the subject line. Comments can be sent via facsimile to 907–772–5995.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Tom Parker, Petersburg Ranger District, Tongass National Forest, P.O. Box 1328, Petersburg, AK 99833 or (907) 772–5974. 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:

Background: The Southeast Alaska Power Agency (SEAPA), the project proponent, is a joint action agency organized and existing pursuant to the laws of the State of Alaska. SEAPA's member utilities (Ketchikan, Wrangell and Petersburg) provide electric utility services to their respective service areas utilizing power generated by SEAPA's facilities. These three communities are part of SEAPA's interconnected network, which include the Swan Lake and Lake Tyee hydroelectric projects and approximately 175 miles of transmission line that span from Ketchikan to Petersburg. The proposed Kake to Petersburg Intertie (KPI) project would connect Kake to SEAPA's interconnected network and provide relatively low cost electricity to the community of Kake.

Purpose and Need for Action

The community of Kake is presently served by an isolated electric system that depends upon high-cost, diesel generation. This isolated system is served by a diesel plant that consists of three diesel generators. High operation and maintenance expenses and high fuel costs make diesel generators costly to operate. In 2011, the full retail cost of power in Kake was more than five times the rate in the larger communities of Petersburg, Ketchikan, and Wrangell, and is currently subsidized for residential customers and public facilities through the State of Alaska's Power Cost Equalization (PCE) program, which is funded on an annual basis by

the State legislature. Commercial customers are not eligible to participate in the PCE program, who pay the full retail cost for power in Kake. The cost of electricity in Kake negatively affects the economic well-being of the community and is a disincentive to economic development.

The need for this action is established by the Forest Service's responsibility under the Federal Land Policy and Management Act (FLPMA) to respond to an application for a right-of-way (43 U.S.C. 1701).

Proposed Action

The Forest Service proposes to issue a special use permit to authorize SEAPA to construct, operate, and maintain the proposed KPI Project across NFS lands. The Proposed Action would construct, operate and maintain a new electric transmission line and associated facilities to connect the community of Kake with the existing SEAPA interconnected network in Petersburg, AK. The transmission line would extend north and then west for approximately 60 miles. The line would be built to transmit either 69 or 138 kV and consist of single wood-pole structures with horizontal post insulators, with an average span length of 350 to 400 feet between poles. The proposed transmission line would originate at the existing SEAPA substation south of Petersburg, and extend north and northeast toward Frederick Sound. The transmission line would cross Frederick Sound and the mouth of the Wrangell Narrows via a 1.2 mile horizontal directional bore that would place the cable below the seafloor. Once on Kupreanof Island, the transmission line would follow the TUS LUD Potential Power Transmission Corridor north through Inventoried Roadless Area 213 (Five Mile) and then west through Inventoried Roadless Areas 212 (Missionary) and 211 (North Kupreanof). From Inventoried Roadless Area 211, the transmission line would continue west and northwest to Kake where it would terminate at a new substation located near the existing powerhouse. The majority of the route is on NFS lands, the route also crosses lands owned by the Alaska Department of Natural Resources, the Sealaska Corporation, Kake Tribal Corporation, the City of Kake, and Petersburg Borough.

Possible Alternatives

The previous Notice of Intent (NOI) for the Kake-Petersburg Intertie Transmission Line (May 7, 2010; **Federal Register** Vol. 75, No. 88, pg. 25195–25197) identified a Center-South route as one of two alternatives to the Proposed Action. This route would connect to the existing Tyee transmission line, approximately 8 miles south of Petersburg, and requires a tap or switch yard. This route crosses Wrangell Narrows, proceeds west across the Lindenberg Peninsula, crosses Duncan Canal and continues northwest to terminate in Kake at a new substation located near the existing powerhouse. As with the Proposed Action, the majority of the project would fall on National Forest System lands but would also cross over lands owned and managed by the Borough of Petersburg, Sealaska Corporation, Kake Tribal Corporation, and the city of Kake.

In addition to the Center-South route, the previous NOI identified two Northern Route options: Options 1 and 2. The Northern Route, Option 1 started at the existing SEAPA substation south of Petersburg and followed an existing gravel road 3.5 miles east-northeast to Frederick Sound, near Sandy Beach Park. From there, Option 1 crossed Frederick Sound via a 3.1-mile-long submarine cable that would come ashore near Prolewy Point on the east shore of Kupreanof Island. This proposed crossing is the only difference between this option and the Proposed Action. Like the Center-South route, this option is being considered as an alternative to the Proposed Action.

The Northern Route, Option 2 originated at the same existing SEAPA substation, but proceeded north along Mitkof Highway to near the narrowest point of the Wrangell Narrows. Crossing the Wrangell Narrows, via a horizontal directional bore or buried cable that would extend approximately 1,400 feet, this option then continued north overhead, past the city of Petersburg and across Petersburg Creek. This route has been eliminated from further consideration due to the potential impacts on the unroaded character of the city of Kupreanof, and potential impacts to Petersburg Creek, an important area for fish and wildlife, recreation and tourism and subsistence.

Responsible Official

Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, AK 99901.

Nature of Decision To Be Made

The Forest Supervisor is the responsible official for this action and will decide whether or not to permit the construction of the proposed electric transmission line across NFS lands, as well as the route that will be followed, and any mitigation measures and/or monitoring, as appropriate. The decision will be based on the information disclosed in the EIS. The responsible official will consider comments, responses, the disclosure of environmental consequences, and applicable laws, regulations and policies in making the decision and will state the rationale in the Record of Decision.

Preliminary Issues

The Proposed Action and the Center-South route both cross through inventoried roadless areas. Road building is not anticipated. However, if the construction of the transmission line is allowed, it will reduce the inventoried acres and could affect roadless values. Preliminary issues identified through scoping for this project included concerns that the unroaded character of the city of Kupreanof would be affected by the presence of a nearby electric transmission line which could have impacts on the quality of life for the residents. Concerns were also expressed about potential impacts to Petersburg Creek, an important area for fish and wildlife, recreation and tourism, and subsistence activities. These two issues have been mitigated by dropping the Northern Route, Option 2 as an alternative.

Permits or Licenses Required

Forest Service: Special use permit to construct, operate and maintain the proposed transmission line across NFS lands. Permits to survey the authorized right-of-way.

U.S. Army Corps of Engineers: Approval of discharge of dredged or fill material into the waters of the United States (404 of the Clean Water Act). Approval of construction or work in navigable of the United States which includes Wrangell Narrows and Duncan Canal, depending on the alternative selected.

EPA: Stormwater discharge permits.

U.S. Coast Guard: Coordination to ensure appropriate clearance for lines over water; generally handled through the Corps' permitting authority.

Federal Aviation Administration: Notice of proposed construction.

Alaska DNR: Authorization for occupancy and use of tidelands and submerged lands. Right-of-way to construct the proposed transmission line. ANILCA 906(k) compliance.

ADEC: Certificate of Reasonsable Assurance. Certification of compliance with the Alaska Water Qualtiy Standards. Solid Waste Disposal Permit.

ADF&G: Habitat protection permits addressing conditions and timing of stream crossings and maintenance of

vegetation. Title 16 fish habitat permit for any disturbance of anadromous fish streams.

Scoping Process

This NOI re-initiates the scoping process, which guides the development of the EIS. Public participation will be especially important at several points during the analysis. The Petersburg Ranger District is seeking information and comments from Federal, State, and local agencies, tribal organizations, individuals, businesses and organizations that may be interesed in, or affected by, the proposed project. This project was originally scoped under the NOI on May 7, 2010. This correction notice is filed since the Proposed Action has changed. Additionally the project was originally scoped under the 36 CFR 215 Notice, Comment and Appeal Procedures. The 215 appeal procedures have been replaced by the Project-Level Pre-decisional Administrative Review Process, 36 CFR Part 218 as of March 27, 2013. The ''objection process'' allows parties who have submitted timely, specific written comments during Forest Service-announced public comment periods, such as this scoping period or when the Draft EIS goes out for public comment, to object to the decision being drafted. No public meetings are to be held with the release of this NOI. Public meetings will be held in Petersburg and Kake in conjunction with the release of the Draft EIS in September.

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 EIS. 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 during the earlier scoping period are part of the project record and do not need to be re-submitted.

Dated: July 18, 2014.

Forrest Cole,

Forest Supervisor.

[FR Doc. 2014–17669 Filed 7–25–14; 8:45 am]

BILLING CODE 3411–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2014–0002]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.), the Architectural and Transportation Barriers Compliance Board (Access Board) invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew a generic information collection. As part of a federal government-wide effort to streamline the process for seeking feedback from the public on service delivery, the Access Board has an approved Generic Information Collection Request (Generic ICR) entitled ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.''

A copy of the draft supporting statement is available at *http://www.regulations.gov* (see Docket ID ATBCB–2014–0002).

DATES: Submit comments by September 26, 2014.

ADDRESSES: Submit comments by any of the following methods:

- *Federal eRulemaking Portal http://www.regulations.gov.* Follow the instructions for submitting comments. Regulations.gov ID for this docket is ATBCB–2014–0002.
- *Email: damiani@access-board.gov*. Include docket number ATBCB–2014–0002 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Delivery/Courier:* Office of the General Counsel, U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov* and are available for public viewing.

FOR FURTHER INFORMATION CONTACT: Mario Damiani, Office of the General Counsel, U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0050 (voice); 202–272–0064 (TTY); 202–272–0081 (FAX). Electronic mail address: *damiani@access-board.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3014–0011.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Type of Review: Renewal of a generic information collection.

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

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

Respondents: Average annual estimate of approximately 1,100

Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of Activities: 7.

Average Number of Respondents per Activity: 157.

Annual Responses: 1,100.

Frequency of Response: Once per request.

Estimated Average Burden per Response: 7.25 minutes.

Estimated Total Annual Burden: 120 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Access Board's performance; (b) the accuracy of the estimated burden; (c) ways for the Access Board to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. We will summarize your comments in the request for OMB's clearance of this information collection.

David M. Capozzi,

Executive Director.

[FR Doc. 2014–17632 Filed 7–25–14; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

National Advisory Committee on Racial, Ethnic and Other Populations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of a virtual public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a virtual meeting of the National Advisory Committee on Racial, Ethnic and Other Populations (NAC). The NAC will deliberate the report and recommendations proposed by the NAC's Race and Hispanic Origin Research Working Group. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: On Wednesday, August 13, 2014, the virtual meeting will begin at approximately 2:30 p.m. Eastern Time and adjourn at approximately 4:00 p.m. Eastern Time.

ADDRESSES: For members of the public wishing to attend the virtual meeting in person, a listening room will be available at the following location: U.S. Census Bureau, Conference Room 3, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, *Jeri.Green@census.gov,* Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339. Also, please see the following link for further information: *census.national.advisory.committee@census.gov*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (FACA) (Title 5, United States Code, Appendix 2, Section 10), notice is hereby given to announce an open virtual meeting of the NAC. The NAC will meet in a virtual session on August 13, 2014. A virtual meeting of the NAC provides a cost savings to the government while still offering a venue that allows for public participation and transparency, as required by the FACA.

This virtual meeting will take place by webinar and audio conferencing technology. Members of the public, whether attending virtually or in person, should register by August 11, 2014. You may access the online registration form with the following link: *https://regonline.com/nacvirtual_aug2014.* Web and audio instructions to participate in this meeting will be provided to all registered participants.

Members of the public are invited to attend the meeting virtually or in person. Please see the **ADDRESSES** section of this notice for the location of the meeting room.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting. If attending in person, due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Public comments shall be provided in writing either by email or by postal mail no later than August 20, 2014. In addition, there will be a 10-minute public comment period via teleconference. Comments will be made on a first-come, first-serve basis. An operator will receive your call during the 10-minute public comment period. If you are attending the virtual meeting in person, you also will be given an opportunity to provide comments. Each public comment is limited to 2 minutes.

Any member of the public who wishes to file written comments pertaining to the agenda may do so by sending the comments via email to the *census.national.advisory.committee@census.gov* (subject line ''Virtual NAC Meeting''), or by letter submission to Committee Liaison Officer, Virtual NAC Meeting, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Such submissions will be included in the record for the meeting if received by Monday, August 11, 2014.

Virtual Meeting Topics To Be Discussed

The primary purpose of the meeting is to provide the NAC with an opportunity to discuss the Race and Hispanic Origin Working Group Recommendations. Meeting materials and agenda will be posted to the following site several days prior to the virtual event: *https://www.census.gov/cac/about_census_advisory_committees/2014_meetings.html.*

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on August 13, 2014.

Dated: July 23, 2014.

Nancy A. Potok,

Deputy Director, Bureau of the Census.

[FR Doc. 2014–17807 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

DATES: *Effective* July 28, 2014.

SUMMARY: The Department of Commerce (''Department'') determined that the request described below for a new shipper review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules, (''solar cells'') from the People's Republic of China (''PRC'') meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for the new shipper

review is December 1, 2013 through May 31, 2014.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, the Department published the antidumping duty order on solar cells from the PRC.[1] On June 26, 2014, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(c), the Department received a timely request for a new shipper review from Hengdian Group DMEGC Magnetics Co., Ltd. (''DMEGC'').[2] On July 9, 2014, the Department received entry data from U.S. Customs and Border Protection (''CBP'') related to DMEGC's request for a new shipper review.[3] We also requested entry documents from CBP in order to confirm certain information reported by DMEGC. The continuation of the new shipper review will be contingent upon confirmation of the information reported in the initiation request.

DMEGC stated that it is the producer and exporter of the subject merchandise upon which its request for a new shipper review is based. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), DMEGC certified that it did not export solar cells to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), DMEGC certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported solar cells to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), DMEGC also certified that its export activities were not controlled by the central government of the PRC.[4]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), DMEGC submitted documentation establishing the following: (1) The date on which it first shipped solar cells to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[5]

The Department conducted a CBP database query and confirmed by examining the results that the sale of subject merchandise that DMEGC reported to the Department entered the United States during the POR specified by the Department's regulations.[6]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and based on the information on the record, the Department finds that DMEGC meets the threshold requirements for initiation of a new shipper review of its shipment(s) of solar cells from the PRC.[7] However, if the information supplied by DMEGC is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply facts available pursuant to section 776 of the Act, depending upon the facts on the record. The POR for the new shipper review of DMEGC is December 1, 2013, through May 31, 2014.[8] Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary or semiannual anniversary month of the order. The Department intends to issue the preliminary results of this new shipper review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.[9]

It is the Department's usual practice, in cases involving non-market economies (''NME''), to require that a company seeking to establish eligibility for an antidumping duty rate separate from the NME-wide entity rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to DMEGC which will include a separate rate section. The new shipper review of DMEGC will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its exports of solar cells.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from DMEGC in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because DMEGC exports and produces the subject merchandise, the sales of which form the basis of its new shipper review request, we will instruct CBP to permit the use of a bond only for entries of subject merchandise which DMEGC exported and produced.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: July 18, 2014.

Gary Taverman,

Senior Advisor, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–17504 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 73 FR 73018 (December 7, 2012).

[2] *See* Letter from DMEGC to the Secretary of Commerce ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: New Shipper Review Request,'' dated June 26, 2014 (''NSR Request'') .

[3] *See* Letter to All Interested Parties ''Request for a New Shipper Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China 12/01/2013–5/31/14: Hengdian Group DMEGC Magnetics Co., Ltd.,'' dated July 11, 2014 (''CBP Data'').

[4] *See* NSR Request, at Exhibit 1.

[5] *Id.*

[6] *See* 19 CFR 351.214(g)(1)(i)(B).

[7] *See, generally,* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office IV ''Initiation of Antidumping New Shipper Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Hengdian Group DMEGC Magnetics Co., Ltd., Initiation Checklist,'' dated concurrently with this notice (''Initiation Checklist'').

[8] *See* 19 CFR 351.214(g)(1)(i)(B).

[9] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Sodium Hexametaphosphate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2013–2014

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

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the antidumping duty order on sodium hexametaphosphate from the People's Republic of China (''China'') for the period March 1, 2013, through February 28, 2014.

DATES: *Effective Date:* July 28, 2014.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0238.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 2014, based on a timely request for review by Hubei Xingfa Chemicals Group Co., Ltd. (''Hubei Xingfa''),[1] the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on sodium hexametaphosphate from the People's Republic of China covering the period March 1, 2013, through February 28, 2014.[2] The review covers only Hubei Xingfa.[3] On July 2, 2014, Hubei Xingfa withdrew its request for an administrative review.[4] No other party requested a review of this company or any other exporter of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Hubei Xingfa timely withdrew its request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of sodium hexametaphosphate from the People's Republic of China for the period March 1, 2013, through February 28, 2014, in its entirety.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries subject to this administrative review shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 22, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–17716 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Request for Administrative Review of the Antidumping Duty Order on Sodium Hexametaphosphate from the People's Republic of China filed by Hubei Xingfa on March 31, 2014.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 24398 (April 30, 2014) (''*Initiation Notice*'').

[3] *See id.*

[4] *See* Hubei Xingfa Notice of Withdrawal: Administrative Review of Antidumping Duty Order on Sodium Hexametaphosphate from the People's Republic of China filed by Hubei Xingfa on July 2, 2014.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review; 2012–2013

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

SUMMARY: On March 25, 2014, the Department of Commerce (Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar (SSB) from India.[1] The period of review (POR) is February 1, 2012, through January 31, 2013. We have not made changes to our margin calculations for the final results of this review. The final dumping margins for this review are listed in the ''Final Results of the Review'' section below.

DATES: Effective July 28, 2014.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6478.

SUPPLEMENTARY INFORMATION:

Background

Following the *Preliminary Results,* on March 26, 2014, the Department issued an additional supplemental questionnaire to Ambica Steels Limited (Ambica), the only respondent in this administrative review. Ambica responded on April 2, 2014. We received a case brief from Ambica.

Scope of the Order

The merchandise subject to the order is SSB. The SSB subject to the order is currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive.

A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Bar from India'' dated concurrently with this notice (Issues and Decision Memorandum), which is hereby adopted by 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 (IA ACCESS). Access to IA ACCESS is available to

[1] *See Stainless Steel Bar From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 16282 (March 25, 2014) (*Preliminary Results*).

registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Analysis of Comments Received

A list of the issues raised and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix.

Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margin exists for the respondent for the period February 1, 2012, through January 31, 2013.

Producer/exporter	Weighted-Average Dumping Margin (Percent)
Ambica Steels Limited	0.00

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), the Department determines, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For assessment purposes, because Ambica's weighted-average dumping margin remains zero or *de minimis* (*i.e.,* less than 0.5 percent) in these final results, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). Our instructions will be on an importer-specific basis, where the importer is known, or on a customer-specific basis, where the importer is not known.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by Ambica for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Ambica will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.45 percent, the ''all others'' rate established in the order.[2] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: July 22, 2014.

Paul Piquado,

Assistant Secretary

for Enforcement and Compliance.

Appendix—Issues in Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of Issues
1. Whether To Correct the Name of a U.S. Customer in the Final Liquidation Instructions
2. Whether To Name All of Ambica's U.S. Customers in the Final Liquidation Instructions

[FR Doc. 2014–17721 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From India,* 59 FR 66915, 66921 (December 28, 1994).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the People's Republic of China: Amended Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce is rescinding the administrative review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China covering the period May 25, 2012, through November 30, 2013 for the companies listed in Appendix I of this notice. The version of the partial rescission notice signed on June 24, 2014, contained a number of errors which this amended partial rescission notice corrects.[1] This amended partial rescission notice takes the place of the

[1] In the version of the partial rescission notice signed on June 24, 2014, the Department inadvertently rescinded the review of Shenzen Topray Co., Ltd. and Spray Energy Co., Ltd., for which all review requests were not withdrawn and did not rescind the review of LDK Solar Hi-tech (Nanchang) Co., Ltd. for which all review requests were timely withdrawn.

prior version and is being published in its place.

DATES: *Effective Date:* July 28, 2014.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Drew Jackson, AD/CVD Operations, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0182 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, the Department of Commerce published in the **Federal Register** the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (PRC).[2] On December 3, 2013, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on solar cells.[3] The Department received multiple timely requests for an administrative review and on February 3, 2014, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of the initiation of an administrative review of that order.[4] The administrative review was initiated with respect to 145 companies or groups of companies, and covers the period from May 25, 2012, through November 30, 2013. While there are a number of companies which remain under review, the requesting parties have timely withdrawn all review requests for certain companies, as discussed below.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. All requesting parties withdrew their respective requests for an administrative review of the entities listed in Appendix I within 90 days of the date of publication of the *Initiation Notice.* The entities listed in Appendix I had a separate rate granted in the most recently completed segment of this proceeding in which they were under review. Accordingly, the Department is rescinding this review, in part, with respect to these entities, in accordance with 19 CFR 351.213(d)(1).[5]

Companies That Have Not Demonstrated Eligibility for a Separate Rate

In addition to the companies noted above, all review requests were timely withdrawn for other companies that are currently under review that either do not have a separate rate because they have never been reviewed or did not demonstrate eligibility for a separate rate in the most recently completed segment of this proceeding in which they were under review. Therefore, these companies will continue to be subject to the PRC-wide entity rate. While the requests for review of those companies were withdrawn by all parties, those withdrawn companies are part of the PRC-wide entity which could come under review in this segment of the proceeding. If the PRC-wide entity comes under review we will make a determination with respect to the PRC-wide entity at the final results. A complete list of these entities without separate rates is contained in Appendix II.

Assessment

For the entities in Appendix I for which the Department has rescinded this review and which had a separate rate granted in the most recently completed segment of this proceeding in which they were under review, the Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection 15 days after the publication of this notice in the **Federal Register**. For these entities, antidumping duties shall be assessed on period of review entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

For the entities in Appendix II, which are part of the PRC-wide entity during the instant review period (*i.e.,* have not established their eligibility for a separate rate), the Department will issue assessment instructions 15 days after publication of the final results of this review.

Notification to Importers

This notice serves as a final reminder to importers whose entries will be liquidated as a result of this rescission notice 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 assumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders (APOs)

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), 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.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: July 16, 2014.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

Appendix I

The following companies, which were named in our *Initiation Notice,* had a separate rate granted in the most recently completed segment of this proceeding in which they were under review. Subsequently, interested parties timely withdrew all requests for review of these companies. Therefore, pursuant to 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to these companies:

- CEEG (Shanghai) Solar Science Technology Co., Ltd.
- CEEG Nanjing Renewable Energy Co., Ltd.
- China Sunergy (Nanjing) Co., Ltd.
- CNPV Dongying Solar Power Co., Ltd.
- Hanwha SolarOne (Qidong) Co., Ltd.
- JA Solar Technology Yangzhou Co., Ltd.
- Jetion Solar (China) Co., Ltd.
- Jiawei Solarchina Co. (Shenzhen), Ltd.
- JingAo Solar Co., Ltd.
- LDK Solar Hi-tech (Nanchang) Co., Ltd.
- Lightway Green New Energy Co., Ltd.
- Ningbo Komaes Solar Technology Co., Ltd.
- Risen Energy Co, Ltd.
- Shanghai JA Solar Technology Co., Ltd.
- Shanghai Solar Energy Science & Technology Co., Ltd.

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012).

[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 78 FR 72636 (December 3, 2013).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 6147 (February 3, 2014) (*Initiation Notice*).

[5] *See* Appendix I.

- tenKsolar (Shanghai) Co., Ltd.
- Yuhuan Sinosola Science & Technology Co., Ltd.[6]
- Yuhuan Solar Energy Source Co., Ltd.

Appendix II

The following companies, which were named in our *Initiation Notice,* either do not have a separate rate because they have never been reviewed or were not granted a separate rate in the most recently completed segment of this proceeding in which they were under review. Therefore, these companies will continue to be subject to the PRC-wide entity rate. Although interested parties timely withdrew all requests for review of these companies, the companies are part of the PRC-wide entity which could come under review in this segment of the proceeding. If the PRC-wide entity comes under review, we will make a determination with respect to the PRC-wide entity at the final results.

- Aiko Solar
- Amplesun Solar
- Beijing Hope Industry
- Best Solar Hi-tech
- China Sunergy
- Chinalight Solar
- Dai Hwa Industrial
- EGing
- ENN Solar Energy
- General Solar Power
- Golden Partner Development
- Goldpoly (Quanzhou)
- Hairun Photovoltaics Technology Co., Ltd.
- Hareon Solar Technology
- HC Solar Power Co., Ltd.
- Jia Yi Energy Technology
- Jiangxi Green Power Co. Ltd.
- Jiasheng Photovoltaic Tech
- Jiawei Solar Holding
- Jiutai Energy
- Linuo Photovoltaic
- Perfectenergy
- Polar Photovoltaics
- Qiangsheng (QS Solar)
- QXPV (Ningbo Qixin Solar Electrical Appliance Co., Ltd)
- Refine Solar
- Risun Solar (JiangXi Ruijing Solar Power Co., Ltd)
- Sanjing Silicon
- Shanghai Chaori Solar Energy
- Shangpin Solar
- Shanshan Ulica
- Shenzhen Global Solar Energy Tech
- Shuqimeng Energy Tech
- Skybasesolar
- Solargiga Energy Holdings Ltd.
- Sunflower
- Sunlink PV
- Sunvim Solar Technology
- Tainergy Tech
- Tianjin Jinneng Solar Cell
- Topray
- Topsolar
- Trony
- Weihai China Glass Solar
- Wuxi Sunshine Power Co., Ltd.
- Wuxi University Science Park International Incubator Co., Ltd.
- Yunnan Tianda
- Yunnan Zhuoye Energy
- Zhejiang Leye Photovoltaic Science & Technology Co., Ltd.
- Zhejiang Top Point Photovoltaic Co., Ltd.
- Zhejiang Wanxiang Solar Co, Ltd.
- Zhenjiang Huantai Silicon Science & Technology Co., Ltd.

[6] The Department notes that it initiated a review of Yuhan Sinosola Science & Technology Co., Ltd. However, the the U.S. Customs and Border Protection's ACE Secure Data Portal reflects a rate for Yuhuan Sinosola Science & Technology Co., Ltd.

[FR Doc. 2014–17730 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, August 19, 2014, at 9:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Hinman, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue, NW., Washington, DC 20230 (Phone: 202–482–0627; Fax: 202–482–5665; email: *maureen.hinman@trade.gov.*) This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9:00 a.m. to 3:30 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. EDT. Those interested in attending must provide notification by Thursday, August 14, 2014 at 5:00 p.m. EDT, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for this meeting will include follow-up discussions to the May 28, 2014 joint ETTAC-Environmental Trade Working Group (ETWG) meeting, discussion regarding next steps for the 2014–2016 charter, and 2012–2014 charter conclusion action items. The status of the U.S. Environmental Export Initiative will also be discussed.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. This meeting will be the final meeting under the current charter which expires in September 2014.

Dated: July 17, 2014.

Catherine Vial,

Director, Office of Energy and Environmental Industries, Acting.

[FR Doc. 2014–17337 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD410

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 41 post Data Workshop Webinar.

SUMMARY: The SEDAR 41 assessments of the South Atlantic stocks of red snapper and gray triggerfish will consist of a series of workshops and webinars: A Data Workshop; an Assessment Workshop; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: A SEDAR 41 post Data Workshop webinar will be held on Friday, August 15, 2014, from 1 p.m. until 4 p.m.

ADDRESSES: *Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHR INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at

least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator; phone (843) 571–4366; email: *julia.byrd@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the post Data Workshop are as follows:

Participants will finalize data recommendations from the Data Workshop and provide early modeling advice.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: July 23, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–17700 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD407

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Observer Policy Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, August 19, 2014 at 9 a.m.

ADDRESSES: *Meeting address:* The meeting will be held at the Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300; fax: (781) 245–0842.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Herring Committee will discuss Terms of Reference and general charge to the Observer Committee. The Committee will also review progress regarding development of NMFS-led omnibus amendment to establish provisions for industry-funded monitoring across all Council-managed fisheries; review and discuss timeline as well as discuss the details of omnibus industry-funded amendment alternatives and develop related recommendations. The Committee will also plan the next meeting and address other business as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: July 23, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–17699 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC711

Endangered Species; File No. 18102

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the North Carolina Department of Marine Fisheries (NCDMF) has been issued a permit for the incidental take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) Distinct Population Segments (DPSs) associated with the otherwise lawful commercial inshore gillnet fishery in North Carolina.

ADDRESSES: The incidental take permit, final environmental assessment, and other related documents are available on the NMFS Office of Protected Resources Web site at *http://www.nmfs.noaa.gov/pr/permits/esa_review.htm.*

FOR FURTHER INFORMATION CONTACT: Heather Coll (ph. 301–427–8455, email *Heather.Coll@noaa.gov* or Angela Somma (ph. 301–427–8403, email *Angela.Somma@noaa.gov*).

SUPPLEMENTARY INFORMATION: On July 9, 2013, notice of receipt was published in the **Federal Register** (78 FR 41034) that a request for a permit for the incidental take of Atlantic sturgeon DPSs (Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic) associated with the otherwise lawful gillnet fishery in North Carolina inshore waters had been submitted by NCDMF. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

This permit authorizes the incidental take of specified numbers of Atlantic sturgeon DPSs incidental to the continued commercial harvest of target fish species in gillnets subject to monitor, minimize, and mitigate incidental take as set forth in the conservation plan and the permit for a 10-year period.

The conservation plan includes managing inshore gill net fisheries by dividing estuarine waters into five primary management units (i.e., A1, 2, 3; B; C; D; E). (Management unit A is subdivided into three subunits because quantifiable evidence of differences in Atlantic sturgeon distribution and fishing effort exist within the management unit.) Each of the management units will be monitored seasonally and by fishery. Management Unit A is divided into three subunits: A–1, A–2, and A–3 to allow NCDMF to effectively address subunits where proactive management actions may be taken at a finer scale. Management Subunit A–1 will encompass Albemarle Sound as well as contributing river systems in the unit not crossing a line 36°4.30′ N. −75°47.64′ W. east to a point 36°2.50′ N. −75°44.27′ W. in Currituck Sound or 35°57.22′ N. −75°48.26′ W. east to a point 35°56.11′ N. −75°43.60′ W. in Croatan Sound and 36°58.36′ N. −75°40.07′ W. west to a point 35°56.11′ N. −75°43.60′ W. in Roanoke Sound. Management Subunit A–2 will encompass Currituck Sound north of a line beginning at 36°4.30′ N. −75°47.64′ east to a point at 36°2.50′ N −75°44.27′ W. as well as the contributing river systems in this unit. Management Subunit A–3 will encompass Croatan Sound waters south from a point at 35°57.22′ N. −75°48.26′ W. east to a point 35°56.11′ N. −75°43.60′ W. and Roanoke Sound waters south from a point 36°58.36′ N. −75°40.07′ W. west to a point 35°56.11′ N. −75°43.60′ W. south to 35°46.30′ N. Management Unit B includes all inshore waters south of 35°46.30′ N., east of 76°30.00′ W. and north of 34°48.2′ N. This management unit will include all of Pamlico Sound and the northern portion of Core Sound. Management Unit C includes the Pamlico, Pungo, Bay, and Neuse river drainages west of 76°30.00′ W. Management Unit D includes all inshore waters south of 34°48.27′ N. and west of a line running from 34°40.70′ N.—76°22.50′ W. to 34°42.48′ N. −76°36.70′ W. to the Highway 58 bridge. Management in unit D includes the southern Core Sound, Back Sound, Bogue Sound, North River, and Newport River. Management Unit E includes all inshore waters south and west of the Highway 58 bridge to the North Carolina/South Carolina state line. This includes the Atlantic Intracoastal Waterway and adjacent sounds and the New, Cape Fear, Lockwood Folly, White Oak, and Shallotte rivers.

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate, to the maximum extent practicable, the incidental take of Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs.Additionally, on July 17, 2014, NMFS signed an implementing agreement (IA) with NCDMF to better delineate responsibilities with regard to implementation of the conservation plan. Because information on Atlantic sturgeon population and trends in the inshore waters of North Carolina is limited or nonexistent, this agreement was necessary. The IA outlines a year 1–3 information gathering and monitoring phase (first phase) and a year 4–10 implementation phase (second phase). It is anticipated by both parties that the results of the first phase could adjust and better predict take numbers for years 4–10 during the second phase, during which information gathering and monitoring will still continue to take place.

The conservation plan specifies that monitoring of the inshore gillnet fisheries will be done through onboard and alternative platform observers. NCDMF will observe 7–10% ≥5.0 ISM; 1–2% <5.0 ISM) statewide while gillnet fishing occurs. Observer coverage will be concentrated mostly on large mesh, since most takes occur with large mesh. Furthermore, NCDMF will provide weighted coverage in areas with more Atlantic sturgeon interactions. Well over 90% of historic Atlantic sturgeon interactions have occurred in management unit A, which is Albemarle Sound. If NCDMF covers 7–10% of the entire large mesh gill net fishery effort each year with weighted coverage in Albemarle Sound (formerly at 1% coverage), NMFS and NCDMF should start obtaining more data with regard to Atlantic sturgeon population and trends. This is also the reason though for the three year monitoring period outlined in the IA to help gather better data and make appropriate decisions using the best available information. If, in annual reports, it becomes clear that the monitoring is ineffective or not being done to the level agreed, NMFS and NCDMF also have the IA to help our agencies work through disagreements, if any arise. NMFS would need to reinitiate consultation if it becomes evident that the action is not being carried out in the manner described in the permit and conservation plan.

Observer coverage will be based on the types and levels of fishing, Atlantic sturgeon activity, and NCDMF's ability to monitor fishing effort in primary fisheries within five primary management units. Each of the units will be monitored seasonally and by fishery with weighted coverage derived from estimated Atlantic sturgeon takes. Data on sturgeon incidental take will include gear type, soak time, gear parameters (e.g., mesh size), location, condition of individual caught, length, weight, disposition, and whether a tag was applied or fin clip collected. Information on fishing effort, catch, and discards will also be collected. Observers will be debriefed daily and submit reports weekly. In addition to enforcing state regulations, Marine Patrol officers will inspect fish houses, conduct aerial surveys, check fishing gear and licenses, interview fishermen, and monitor fishing activities. NCDMF will use data collected through the Trip Ticket Program. The data collected through onboard and alternative platform observers, Marine Patrol officer reports, and the Trip Ticket Program will be used to estimate fishing effort, Atlantic sturgeon bycatch, and level of compliance. All data will be housed in a statewide biological database.

The conservation plan specifies if estimated takes of Atlantic sturgeon approach allowable thresholds in a management unit, NCDMF will issue a proclamation closing the season for the

responsible fishery within the applicable management unit. NCDMF will issue proclamations implementing additional restrictions if necessary to provide increased protection of Atlantic sturgeon and other ESA-listed species or lifting gillnet or area restrictions if supported by NCDMF or NMFS biological data. Restrictions may include additional measures to reduce fishing effort, reduced yardage, seasonal/area closures, attendance requirements, other gear limitations or modifications, extensive outreach, and an adaptive Observer Program. NCDMF will also identify and adaptively respond to areas of high potential for Atlantic sturgeon bycatch. These ''hotspots'' will be defined as any area, determined by geographically enforceable boundaries, where Atlantic sturgeon observations are unusually high within a management unit or subunit, such that the NCDMF Director determines that closure and evaluation is necessary to (1) avoid violation of a take limit, or (2) provide adequate protection or the Atlantic sturgeon, or (3) to allow Atlantic sturgeon to complete a seasonal migration and minimize interactions. Temporary ''hotspot'' closures may be implemented while data are gathered and analyzed. ''Hotspot'' areas will be identified and handled proactively and reactively. For any given management unit or subunit during a season that shows high Atlantic sturgeon abundance, NCDMF may close the management unit or subunit for the duration of the defined season. If an area is closed as a ''hotspot'' multiple times throughout the year or over a two-year period, NCDMF will take proactive measures to close the area for longer than a defined season. If a particular area within a management unit or subunit can be defined within the unit as the ''hotspot'' that area can be defined geographically and closed within the unit temporarily or permanently.

The amount of annual incidental take of Atlantic sturgeon DPSs authorized is expressed as either interaction or mortality. Each year for ten years, for both large and small mesh combined, 2,927 (169 of which could be mortalities) Atlantic sturgeon could be taken. These numbers are further broken down by DPS and by large and small mesh. Annual large mesh takes of Carolina DPS fish could be up to 1655 (80 of which could be mortalities). Annual large mesh takes of all other DPS fish could be up to 548 (21 of which could be mortalities). Annual small mesh takes of Carolina DPS fish could be up to 607 (58 of which could be mortalities). Annual small mesh takes of all other DPS fish could be up to 117 (10 of which could be mortalities). Because reaching the level of take for any Atlantic sturgeon would end the incidental take authorization, it is highly unlikely that all DPSs would be impacted at these full levels. Additionally, these levels could change in years 4–10 of the permit due to monitoring population trend data that will come from the year 1–3 monitoring period depicted in the Implementing Agreement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 22, 2014.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–17645 Filed 7–25–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Amended and Restated Order Designating the Provider of Legal Entity Identifiers To Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has issued an Amended and Restated Order to extend the Commission's designation of the Depository Trust and Clearing Corporation (''DTCC'') and Society for Worldwide Interbank Financial Telecommunication (''SWIFT'') joint venture (''DTCC–SWIFT'') as the provider of legal entity identifiers, or ''LEIs,'' pursuant to the Commodity Exchange Act and the Commission's regulations. DTCC–SWIFT's designation was made by Commission order issued on July 23, 2012. The designation was made for a term of two years. The Amended and Restated Order amends the Commission's order of July 23, 2012, as previously amended on June 7, 2013, to extend DTCC–SWIFT's designation for an additional one year, while the terms of transition to a fully operational global LEI system are finalized and implemented. Consistent with the terms of the Commission's order of July 23, 2012, as amended on June 7, 2013, the Amended and Restated Order permits registered entities and swap counterparties subject to the Commission's jurisdiction to comply with the specified legal entity identifier requirements of the Commission's regulations by using identifiers issued by DTCC–SWIFT, or any other pre-Local Operating Unit (''pre-LOU'') that has been endorsed by the Regulatory Oversight Committee of the global LEI system as being globally acceptable and as issuing globally acceptable legal entity identifiers.

FOR FURTHER INFORMATION CONTACT: Srinivas Bangarbale, Chief Data Officer, Office of Data and Technology, (202) 418–5315, *sbangarbale@cftc.gov,* or Nora Flood, Attorney Advisor, Division of Market Oversight, (202) 418–5354, *nflood@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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- A. *Legal Entity Identifiers: CEA Section 21(b) and Section 45.6 of the Commission's Regulations*
- B. *Designation of the DTCC–SWIFT Utility*
- C. *Amendment of Designation Order To Account for Developments in the Establishment of a Global LEI System*

II. Extension of Designation of the DTCC–SWIFT Utility

III. Amended and Restated Order

I. Background

A. Legal Entity Identifiers: CEA Section 21(b) and Section 45.6 of the Commission's Regulations

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [1] amended the Commodity Exchange Act (''CEA'') [2] to establish a comprehensive new regulatory framework for swaps. Amendments to the CEA included the addition of provisions requiring the retention, and the reporting to Commission-registered swap data repositories (''SDRs''), of data regarding swap transactions, in order to enhance transparency, promote standardization and reduce systemic risk.[3] Pursuant to

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

[2] 7 U.S.C. 1 *et seq.*

[3] *See, e.g.,* new Section 2(a)(13)(G) of the CEA, which requires all swaps, whether cleared or uncleared, to be reported to a registered SDR; new Section 21(b) of the CEA, which directs the Commission to prescribe standards for swap data reporting and attendant recordkeeping; and new Sections 4r and 2(h)(5) of the CEA, which, among

these newly added provisions, the Commission added to its regulations part 45,[4] which sets forth recordkeeping rules, and rules for the reporting of swap transaction data to a registered SDR, and part 46,[5] which sets forth recordkeeping and swap data reporting rules for historical swaps.

Under the authority granted by new section 21(b) of the CEA, which, among other things, directs the Commission ''to prescribe standards that specify the data elements for each swap that shall be collected and maintained'' by a registered SDR,[6] the Commission, in its part 45 regulations, prescribed the use of a legal entity identifier, or ''LEI,'' in required recordkeeping and swap data reporting. Section 45.6 provides that ''[e]ach counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to [part 45] by means of a single legal entity identifier as specified in this section.'' [7] In adopting this requirement, the Commission highlighted the LEI as a crucial regulatory tool to facilitate data aggregation by regulators, in furtherance of the systemic risk mitigation and other important purposes of the Dodd-Frank Act.[8]

Section 45.6 sets forth requirements that the legal entity identifier to be used to comply with the Commission's recordkeeping and swap data reporting rules must meet, including satisfaction of specified technical and governance principles. In adopting these requirements, the Commission took into consideration work that had commenced at the international level to establish a global LEI system.[9] The Commission expressed its agreement that ''optimum effectiveness of [the LEI] as a tool for achieving the systemic risk mitigation, transparency and market protection goals of the Dodd-Frank Act—goals shared by financial regulators world-wide—would come from creation of [an LEI] . . . that is capable of becoming the single international standard for unique identification of legal entities across the world financial sector.'' [10] The Commission cited its involvement in an international initiative, coordinated by the Financial Stability Board (''FSB''),[11] to establish standards, and a governance framework, for a global LEI system—including the Commission's participation in an ad hoc, expert group of regulatory authorities convened by the FSB to develop recommendations regarding the implementation of such a system.[12]

B. Designation of the DTCC–SWIFT Utility

Pursuant to Section 21(b) of the CEA and Section 45.6 of the Commission's regulations, on July 23, 2012, the Commission issued an order (''Order'') [13] designating the utility operated by DTCC–SWIFT as the provider of the legal entity identifier to be used in recordkeeping and swap data reporting pursuant to parts 45 and 46 of the Commission's regulations, and directing registered entities and swap counterparties subject to the Commission's jurisdiction to use identifiers provided by DTCC–SWIFT to comply with the Commission's recordkeeping and swap data reporting requirements. DTCC–SWIFT's designation was subject to specified conditions, including DTCC–SWIFT's continuing compliance with all of the legal entity identifier requirements set forth in part 45 of the Commission's regulations.[14]

In the preamble to the Order, the Commission highlighted its ongoing participation in the international process, coordinated by the FSB, to develop standards and a governance framework for a global LEI system, as well as its expectation that, after recommendations regarding the global system were endorsed by the FSB and implemented, the identifier to be used to comply with the Commission's recordkeeping and swap data reporting rules would transition into the global LEI.[15] The Commission noted that, in light of the work being undertaken at the international level to establish a global LEI system, and as requested by other regulatory authorities participating in that work, the Commission would, on a transitional basis, refer to the legal entity identifier to be used to comply with the Commission's recordkeeping and swap data reporting rules as the CFTC Interim Compliant Identifier (''CICI''), rather than the ''LEI.'' [16] The Order provided that such identifier would be known as the CICI ''until the establishment of the global LEI system or further action by the Commission.'' [17]

C. Amendment of Designation Order To Account for Developments in the Establishment of a Global LEI System

On June 7, 2013, the Commission issued an amendment to the Order (''Amendment''),[18] to take into account the significant progress that had been made in establishing the global LEI system. In the preamble to the Amendment, the Commission summarized the developments that had taken place at the international level since the Order was issued. It noted that the process to establish the global LEI system was now being led by an international Regulatory Oversight Committee (''ROC''), of which the Commission was a member, and that the ROC had determined that the global LEI system would be federated in nature—comprised of a private sector Central Operating Unit (''COU''), and multiple Local Operating Units (''LOUs'') that would issue LEIs. The Commission noted that under the auspices of the ROC, a foundation (''Global LEI Foundation'') was being established in Switzerland to provide the COU, and that the COU would, within the global

other things, establish reporting requirements for swaps in effect as of the enactment of the Dodd-Frank Act (''pre-enactment swaps''), as well as swaps in effect after such enactment but prior to the effective date for compliance with the Commission's final recordkeeping and swap data reporting rules (''transition swaps'' and, collectively with pre-enactments swaps, ''historical swaps'').

[4] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012).

[5] Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012).

[6] CEA Section 21(b).

[7] 77 FR at 2204. In addition, in part 46 of the Commission's regulations, Section 46.4 provides that each counterparty to a historical swap in existence on or after April 25, 2011, for which an initial data report is required pursuant to part 46, must obtain a legal entity identifier, which must be used for purposes of recordkeeping and swap data reporting under part 46 as prescribed in Section 46.4. 77 FR at 35228–9.

[8] *See* 77 FR at 2138.

[9] *See* 77 FR at 2163.

[10] 77 FR at 2163.

[11] The FSB is an international body that develops and promotes the implementation of effective regulatory, supervisory and other policies in the interest of financial stability. Established in 2009 as a successor to the Financial Stability Forum, the FSB coordinates the work of national financial authorities, international standards setting bodies and international financial institutions. Its membership includes G–20 members, the International Monetary Fund and the World Bank. The FSB Secretariat is located in Basel, Switzerland. The FSB's Web site can be accessed at *http://www.financialstabilityboard.org.*

[12] *See* 77 FR at 2162.

[13] Availability of a Legal Entity Identifier Meeting the Requirements of the Regulations of the Commodity Futures Trading Commission and Designation of Provider of Legal Entity Identifiers To Be Used in the Recordkeeping and Swap Data Reporting, 77 FR 53870 (September 4, 2012).

[14] *See* 77 FR at 53873.

[15] *See* 77 FR at 53871, citing Commission Press Release, CFTC Announces Process to Designate the Provider of CFTC Interim Compliant Identifiers, March 9, 2012, available at *http://www.cftc.gov/PressRoom/PressReleases/pr6200–12.*

[16] *Id.*

[17] 77 FR at 53873.

[18] Amended Order Designating the Provider of Legal Entity Identifiers to Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations, 78 FR 38954 (June 28, 2013).

LEI system, coordinate the system's multiple LOUs.[19]

The Commission further noted that, as a step in the establishment of the global LEI system, each of seven identifier-issuing utilities—including the Commission-designated utility operated by DTCC–SWIFT—had been sponsored to the ROC by the ROC member exercising oversight over such utility, and had been provided with a distinct prefix for use when issuing identifiers, in order to ensure the uniqueness of identifier codes across utilities. The Commission expressed its expectation that the number of ROC member-sponsored ''pre-LOUs'' would increase in the coming months. The Commission also expressed its expectation that the Commission-designated ''pre-LOU'' operated by DTCC–SWIFT would become a LOU, and that the identifiers issued by it would become LEIs, within the global LEI system.[20]

In the preamble to the Amendment, the Commission emphasized the importance, during the transitional period before the global LEI system became fully operational, of preserving the uniqueness of the identifier issued to any particular legal entity. The Commission stated that, once requirements mandating the use of LEIs were in effect in more than one jurisdiction, the only way to ensure that a single legal entity was not issued more than one identifier, pursuant to the requirements of more than one jurisdiction, was through regulatory cooperation—namely, the acceptance, by ROC member authorities mandating the use of LEIs, of identifiers issued by any ROC-recognized pre-LOU.[21]

The Amendment modified the Order to provide for such mutual regulatory acceptance. The Commission noted in the preamble to the Order the ROC's forthcoming finalization of ''a framework for global acceptance of [identifiers] assigned by a pre-LOU that is sponsored by a ROC member who assures the ROC that the pre-LOU meets specified principles regarding compliance with the [global] LEI standard, technical capacity, and agreement to adhere to ROC high-level principles.'' [22] The Amendment modified the Order to provide that, after the ROC had adopted such a framework, and had also approved the DTCC–SWIFT utility and the identifiers issued by it as globally acceptable, registered entities and swap counterparties subject to the Commission's jurisdiction could use identifiers issued by DTCC–SWIFT, or any other pre-LOU approved by the ROC as globally acceptable and as issuing globally acceptable identifiers, to comply with the Commission's recordkeeping and swap data reporting rules.[23]

The preamble to the Amendment stated that it was the Commission's understanding that, once the ROC had adopted standards for the approval of pre-LOUs and the identifiers issued by them as globally acceptable, any identifiers approved by the ROC as meeting such standards would be referred to as ''LEIs.'' Accordingly, the Amendment further modified the Order to provide that, effective immediately upon ROC approval of the identifiers issued by DTCC–SWIFT as globally acceptable, ''the [identifiers] issued by DTCC–SWIFT shall be known as LEIs and not as CICIs.'' [24]

On October 30, 2013, the Commission's Chief Information Officer published on the Commission's Web site a notice [25] stating that the ROC had adopted standards for the approval of pre-LOUs and the identifiers issued by them as globally acceptable, and had approved DTCC–SWIFT and the identifiers issued by it as meeting such standards (such approval being known, at the international level, as ROC ''endorsement''). Accordingly, the notice stated that from October 30, 2013, onward, registered entities and swap counterparties subject to the Commission's jurisdiction could comply with the legal entity identifier requirements of the Commission's recordkeeping and swap data reporting rules ''by using any [identifier] endorsed by the ROC as globally acceptable.'' [26]

Since its endorsement by the ROC as a globally acceptable pre-LOU, the DTCC–SWIFT utility—which had initially been referred to, on the utility's Web site and in educational and other materials, as the ''CFTC Interim Compliant Identifier (CICI) utility'' [27] has commenced referring to itself as the ''Global Markets Entity Identifier (GMEI) utility.'' It is the Commission's understanding that this transition in terminology is intended to clarify for market participants that the identifiers issued by the DTCC–SWIFT utility may be used not only to comply with the Commission's recordkeeping and swap data reporting rules, but also to comply with the requirements of other regulatory authorities that recognize legal entity identifiers issued by ROC-endorsed pre-LOUs.

The transition in the terminology used by DTCC–SWIFT to refer to its utility also reflects the transition—anticipated by the Commission in the Amendment—away from the use of the term ''CICI'' to refer to the legal entity identifier to be used to comply with the Commission's recordkeeping and swap data reporting rules. As discussed above, at the time of issuing the Amendment, it was the Commission's understanding that, after the ROC commenced endorsing pre-LOUs and the identifiers issued by them as globally acceptable, any such globally acceptable identifiers would be referred to as ''LEIs''. Accordingly, the Amendment modified the Order to provide for the identifiers issued by DTCC–SWIFT to be known as LEIs rather than CICIs, once such identifiers were endorsed as globally acceptable by the ROC. While, subsequent to the issuance of the Amendment, the ROC did commence endorsing pre-LOUs and the identifiers issued by them as globally acceptable, the ROC also deferred from referring to endorsed identifiers as ''LEIs'' until the process of establishing the global LEI system had progressed further. Thus, for an interim period, identifiers endorsed by the ROC as globally acceptable and issued by a globally acceptable pre-LOU—including the identifiers issued by DTCC–SWIFT—have been referred to at the international level as ''pre-LEIs.''

[19] *See* 78 FR at 38955.

[20] *Id.*

[21] *Id.*

[22] 78 FR at 38955.

[23] *See* 78 FR at 38956. The Amendment also modified the Order to provide that the use of identifiers issued by approved pre-LOUs other than DTCC–SWIFT or WM Datenservice (a pre-LOU sponsored to the ROC by BaFin, Germany's Federal Financial Supervisory Authority) could commence only after the Commission's Chief Information Officer published a notice on the Commission's Web site stating that such identifiers and such pre-LOUs had been approved by the ROC as globally acceptable. *Id.*

[24] 78 FR at 38956.

[25] Notice Regarding LEIs That May Be Used to Comply With CFTC LEI Requirements, October 30, 2013, available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/noticeroc amendedorder.pdf.*

[26] *Id.*

[27] In the Order, the Commission provided that the legal entity identifier to be used to comply with the Commission's recordkeeping and swap data reporting rules would be known as the CICI ''until the establishment of the global LEI system or further action by the Commission.'' 77 FR at 53873. The Commission's designation of the DTCC–SWIFT utility as the provider of such identifier was conditioned on the utility's Web site, ''and other facilities and documents used to provide identifiers for use in complying with parts 45 and 46,'' referring to the CICI and not to the ''LEI, the preliminary LEI, or other similar terms including the term LEI.'' *Id.*

See the discussion, *infra,* of the action taken by the Commission, through its issuance of the Amendment, to provide for the transition away from the use of the term ''CICI'' to refer to the legal entity identifier to be used to comply with parts 45 and 46, prior to the conclusion of the process of establishing the global LEI system.

II. Extension of Designation of the DTCC–SWIFT Utility

In the Order, the Commission designated DTCC–SWIFT as the provider of legal entity identifiers to be used to comply with parts 45 and 46 of the Commission's regulations for a term of two years, running from the date of issuance of the Order on July 23, 2012.[28] The Order provided that if, at the conclusion of the term of DTCC–SWIFT's designation, the global LEI system was not yet operational, ''the Commission may consider the feasibility of having multiple CICI providers and the feasibility of coordination among them to avoid duplicative LEIs, and if it believes this is feasible, may consider submissions from DTCC–SWIFT as well as from other parties that seek to become CICI providers.'' [29]

The process to establish the global LEI system has continued to move forward since the issuance of the Amendment on June 7, 2013. As discussed above, in the second half of 2013, the ROC adopted endorsement standards for pre-LOUs and the identifiers issued by them, and has since endorsed sixteen member-sponsored pre-LOUs—including DTCC–SWIFT—as globally acceptable.[30] The Global LEI Foundation that will provide the COU, managing the central operations of the global LEI system, has also been formally established under Swiss law. The ROC and the Global LEI Foundation are currently in the process of developing a framework for the transition of full operational management of the global LEI system to the COU, with supervisory oversight by the ROC in the public interest. On June 30, 2014, the ROC issued a press release stating that, with the establishment of the Global LEI Foundation and the commencement of the transition to full operational management by the COU, legal entity identifiers issued by pre-LOUs that have been endorsed by the ROC as globally acceptable, would henceforth be referred to as ''LEIs'' rather than ''pre-LEIs.'' [31] The Commission notes that previously issued pre-LEIs (including CICIs issued by DTCC–SWIFT) do not now need to be reissued; they will, going forward, be referred to as ''LEIs'' rather than ''pre-LEIs'' (or ''CICIs''), but will otherwise remain unchanged.

While progress continues to be made in the establishment of the global LEI system, the system will not be fully operational before the expiration of DTCC–SWIFT's two-year term of designation under the Order. Taking into consideration the significant progress that has been made in establishing the global LEI system to date—including the ROC's endorsement of the DTCC–SWIFT utility as a globally acceptable pre-LOU—and in anticipation that the DTCC–SWIFT utility will become a LOU within the global system, the Commission believes that it is appropriate, in order to further the smooth transition to a fully operational global LEI system, to extend its designation of the DTCC–SWIFT utility.

The Order contemplated that, if the global LEI system was not yet operational before the term of DTCC–SWIFT's designation expired, the Commission could consider the feasibility of having multiple providers of legal entity identifiers, and the feasibility of coordination among them to avoid the issuance of duplicative identifiers. The Order was issued before the governance framework for the global LEI system had been determined—and, in particular, before it was determined that the system would be federated in nature, comprised both of a central COU, and of multiple LOUs issuing LEIs. Consistent with this federated framework, during the current, transitional period before the global LEI system becomes fully operational, the ROC has established standards for the global acceptance of pre-LOUs that satisfy specified principles and requirements, and has endorsed a number of pre-LOUs as meeting those standards. In addition, the ROC has carried forward its practice, described in the Amendment, of providing each pre-LOU with a distinct prefix for use when issuing identifiers, in order to ensure the uniqueness of identifier codes across pre-LOUs. During the transitional period, the ROC has also played an important role in promoting the mutual acceptance, by ROC member authorities mandating the use of LEIs, of identifiers issued by any pre-LOU endorsed by the ROC as globally acceptable.[32]

Thus, while the global LEI system is not yet fully operational, its implementation has progressed to the point where the system can accommodate multiple pre-LOUs, operating in accordance with standards that are designed to promote consistency, and to avoid duplication, in the issuance of legal entity identifiers. Accordingly, the Commission believes that the feasibility of having multiple providers of legal entity identifiers, and the feasibility of coordination among them to avoid the issuance of duplicative identifiers, has already been addressed in connection with the establishment of the global LEI system—into which the identifiers to be used to comply with the Commission's recordkeeping and swap data reporting rules, and any provider thereof, are expected to transition.[33] The Commission's modification of the Order, by way of the Amendment, to permit the use of identifiers issued by any pre-LOU endorsed by the ROC as globally acceptable, and as issuing globally acceptable identifiers, reflects the Commission's support for the feasibility of such a multiple provider system.

For the reasons described above, the Commission is amending the Order, as modified by the Amendment, to extend its designation of the DTCC–SWIFT utility while the terms of transition to a fully operational global LEI system are finalized and implemented. The Commission is also updating the Order to align the legal entity identifier terminology used therein with the terminology that is currently used at the international level, and to remove from the Order certain provisions that, given the current state of implementation of the global LEI system, are no longer applicable.

III. Amended and Restated Order

It is ordered, pursuant to Section 21(b) of the CEA and Section 45.6 of the Commission's regulations, that the Order, as modified by the Amendment, is amended and restated in its entirety to read as follows:

It is hereby ordered that:

1. Subject to Section 2(a), below, the Depository Trust and Clearing Corporation (''DTCC'') and Society for Worldwide Interbank Financial Telecommunications (''SWIFT'') joint venture (''DTCC–SWIFT'') is designated as the provider of legal entity identifiers (''LEIs''), to be used in recordkeeping

[28] *See* 77 FR at 53873. The Order also permitted the Commission's earlier termination of such designation ''in connection with the establishment of a global LEI system.'' *Id.*

[29] *Id.*

[30] To date, the sixteen endorsed pre-LOUs have, collectively, issued nearly 300,000 legal entity identifiers. *See* ROC Press Release, Regulatory Oversight Committee Welcomes First Meeting of Global LEI Foundation, June 30, 2014, available at *http://www.leiroc.org/publications/gls/gleif_20140629_1.pdf.*

[31] *Id.*

[32] *See, e.g.,* 78 FR at 38955.

[33] This does not preclude the Commission from considering a submission from another existing or prospective provider of legal entity identifiers that wishes also to be designated by the Commission, along with DTCC–SWIFT, but the Commission notes that its consideration of any such submission would take into account not only the relevant requirements of Section 45.6 of the Commission's regulations, but also, for the reasons set forth herein, the principles, standards and current state of implementation of the global LEI system.

and swap data reporting pursuant to parts 45 and 46 of the Commission's regulations.

a. This designation is conditioned on DTCC–SWIFT's continuing compliance, for as long as it is authorized to provide LEIs by this order or any future order of the Commission, with all of the legal entity identifier requirements of part 45 of the Commission's regulations, and any related requirements as set forth in this order or in the requirements document provided to DTCC–SWIFT during the determination and designation process; including, without limitation, the requirement to be subject to supervision by a governance structure that includes the Commission and other financial regulators in any jurisdiction requiring use of legal entity identifiers pursuant to applicable law, for the purpose of ensuring that issuance and maintenance of LEIs and of associated reference data adheres on an ongoing basis to the Commission's requirements set forth in part 45.

b. This designation is further conditioned on the requirement that, subject to applicable confidentiality laws and other applicable law, (1) DTCC–SWIFT shall make public all LEIs and associated reference data, utility operations, and identity validation processes, and (2) if DTCC–SWIFT fails to satisfy the conditions of this designation, or upon any termination of this designation pursuant to Section 2(c)(2) below, DTCC–SWIFT shall, as instructed by the Commission, pass to a successor LEI utility specified by the Commission, or to the global LEI system, free of charge, all LEIs issued by DTCC–SWIFT and associated reference data and all LEI intellectual property rights.

c. This designation is made for a limited term of one year from the date of this Amended and Restated Order, and may be terminated by the Commission on three months' notice in connection with (1) the establishment of the global LEI system, or (2) DTCC–SWIFT's exit from the global LEI system.

2. To comply with the legal entity identifier requirements of parts 45 and 46 of the Commission's regulations:

a. Registered entities and swap counterparties subject to the Commission's jurisdiction may use LEIs provided by DTCC–SWIFT, or any other pre-Local Operating Unit (''pre-LOU'') approved by the Regulatory Oversight Committee of the global LEI system (''ROC'') as globally acceptable and as issuing globally acceptable LEIs. The list of pre-LOUs that are currently approved by the ROC as globally acceptable and as issuing globally acceptable LEIs, including the Web site address via which registered entities and swap counterparties may contact each such pre-LOU, is available at *http://www.leiroc.org/publications/gls/lou_20131003_2.pdf.*

b. As provided in section 45.6(b)(1) of the Commission's regulations, registered entities and swap counterparties subject to the Commission's jurisdiction shall be identified in all swap recordkeeping and swap data reporting by a single LEI.

Issued in Washington, DC, on July 22, 2014, by the Commission.

Christopher J. Kirkpatrick,

Acting Secretary of the Commission.

Appendix to Amended and Restated Order Designating the Provider of Legal Entity Identifiers To Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative. Commissioner O'Malia did not participate in this matter.

[FR Doc. 2014–17643 Filed 7–25–14; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project Program

AGENCY: Deputy Assistant Secretary of Defense for Civilian Personnel Policy, (DASD (CPP)), Department of Defense (DoD).

ACTION: This notice amends existing STRL Personnel Management Demonstration Project Programs.

SUMMARY: STRLs will implement Senior Scientific Technical Manager (SSTM) positions, which are defined as senior professional scientific and technical positions classified above the GS–15 level of the General Schedule (GS). The primary functions of these positions shall be (1) to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of such STRL; and (2) to carry out technical supervisory responsibilities. These positions may only be established at authorized STRLs with personnel demonstration projects.

STRLs will also implement two new direct-hire authorities to appoint bachelor's degree candidates into scientific and engineering positions and veteran candidates into scientific, technical, engineering, and mathematics positions. The current direct-hire authority to appoint candidates with an advanced degree into scientific and engineering positions is also being included in this notice so that all STRL direct-hire authorities are documented in one location.

DATES: This notice may be implemented beginning on the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Department of the Army

- *ARL:* Mr. Tom Bock, Program Manager, ARL Personnel Demonstration Project, AMSRD–ARL–O–HR, 2800 Powder Mill Road, Adelphi MD 20783–1197;
- *AMRDEC:* Mr. Chad Marshall, Demonstration Project Manager, AMRDEC, 5400 Fowler Road, Redstone Arsenal, AL 35898–5000;
- *CERDEC:* Ms. Desiree Roe, CERDEC Personnel Demonstration Project Administrator, Myer Center, Building 2700, Room 2C204, ATTN: AMSRD–CER–HRO, Fort Monmouth, NJ 07703–5209;
- *ECBC:* Ms. Patricia Milwicz, Management and Program Analyst, ECBC, Directorate of Program Integration, Workforce Management Office, Department of the Army, ATTN: RDCB–DPC–W, 5183 Blackhawk Road, Building 3330, Aberdeen Proving Ground, MD 21010–5424;
- *ERDC:* Ms. Patricia Sullivan, Personnel Demonstration Project Manager, U.S. Army ERDC, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199;
- *MRMC:* Ms. Linda Krout, Personnel Demonstration Project Manager, 505 Scott St., Fort Detrick, MD 21702–5000;
- *NSRDEC:* Ms. Joelle Montecalvo, Demonstration Project Manager, NSRDEC, Kansas Street, (AMSRD–NSR–BO–W), Natick, MA 01760;
- *TARDEC:* Ms. Jennifer Davis, TARDEC, ATTN: RDTA–CS/MS 204, Warren, MI 48397–5000; and
- *ARDEC:* Mr. Mike Nicotra, U.S. Army ARDEC, Human Capital Management Office, Building 1, 3rd Floor, RDAR–EIH, Picatinny Arsenal, NJ 07806–5000.

Department of the Air Force:

- *AFRL:* Ms. Michelle Williams, Personnel Demonstration Project Manager, AFRL, 1864 4th Street, Wright-Patterson Air Force Base, OH 45433–5209.

Department of the Navy

- *ONR:* Ms. Margaret J. Mitchell, Director, Civilian Human Resources, ONR, 875 North Randolph Street, Code BD, Arlington, VA 22203;
- *NRL:* Ms. Cathy Downing, Director, Strategic Workforce Planning, NRL, 4555 Overlook Avenue SW., Washington, DC 20375–5320;
- *NAVSEA Warfare Centers:* Ms. Diane Brown, NAVSEA Warfare Centers Personnel Demonstration Project Manager, Naval Surface Warfare Center Carderock Division, 5001 South Broad Street, Philadelphia, PA 19112–5083;
- *NAVAIR, Weapons Division and Aircraft Division:* Mr. Dustin Kirby, Naval Air Warfare Center, Weapons Division (NAWCWD), Code 730000D, 1 Administration Circle, Building 00464, China Lake, CA 93555–6100; and
- *Space and Naval Warfare Systems Command, Space and Naval Warfare Systems Center (SSC)*
  - *SSC Atlantic:* Ms. Lindsay Blackwell, SSC Atlantic STRL Project Lead, SSC Atlantic, P.O. Box 190022, North Charleston, SC 29419–9022; and
  - *SSC Pacific:* Ms. Angela Hanson, SSC Pacific STRL Project Lead, SSC Pacific, 53560 Hull Street, San Diego, CA 92152–5001.

DoD

- Ms. Susie Collins, Defense Civilian Personnel Advisory Service, Non-Traditional Personnel Programs (DCPAS–NTPP), 4800 Mark Center Drive, Alexandria, VA 22350–1100.

SUPPLEMENTARY INFORMATION:

1. Background

Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337, as amended by section 1109 of the NDAA for FY 2000, Public Law 106–65, and section 1114 of the NDAA for FY 2001, Public Law 106–398, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as STRLs. All STRLs authorized by section 1105 of the NDAA for FY 2010, Public Law 111–84, as well as any newly designated STRLs authorized by SECDEF or future legislation may utilize the provisions described in this **Federal Register** Notice (FRN). STRLs implementing this flexibility must have an approved personnel management demonstration project plan published in a FRN and shall fulfill any collective bargaining obligations. Each STRL shall establish internal operating instructions as appropriate. The fifteen current STRLs are:

- Army Research Laboratory (ARL)
- Aviation and Missile Research, Development, and Engineering Center (AMRDEC)
- Communications-Electronics Research, Development, and Engineering Center (CERDEC)
- Edgewood Chemical Biological Center (ECBC)
- Engineer Research and Development Center (ERDC)
- Medical Research and Materiel Command (MRMC)
- Natick Soldier Research, Development and Engineering Center (NSRDEC)
- Tank Automotive Research, Development and Engineering Center (TARDEC)
- Armament Research, Development and Engineering Center (ARDEC)
- Air Force Research Laboratory (AFRL)
- Office of Naval Research (ONR)
- Naval Research Laboratory (NRL)
- Naval Sea Systems Command (NAVSEA) Warfare Centers
- Naval Air Systems Command (NAVAIR) Warfare Centers, Weapons Division and Aircraft Division
- Space and Naval Warfare Systems Command, Space and Naval Warfare Systems Center (SSC), Atlantic and Pacific

The Above GS–15 Position concept was first implemented in September 1997 with the publication of the demonstration project plan for the U.S. Army Aviation Research, Development and Engineering Center (AVRDEC) and the U.S. Army Missile Research and Development Engineering Center (MRDEC) (now the AMRDEC). A subsequent phased implementation took place as the remaining STRL demonstration projects were approved. Forty billets were authorized by the Office of Personnel Management (OPM) to be delegated DoD-wide to STRLs for SSTM positions with duties and qualifications that exceeded the GS–15 classification criteria. These allocations are managed separately from the Senior Executive Service (SES), Scientific and Professional Positions (STs), and Senior-Level (SL) positions.

Section 1105 of the NDAA for FY 2010 designated additional STRLs into the personnel management demonstration projects and these STRLs published FRNs (Appendix B) that created pay bands above the GS–15 level in anticipation of a DoD initiative that would authorize such pay bands. The pay bands identified meet the criteria for establishment of the SSTM positions authorized by this FRN.

Section 1108 of the NDAA for FY 2009, Public Law 110–417, as amended by section 1101 of the NDAA for FY 2011, Public Law 111–383 and section 1103 of the NDAA for FY 2012, Public Law 112–81, authorized a direct-hire authority for candidates with an advanced degree to be appointed to scientific and engineering positions. This authority has provided the STRLs the ability to compete with private industry and academia resulting in expeditious appointments of high-quality advanced-degree candidates.

2. Overview

I. Introduction

A. Purpose

Section 1107(f) of NDAA for FY 2014 establishes in each STRL a category of positions entitled Senior Scientific Technical Managers (SSTM). The purpose of the SSTM category is to appropriately classify positions that surpass the GS–15 classification criteria. These positions would not be appropriately classified as STs because of the significant degree of technical supervisory and/or managerial authorities inherent in the positions. The SL classification designation would not be appropriate because it does not cover positions that involve fundamental research and development responsibilities. Similarly, the SES classification designation would also not be appropriate because it does not require the specialized scientific or engineering expertise required in the SSTM positions. The SSTMs also do not demonstrate the level of managerial authority and impact required of an SES position. The SSTMs establish a separate pay band level or career track. This notice implements the SSTM category.

Section 1107(a) of NDAA for FY 2014 establishes two new direct-hire authorities. In addition, Section 1108 of the NDAA for FY 2009, Public Law 110–417, as amended, established a direct-hire authority for qualified candidates with an advanced degree. The purpose of the direct-hire authorities is to provide a streamlined and accelerated hiring process to allow the STRLs to successfully compete with private industry and academia for high-quality scientific, engineering, and technician talent for both GS and Demonstration Project positions.

B. Required Waivers to Law and Regulation

Several laws, rules, and regulations will require waivers to implement the SSTM. Appendix A lists these laws and regulations. Section 1108 of the NDAA for FY 2009, as amended and Section 1107(a) of NDAA for FY 2014 waived subchapter I of 5 United States Code (U.S.C.) chapter 33 (other than sections

3303 and 3328) when using the direct-hire authorities.

C. Expected Benefits

(1) The SSTM authority is expected to:

(a) Properly classify and compensate senior professional individuals who are engaged in or managing research and development in the physical, biological, medical or engineering sciences or other closely related field and who provide technical supervision over such programs.

(b) Provide the opportunity for career development and expansion of a pool of experienced, prominent technical candidates meeting the levels of proficiency and leadership essential to create and maintain DoD state-of-the-art scientific, engineering, and technological operations; and

(c) Provide laboratories a sufficient number of properly classified Above GS–15 Positions to meet mission needs.

(2) The direct-hire authorities are expected to be very effective in streamlining and accelerating the hiring process for high-quality scientific, engineering, and technician positions, enhancing the STRL's ability to compete with private industry and academia for the high-quality candidates.

D. Participating Organizations and Employees

All DoD laboratories designated as STRLs under section 1105 of the NDAA for FY 2010 (including any newly designated STRLs authorized by SECDEF or by future legislation) with approved personnel management demonstration project plans published in **Federal Registers** may utilize the provisions described in this FRN.

II. Personnel System Changes

All current STRL demonstration project plans are hereby amended to add the following:

A. Description and Implementation of SSTM Positions

1. Authorized Positions

The number of authorized positions in each STRL, not including the 40 positions authorized by OPM, shall not exceed 1 percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made. If the 1 percent of authorized positions does not equate to a whole number, the STRL shall round down to the next lower number. Though the authorized number of SSTM positions may increase or decrease as the overall DoD science and engineering workforce increases or decreases, no SSTM employee will have his/her classification as a SSTM changed or his/her pay reduced, because the size of the STRL's science and engineering workforce has decreased. In such circumstances, an STRL may temporarily exceed its new authorized number until attrition occurs.

2. Position Classification

(a) Position Requirements

At a minimum, the paramount requirement for all SSTM positions is knowledge of and expertise in the specific scientific and/or technology areas related to the mission of the employing STRL and its Component. Position incumbents must perform the following:

- Furnish highly advanced and/or unprecedented scientific and/or technical guidance and recommendations to top-level administrative and technical management officials within the STRL, Component, DoD, other Government agencies, and outside organizations such as academia; *and*

- Primarily perform and/or manage research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of the STRL; *and*

- Carry out technical supervisory responsibilities involving technical planning and oversight of work accomplished through Federal civil service employees, assigned military members, non-Federal workers, and/or others, to include Intergovernmental Personnel Act (IPA) assignments, contractors, volunteers, etc.

Incumbents typically report to an SES or SES equivalent-level position. While all SSTM positions have technical supervisory responsibilities, they do not all meet the intent of the supervisory criteria specified in the OPM General Schedule Supervisory Guide (GSSG) or other applicable supervisory classification guidance as defined by a STRL's FRN. However, depending on the STRL missions, programs, and/or structure, some SSTM positions may have as a paramount responsibility accomplishing work through both the technical and administrative direction to others. These positions meet at least the minimum requirements for coverage under the GSSG and may be eligible for a supervisory pay differential in accordance with paragraph 8 of this FRN.

(b) Pay Bands/Career Track

This FRN authorizes STRLs to establish a separate pay band/career track level(s) or to modify existing pay band/career track level(s) to accommodate the SSTM category. Levels can be established to cover either supervisory or nonsupervisory positions, or both, as described in paragraph 2(a) above. Specific details regarding SSTM pay band/career track levels will be included in the STRLs internal operating instructions.

3. Designated Classification Officials for SSTM Positions

Laboratory directors, or their designees, are designated as the classification officials for SSTM positions. Specific details regarding each STRL's classification process, control and management of these positions will be included in the STRL's internal operating procedures.

4. Staffing and Recruitment

Positions may be filled: (a) On a temporary, term, or permanent basis utilizing appropriate internal and/or external competitive recruitment procedures; (b) through accretion-of-duties promotions; *or* (c) using a direct hire authority. Positions may also be filled temporarily using non-competitive procedures (e.g., detail and temporary promotions). Laboratory directors have the discretion to select the recruitment and staffing method most appropriate based on the specialized position requirements and available candidate pool. However, the recruitment and staffing methodology must include: (a) An internal process which incorporates an impartial, rigorous, and demanding assessment of candidates to evaluate the breadth of their technical expertise; (b) an external recruitment process; (c) creation of panels to assist in filling positions; *or* (d) other comparable recruitment and/or staffing mechanisms.

5. Basic Pay Range

The minimum basic pay for SSTM positions is 120 percent of the minimum rate of basic pay for GS–15. Maximum SSTM basic pay with locality pay is limited to Executive Level III (EX–III), and maximum salary without locality pay may not exceed EX–IV.

6. Performance Management

Each STRL will determine the appropriate performance/contribution management system, non-SES/SL/ST or SES/SL/ST program, to be used to evaluate an SSTM employee's performance/contribution. The selected method will be documented in the

STRL's Demonstration Program internal operating procedures.

7. Pay Retention

Pay retention may be provided to SSTM members under criteria established by each STRL who are impacted by a reduction in force, work realignment, or other planned management action that would necessitate moving the incumbent to a position in a lower pay band within the STRL. Pay retention may also be provided under criteria established by each STRL when an SES or ST employee is placed in a SSTM position as a result of reduction in force or other management action. Grade retention is not authorized for members of the SSTM.

8. SSTM Supervisory Pay Differential

A supervisory pay differential may be used by laboratory directors to provide an incentive to appropriately compensate SSTM personnel. This pay differential is a pay incentive that may range up to 5 percent of base pay (excludes locality pay) for SSTM personnel. It is paid on a pay period basis with a specified not-to-exceed date up to 1 year and may be renewed as appropriate. This pay differential is not included as part of base pay for any purpose. Criteria to be considered in determining the amount of the pay differential are: (a) Needs of the organization; (b) budgetary constraints; (c) years and quality of related experience; (d) relevant training; (e) performance appraisals; (f) experience as a supervisor/manager; (g) organizational level of position; and (h) impact on the organization. The pay differential may be terminated or reduced at the discretion of the laboratory director based on legitimate business reasons; however, the pay differential must be terminated if the employee is removed from a position for which a pay differential is approved, regardless of cause. Each STRL will document in their internal operating procedures the method used for determining payment, reduction, or discontinuation of the pay differential. All personnel actions involving a supervisory pay differential will require a statement signed by the employee acknowledging that the pay differential may be terminated or reduced at the discretion of the laboratory director. The termination or reduction of the pay differential is not an adverse action and is not subject to appeal. The total pay (including locality pay) may not exceed the midpoint between the maximum rate of basic pay of EX–III and the maximum rate of basic pay of EX–II, (i.e. $175,000; (calculation is rounded up to the next thousand) for calendar year 2014). SSTM employees are subject to the aggregate limitation on pay found in 5 U.S.C. 5307 and 5 Code of Federal Regulations (CFR) subpart 530.203.

9. SSTM Program Oversight

The program shall be managed and administered by the laboratory director in compliance with the provisions of this FRN and internal operating procedures developed by each STRL. The number of SSTM positions established pursuant to section 1107(f) shall not exceed 1 percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made, and will be reviewed annually by each STRL's Laboratory Director, or his/her designee, to determine the appropriate number of positions authorized as a result of increases or decreases in the STRL's scientific and engineering workforce. This authorization may be amended by future legislation.

New appointments under this authority may not be made after December 31, 2019 unless Section 1107(f) of NDAA for FY 2014 is amended. Candidates appointed prior to January 1, 2020, may remain in the position as appropriate.

10. Evaluation

Procedures for evaluating this authority will be incorporated into the normal STRL demonstration project evaluation process conducted by the STRLs, DASD(CPP), Director of Laboratories, or Component Headquarters, as appropriate.

11. Reports

STRLs will provide information and data on the use of this authority including numerical limitations, hires made, declinations, difficulties encountered, and/or recognized efficiencies, when requested by the Military Department or the DASD(CPP).

B. Direct-Hire

1. Authorities

STRLs will use the direct-hire authorities authorized by section 1108, NDAA for FY 2009 and section 1107, NDAA for FY 2014, as appropriate, to appoint the following:

(a) Candidates with advanced degrees to scientific and engineering positions;

(b) Candidates with bachelor's degrees to scientific and engineering positions; and

(c) Veteran candidates to scientific, technical, engineering, and mathematics positions, including technicians.

New appointments under (b) and (c) above may not be made after December 31, 2019, unless these authorities are amended by future legislation.

2. Definitions

(a) Scientific and engineering positions are defined as all professional positions, both within the personnel demonstration project and those that are outside the personnel demonstration project as defined in the applicable FRN in scientific and engineering occupations with a positive education requirement.

(b) An advanced degree is a Master's or higher degree from an accredited college or university in a field of scientific or engineering study directly related to the duties of the position to be filled.

(c) Scientific, engineering, technical, mathematic, and technician positions are those demo positions described in the STRL FRN (Appendix B) or Internal Operating Procedures in the Scientist and Engineer and/or Technician/Technical Career Paths or positions outside the personnel demonstration project as defined in the applicable FRN utilized by the STRLs, that directly support the science and engineering activities. The non-demo positions will be identified in internal operating procedures.

(d) Qualified candidates are defined as candidates who:

(1) Meet the minimum qualification standards for the position as published in OPM's operating manual, ''Qualification Standards for General Schedule Positions,'' or the STRL's demonstration project qualification standards specific to the position to be filled; and

(2) Meet any selective factors.

(e) ''Employee'' is defined by 5 U.S.C. 2105.

(f) ''Veteran'' is defined by 38 U.S.C. 101.

3. Provisions

(a) Use of this appointment authority must comply with merit system principles.

(b) Appointments may be made on a permanent, term, or temporary basis.

(c) Qualified bachelor's and advanced degree candidates for scientific and engineering positions may be appointed without regard to the provisions of subchapter 1 of 5 U.S.C. chapter 33 (other than sections 3303 and 3328), including 5 CFR parts 300–330 other than Subpart G of 5 CFR part 300.

(d) Qualified veteran candidates for scientific, technical, engineering, and

mathematics positions, including technicians, may be appointed without regard to the provisions of subchapter 1 of 5 U.S.C. chapter 33, including 5 CFR parts 300–330 other than Subpart G of 5 CFR part 300.

(e) When documenting personnel actions, cite the first legal authority code (LAC)/legal authority for all permanent, term, temporary, or special demonstration project appointments as Z2U/P.L. 103–337. The second LAC/legal authority will be cited as follows:

(1) For appointments of advanced degree candidates to scientific and engineering positions: Z5C/Direct Hire Auth (STRL-Advanced Degree), Sec 1108, PL 110–417, 10/14/2008;

(2) For appointments of bachelor's degree candidates to scientific and engineering positions: Z5C/Direct Hire Auth (STRL-Bachelor), Sec 1107(a)(1), PL 113–66, 12/26/2013; and

(3) For appointments of veteran candidates to scientific, technical, engineering, and mathematics positions, including technicians: Z5C/Direct Hire Auth (STRL-Veterans), Sec 1107(a)(2), PL 113–66, 12/26/2013.

4. Authorized Positions

(a) Advanced degree for scientific and engineering positions. The number of appointments made in a calendar year may not exceed 5 percent of the total number of demo and non-demo scientific and engineering positions, to include SES, ST, above GS–15, military and students in the S&E x99 series, within the STRL that are filled as of the close of the fiscal year ending before the start of such calendar year.

(b) Bachelor's degree for scientific and engineering positions. The number of appointments made in a calendar year may not exceed 3 percent of the total number of demo and non-demo scientific and engineering positions, to include SES, ST, above GS–15, military and students in the S&E x99 series, within the STRL that are filled as of the close of the fiscal year ending before the start of such calendar year.

(c) Veteran authority for scientific, technical, engineering, mathematics and technician positions. The number of appointments made in a calendar year may not exceed 1 percent of the total number of demo and non-demo scientific, technical, engineering, mathematics, and technician positions, to include SES, ST, above GS–15, military, and students in the S&E x99 series, within the STRL that are filled as of the close of the fiscal year ending before the start of such calendar year.

(d) When determining the number of appointments authorized, if the percentage of authorized positions does not equate to a whole number, the STRL shall round down to the next lower number.

(e) These authorizations may be amended by future legislation.

5. Evaluation

STRLs will provide information and data on the use of these direct-hire appointment authorities including numerical limitations, hires made, declinations, veterans hired, difficulties encountered, and/or recognized efficiencies, when requested by the Military Department or the DASD(CPP).

Appendix A

United States Code and Code of Federal Regulations Waived Science and Technology Reinvention Laboratories

Title 5, United States Code	Title 5, Code of Federal Regulations
	5 CFR 359.705 to allow demonstration project rules governing pay retention to apply to a former SES placed on an SSTM position.
5 U.S.C. § 3104—Employment of Specially Qualified Scientific and Professional Personnel. Waive to allow scientific, engineering and technology positions authorized under Section 1107(f) of 2014 NDAA.	5 CFR 300–330, other than Subpart G of 300 waived to the extent necessary to allow provisions of the direct hire authorities as described in this **Federal Register** notice.
5 U.S.C. § 3324—Appointments to Positions Classified Above GS–15; and 5 U.S.C. § 3325—Appointments to Scientific and Professional Positions. Waived in entirety.	
5 U.S.C. § 5301—Policy; 5 U.S.C. § 5302(8) and (9)—Definitions; 5 U.S.C. § 5303—Annual Adjustments to Pay Schedules; 5 U.S.C. § 5304—Locality-based Comparability Payments; and 5 U.S.C. § 5306—Pay Fixed by Administrative Action. Waived to the extent necessary to allow SSTM employees to be treated as GS employees and basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay and to permit SSTM pay not to exceed EX–IV and locality adjusted SSTM rates not to exceed EX III.	5 CFR 531, subpart F—Locality-based Comparability Payments. Waived to the extent necessary to allow SSTM employees to be treated as GS employees and basic rates of pay under the SSTM to be treated as scheduled annual rates of pay.
5 U.S.C. § 5363 to the extent necessary to allow SSTMs to receive pay retention as described in this **Federal Register** Notice.	5 CFR 536.306(a) to the extent necessary to allow SSTMs to receive pay retention as described in this **Federal Register** Notice.
5 U.S.C. § 5755 to the extent necessary to allow SSTMs to receive supervisory pay differentials as described in this **Federal Register** Notice.	5 CFR 575, Subpart D, to the extent necessary to allow SSTMs to receive supervisory pay differentials as described in this **Federal Register** Notice.

Appendix B

STRLs Federal Register Notice of Approval of a Demonstration Project Plan

Part 1: STRLs Authorized by Director of Defense Research and Engineering, Memo 30 Aug 1994 and Section 342 of FY 1995 NDAA, Public Law 103–337

STRL	**Federal Register** notice
Air Force Research Laboratory	61 FR 60400 amended by 75 FR 53076.
Army Research Laboratory	63 FR 10680.
Aviation and Missile Research, Development, and Engineering Center	62 FR 34906 and 62 FR 34876 amended by 65 FR 53142 (AVRDEC and AMRDEC merged together).

STRL	Federal Register notice
Communications-Electronics Research, Development, and Engineering Center.	66 FR 54872.
Engineer Research and Development Center	63 FR 14580.
Medical Research and Material Command	63 FR 10440.
Naval Research Laboratory	64 FR 33970.
Naval Sea Systems Command Warfare Centers	62 FR 64050.

Part 2. STRLs Authorized by Section 1105 of FY 2010 NDAA, Public Law 111–84

STRL	Federal Register notice
Armament Research, Development and Engineering Center	76 FR 3744.
Edgewood Chemical Biological Center	74 FR 68936.
Natick Soldier Research, Development and Engineering Center	74 FR 68448.
Naval Air Systems Command Warfare Centers, Weapons and Aircraft Divisions.	76 FR 8530.
Office of Naval Research	75 FR 77380.
Space and Naval Warfare Systems Command, Space and Naval Warfare Systems Center, Atlantic and Pacific.	76 FR 1924.
Tank Automotive Research, Development and Engineering Center	76 FR 12508.

Dated: July 23, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–17657 Filed 7–25–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0114]

Privacy Act of 1974; system of records

AGENCY: Defense Health Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Health Agency is proposing to alter an existing system of records, EDHA 08, entitled ''Health Affairs Survey and Study Data Base'', in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will be used to collect, assemble, interpret, analyze, report and publish survey and study findings and results for the purpose of improving the quality of DoD health care and the health status, welfare, and well-being of the DoD beneficiary population. Uses of identifiable data include primary analysis; secondary analysis; non-response analysis; and cross-mapping analysis. Results will only be reported in the aggregate.

DATES: Comments will be accepted on or before August 27, 2014. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Linda S. Thomas, Chief, Defense Health Agency Privacy and Civil Liberties Office, Defense Health Agency, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, or by phone at (703) 681–7500.

SUPPLEMENTARY INFORMATION: The Defense Health Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 1, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 22, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

EDHA 08

SYSTEM NAME:

Health Affairs Survey and Study Data Base (November 18, 2013, 78 FR 69076).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Defense Health Agency Survey and Study Data Base.''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Health Cost Assessment and Program Evaluation Division, Defense Health Agency, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Uniformed services beneficiaries enrolled in the Defense Eligibility Enrollment Reporting System (DEERS) who are eligible for medical and dental health care; veterans and their

dependents; individuals who submit Medicare and/or Medicaid claims and are linked to DoD health care; DoD civilian employees and contractor personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records in the system include name, address, sponsor and dependents' Social Security Number (SSN) and/or DoD Identification (DoD ID) number, family member prefix, demographics categories that include age, sex, date of birth, telephone number, email address, and military rank/civilian grade level, rank group (officer, enlisted, or civilian), patient identifier, and beneficiary category.

Personal health information and clinical encounter data regarding interactions with health care systems, such as diagnoses, procedures, treatments, services, and benefits; self-reported health and health related response datasets such as surveys and focus groups; health care administrative data, such as inpatient, dental, outpatient, and pharmacy utilization rates; budgetary and managerial cost accounting data, such as claims processing, direct and purchased care workload, and costs; contingency tracking system data such as deployment status; and health plan eligibility and enrollment data.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1071 Notes, Annual Beneficiary Survey; 10 U.S.C. Chapter 55, Medical and Dental Care; 42 U.S.C. Chapter 117, Encouraging Good Faith Professional Review Activities; DoDI 6025.13, Medical Quality Assurance (MQA) in the Military Health System (MHS); and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To collect, assemble, interpret, analyze, report and publish survey and study findings and results for the purpose of improving the quality of DoD health care and the health status, welfare, and well-being of the DoD beneficiary population. Uses of identifiable data include primary analysis; secondary analysis; non-response analysis; and cross-mapping analysis. Results will only be reported in the aggregate.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities.

To the Office of Personnel Management for purposes related to DoD Federal employees and/or their health care benefits through DoD.

To local and state governments and agencies for compliance with local laws and regulations governing control of communicable diseases, preventive medicine and safety; child abuse; and other public health and welfare programs.

To academic, nonprofit, and commercial entities for surveys or authorized health research in the interest of the Federal Government and the public, where such releases are consistent with the mission of the Military Health System. When not essential for longitudinal studies, patient identification data shall be deleted from records used for research studies.

THE DOD BLANKET ROUTINE USES MAY APPLY TO THIS SYSTEM WITH THE FOLLOWING NOTED EXCEPTIONS:

Note 1: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) or any successor DoD issuances implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 45 CFR Parts 160 and 164, Health and Human Services, General Administrative Requirements and Security & Privacy, respectively, applies to most such health information. DoD 6025.18–R or a successor issuance may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974, as amended, or mentioned in this system of records notice.

Note 2: Except as provided under 42 U.S.C. 290dd–2, records of identity, diagnosis, prognosis or treatment information of any patient maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research which is conducted, regulated, requested, or directly or indirectly assisted by a department or agency of the United States will be treated as confidential and disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Records may be retrieved by name, DoD ID number or patient identifier, address, beneficiary category, sponsor and dependents SSN, family member prefix, demographic categories, such as age, sex, email address, military rank/civilian grade level, and rank group (officer, enlisted, or civilian).''

SAFEGUARDS:

Delete entry and replace with ''Media, data and/or records are maintained in a controlled area. The computer system is accessible only to authorized personnel. Entry into these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, passwords which are changed periodically, and administrative procedures. The system provides two-factor authentication including Common Access Cards or other means such as user ID/passwords. Access to personal information is restricted to those who require the data in the performance of their official duties, and have received proper training relative to the Privacy Act of 1974, as amended, the HIPAA Privacy and Security Rules, and Information Assurance.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Hard copy surveys are destroyed after the information contained in survey responses is entered into a computer system.

Annual Beneficiary Survey, Destroy when 5 years old.

Inpatient, Outpatient and other Beneficiary Satisfaction Surveys, Destroy when 5 years old.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Defense Health Cost Assessment and Program Evaluation Division, Defense Health Agency, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Director, Defense Health Cost Assessment and Program Evaluation Division, Defense Health Agency, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.

Requests should contain the name and number of this system of records notice, the individual's full name, current address, telephone number, and signature.

If requesting information about a minor or legally incompetent person,

the request must be made by the custodial parent, legal guardian, or party acting in loco parentis of such individual. Written proof of that status may be required before the existence of any information will be confirmed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act Service Center, Defense Health Agency Privacy and Civil Liberties Office, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.

Requests should contain the name and number of this system of records notice, the individual's full name, current address, telephone number, and signature.

If requesting records about a minor or legally incompetent person, the request must be made by the custodial parent, legal guardian, or party acting in loco parentis of such individual. Written proof of that status may be required before any records will be provided.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Office of the Secretary of Defense (OSD) rules for accessing records, for contesting contents, and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR Part 311; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individuals, DEERS, the Uniformed Services medical and dental treatment facilities, and facilities contracted by DoD to perform medical care for military members, former members, and dependents.''

* * * * *

[FR Doc. 2014–17626 Filed 7–25–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0108]

Agency Information Collection Activities; Comment Request; Race to the Top Program Review Protocols

AGENCY: Office of the Secretary/Office of the Deputy Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 26, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0108 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Patrick Carr, 202–708–8196.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Race to the Top Program Review Protocols.

OMB Control Number: 1894–0011.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 744.

Abstract: The ARRA provides $4.3 billion for the Race to the Top Fund (referred to in the statute as the State Incentive Grant Fund). This is a competitive grant program. The purpose of the program is to encourage and reward States that are creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in four core education reform areas: (a) Adopting internationally-benchmarked standards and assessments that prepare students for success in college and the workplace; (b) building data systems that measure student success and inform teachers and principals in how they can improve their practices; (c) increasing teacher effectiveness and achieving equity in teacher distribution; and (d) turning around our lowest-achieving schools.

The U.S. Department of Education (the Department) will collect this data from the 12 Race to the Top grantee states to inform its review of grantee implementation, outcomes, oversight, and accountability. The Department will use these forms to inform on-site visits, ''stocktake'' meetings with Implementation and Support Unit (ISU) leadership at the Department, and annual reports for individual grantees and the grant program as a whole.

In order to allow for a comprehensive program review of the Race to the Top grantees, we are requesting a 3 year clearance with this form.

Dated: July 23, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–17650 Filed 7–25–14; 8:45 am]

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DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers—Vocational Rehabilitation Practices for Youth and Young Adults.

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–1.

DATES:

Applications Available: July 28, 2014.

Deadline for Notice of Intent to Apply: August 25, 2014.

Date of Pre-Application Meeting: August 18, 2014.

Deadline for Transmittal of Applications: September 2, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified by NIDRR with guidance from its Rehabilitation Research Advisory Council. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: *http://www2.ed.gov/programs/rrtc/index.html*.

Priorities: NIDRR has established two absolute priorities for the competition announced in this notice. Absolute Priority 1, the General RRTC Requirements priority, which applies to all RRTC competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). Absolute Priority 2, the Vocational Rehabilitation Practices for Youth and Young Adults, is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of these absolute priorities.

These priorities are:

Absolute Priority 1—General RRTC Requirements.

Note: The full text of the General RRTC Requirements priority is included in the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132), and in the application package for this competition.

Absolute Priority 2—Vocational Rehabilitation Practices for Youth and Young Adults.

Note: The full text of the Vocational Rehabilitation Practices for Youth and Young Adults priority is included in the notice of final priority published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2)(A).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program published in the **Federal Register** on February 1, 2008 (73 FR 6132). (e) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $875,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Maximum Award: $875,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133B–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning

the content of an application, together with the forms you must submit, are in the application package for the competition announced in this notice.

Notice of Intent to Apply: Due to the broad nature of the priorities in these competitions, and to assist with the selection of reviewers for these competitions, NIDRR is requesting all potential applicants to submit a letter of intent (LOI). The submission is not mandatory and the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, the name of the applicant, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of an LOI is not a prerequisite for eligibility to submit an application.

NIDRR will accept the optional LOI via mail (through the U.S. Postal Service or commercial carrier) or email, by August 25, 2014. The LOI must be sent to: Patricia Barrett, U.S. Department of Education, 550 12th Street SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202; or by email to: *patricia.barrett@ed.gov*.

For further information regarding the LOI submission process, contact Patricia Barrett at (202) 245–6211. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″ , on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. You are not required to double space titles, headings, footnotes, references, captions, or text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

Note: Please submit an appendix that lists every collaborating organization and individual named in the application, including staff, consultants, contractors, and advisory board members. We will use this information to help us screen for conflicts of interest with our reviewers.

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. *Submission Dates and Times:*

Applications Available: July 28, 2014.

Deadline for Notice of Intent to Apply: August 25, 2014.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on August 18, 2014.

Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: September 2, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and

accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html*.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html*.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under this RRTC competition, CFDA number 84.133B–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for this RRTC competition at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, PCP, Washington, DC 20202–2700. FAX: (202) 245–6211.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–1) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–1), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, PCP, Washington, DC 20202–2700. Telephone: (202) 245–6211 or by email: *patricia.barrett@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 23, 2014.

Melody Musgrove,

Director, Office of Special Education Programs.

[FR Doc. 2014–17720 Filed 7–25–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Research Fellowships Program (also known as the Mary E. Switzer Research Fellowships)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

National Institute on Disability and Rehabilitation Research (NIDRR)—Research Fellowships Program (also known as the Mary E. Switzer Research Fellowships)

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F–2.

DATES:

Applications Available: July 28, 2014.

Deadline for Notice of Intent to Apply: August 18, 2014.

Date of Pre-Application Meeting: August 7, 2014.

Deadline for Transmittal of Applications: September 2, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to experienced, highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities.

Fellows must conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended (the Act). Section 204 of the Act authorizes research, demonstration projects, training, and related activities, the purposes of which are to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most significant disabilities, and to improve the effectiveness of services authorized under the Act.

Priority: NIDRR has established one absolute priority for the competition announced in this notice. The Research Fellowships Program permits two types of fellowships, Distinguished and Merit. At this time, NIDRR is choosing to fund a Distinguished Fellowship. The absolute priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**. *Absolute Priority:* For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, the priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

The priority is:

Distinguished Residential Disability and Rehabilitation Policy Fellowship (also known as the Mary E. Switzer Research Fellowships).

Note: The full text of the priority is included in the notice of final priority for the Research Fellowships Program

published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61, and parts 77, 81, 82, 84, and 97. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 356. (d) The regulations in 34 CFR 350.51 and 350.52.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: $125,000.
Maximum Award: $125,000.
Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months. We will reject any application that proposes a project period other than 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Eligible individuals must: (1) Satisfy the requirements of 34 CFR 75.60 and 75.61 and (2) have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities.

To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

Note: Institutions are not eligible to be recipients of research fellowships.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133F–2.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 24 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. You are not required to double space titles, headings, footnotes, references, captions, or text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit for the application narrative does not apply to the documents you upload to the Grants.gov Apply site under the other two headings: ED Project Abstract and Other Attachments. The ED Project Abstract Form should contain only your one-page abstract. The Other Attachments Form should contain all other attachments, including your bibliography, eligibility statement, resume/curriculum vitae, and letters of recommendation/support. Information regarding the protection of human subjects, if applicable, should be included under the Other Attachments Form or in the place provided on the SF–424 Supplemental Form. You do not need to upload a table of contents for your application, as this will be automatically generated by Grants.gov.

We will reject your application if you exceed the page limit.

In concert with the balance principle described in NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299), applicants for the Distinguished Fellowship should specify in their abstract and application narrative which of NIDRR's major domains of individual well-being their research will focus on: (a) Community living and participation, (b) employment, or (c) health and function. Although applicants may propose projects that address more than one domain, they should identify in their proposal the primary domain addressed in their proposed research.

Note: Please submit an appendix that lists every collaborating organization and individual named in the application, including the mentor, staff, consultants, contractors, and advisory board members. We will use this information to help us screen for conflicts of interest with our reviewers.

3. *Submission Dates and Times:*

Applications Available: July 28, 2014.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on August 7, 2014. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: September 8, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Applicants are not required to submit a budget with their proposal.

The Distinguished Fellowship award is a Full-Time Equivalent (FTE) award. A fellow must work principally on the fellowship during the term of the fellowship award. We define ''FTE'' as equal to 40 hours per week. A fellow is not allowed to be a direct recipient of Federal government grant funds in addition to those provided by the Distinguished Fellowship grant (during the duration of the fellowship award performance period). A fellow may, subject to compliance with his or her institution's policy on additional employment, work on a Federal grant that has been awarded to the fellow's institution. A Distinguished Fellow may be allowed to dedicate additional hours beyond the fellow's FTE requirement for the fellowship to other work during the fellowship grant performance period, if this is in keeping with the guidelines offered by the home institutions. In other words, NIDRR defers to the guidelines of the fellow's home institution regarding the admissibility of work in excess of the one FTE dedicated to the fellowship. NIDRR strongly recommends that any additional hours be limited to .25 FTE (or 10 hours per week), but requires that additional hours not exceed .5 FTE (or 20 hours per week).

To satisfy the requirement that fellows devote one FTE to the fellowship work, applicants must include in their Eligibility Statement a plan for how they will fulfill the obligation to work on the fellowship during the term of the fellowship award. We will reject your application if you fail to include such a plan in your Eligibility Statement.

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Requirements for Registering for Grants.gov and Submitting Your Application:* All individuals applying for a research fellowship must register at *www.Grants.gov* prior to submitting their application. To register with Grants.gov you must know the Funding Opportunity Number (FON) of the grant opportunity you are applying for. You can obtain this number by searching Grants.gov using the CFDA number, 84.133. This search will lead you to available NIDRR solicitations and identify the FON for each. You will use the FON to register in Grants.gov. Once you register with Grants.gov, to facilitate the safe and secure transfer of your application to the Department, you will be asked to create a profile with your username and password, which will be used to identify you within the system, and create an electronic signature. Details on registering with Grants.gov as an individual are outlined in the following Grants.gov tutorial: *www.grants.gov/assets/IndividualRegistrationOverview.html.*

To register with Grants.gov, you do not have to provide a Data Universal Numbering System Number, a Taxpayer Identification Number, or your Social Security Number (SSN). You also do not have to complete a Central Contractor Registry or System for Award Management registration in order to access Grants.gov or submit your application.

However, your SSN is required to complete your application for a research fellowship.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Research Fellowships Program competition, CFDA number 84.133F–2, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Research Fellowships Program competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133F).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, PCP, Washington, DC 20202–2700. FAX: (202) 245–6211.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F–2), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F–2), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 356.30 through 356.32 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high-quality products. Performance measures for the Research Fellowships Program include—

- The number of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals;
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific or engineering methods, and builds on and contributes to knowledge in the field; and
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through a review of grantee performance and products. For these reviews, NIDRR uses information submitted by grantees as part of their final performance report. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes. Because grants made under the Research Fellowships Program are limited to a maximum of 12 months, they are not eligible for continuation awards.

VII. Agency Contact

For Further Information Contact: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, PCP, Washington, DC 20202–2700. Telephone: (202) 245–6211 or by email: *patricia.barrett@ed.gov*.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 23, 2014.

Melody Musgrove,

Director, Office of Special Education Programs.

[FR Doc. 2014–17708 Filed 7–25–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Inviting Publishers To Submit Tests for a Determination of Suitability for Use in the National Reporting System for Adult Education

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

DATES: Deadline for transmittal of applications: October 1, 2014.

SUMMARY: The Secretary of Education (1) invites publishers to submit tests for review and approval for use in the National Reporting System for Adult Education (NRS); and (2) announces the date by which publishers must submit these tests.

FOR FURTHER INFORMATION CONTACT: Michelle Meier, U.S. Department of Education, 400 Maryland Avenue SW., room 11162, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7890 or by email: *Michelle.Meier@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department's regulations for Measuring Educational Gain in the National Reporting System for Adult Education, 34 CFR part 462 (NRS regulations), include the procedures for determining the suitability of tests for use in the NRS.

Criteria the Secretary uses: In order for the Secretary to consider a test suitable for use in the NRS, the test must meet the criteria and requirements established in § 462.13.

Submission Requirements:

(a) In preparing your application, you must comply with the requirements in § 462.11.

(b) In accordance with § 462.10, the deadline for transmittal of applications is October 1.

(c) Whether you submit your application by mail (through the U.S. Postal Service or a commercial carrier) or deliver your application by hand or by courier service, you must mail or deliver three copies of your application, on or before the deadline date, to the following address: NRS Assessment Review, c/o American Institutes for Research, 1000 Thomas Jefferson Street NW., Washington, DC 20007.

(d) If you submit your application by mail or commercial carrier, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

(e) If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(f) If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(g) If you submit your application by hand delivery, you (or a courier service) must deliver three copies of the application by hand, on or before 4:30:00 p.m., Washington, DC time, on the application deadline date.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 9212.

Dated: July 23, 2014.

Johan E. Uvin,

Acting Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2014–17796 Filed 7–25–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation

AGENCY: Office of Postsecondary Education, U.S. Department of Education, National Committee on Foreign Medical Education and Accreditation.

ACTION: The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation (NCFMEA). Parts of this meeting will be open to the public, and the public is invited to attend those portions.

Meeting Date and Place: The public meeting will be held on Thursday, September 4, 2014, from 8:00 a.m. until approximately 12:30 p.m., at the U.S. Department of Education, Eighth Floor Conference Center, Office of Postsecondary Education, 1990 K Street NW., Washington, DC 20006. The Committee will meet in Executive Session in the afternoon from 1:30 p.m. until approximately 5:30 p.m. This session will not be open to the public.

Function: The NCFMEA was established by the Secretary of Education under Section 102 of the Higher Education Act of 1965, as amended. The NCFMEA's responsibilities are to:

- Upon request of a foreign country, evaluate the standards of accreditation applied to medical schools in that country; and,
- Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

Comparability of the applicable accreditation standards is an eligibility requirement for foreign medical schools to participate in the William D. Ford Federal Direct Student Loan Program, 20 U.S.C. 1087a et seq.

Meeting Agenda: The NCFMEA will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States and/or reports previously requested of countries by the NCFMEA. Discussion of the standards of accreditation will be held in sessions open to the public.

Discussions resulting in specific determinations of comparability are closed to the public in order that each country may be properly notified by the Department of the Committee's decision.

The countries which are scheduled to be discussed are Antigua and Barbuda, Czech Republic, India, Jamaica, and Poland. The meeting agenda, as well as the staff analyses pertaining to the meeting will be posted on the Department of Education's Web site prior to the meeting at *http://www2.ed.gov/about/bdscomm/list/ncfmea.html.*

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice by August 25, 2014, although we will attempt to meet a request received after that date.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director for the NCFMEA, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: 202 219–7035; fax: 202 502–7874, or email: *Carol.Griffiths@ed.gov.*

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Lynn B. Mahaffie,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–17726 Filed 7–25–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES AND TIMES:
August 19, 2014, 8:30 a.m.–5:30 p.m.
August 20, 2014, 8:30 a.m.–12:00 p.m.

ADDRESSES: The Westin Kansas City at Crown Center, 1 E Pershing Rd., Kansas City, MO 64108.

FOR FURTHER INFORMATION CONTACT: Elliott Levine, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586–1476; Email: *Elliott.Levine@ee.doe.gov* or Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Overview of DOE Bioenergy Technologies Office Multi-Year Program Plan
- Panel discussion on the use of Biomass for Renewable Chemicals & Materials

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Elliott Levine at 202–586–1476; Email: *Elliott.Levine@ee.doe.gov* and Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com* at least 5 business days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at *http://biomassboard.gov/committee/meetings.html.*

Issued at Washington, DC, on July 22, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–17723 Filed 7–25–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 4, 2014, 8:30 a.m.–5:00 p.m. Friday, September 5, 2014, 8:30 a.m.–3:00 p.m.

ADDRESSES: Red Lion Hotel, 2525 N. 20th Avenue, Pasco, WA 99301.

FOR FURTHER INFORMATION CONTACT: Kristen Skopeck, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–5803; or Email: *kristen.skopeck@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Potential Draft Advice
  - Resource Conservation and Recovery Act (RCRA) Class III Modifications
  - Environmental Restoration Disposal Facility Record of Decision Amendment
- Discussion Topics
  - 100 F/IU Area Proposed Plan
  - Hanford Advisory Board Committee Reports

■ Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristen Skopeck at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kristen Skopeck at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Kristen Skopeck's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC on July 18, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–17715 Filed 7–25–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open live board meeting.

SUMMARY: This notice announces a Board meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: August 20, 2014, 9:00 a.m. to 5:00 p.m., August 21, 2014, 9:00 a.m. to 3:30 p.m.

ADDRESSES: Washington Marriott Georgetown, 1221 22nd Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Julie Hughes, STEAB Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202–320–9703, *Julie.Hughes@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Review deliverables and accomplishments from the STEAB Engagement Plan for FY 2014, meet with members of EERE to discuss the status of the Lab Impact Initiative, explore opportunities to continue assisting with the QER process, discuss updates and provide recommendations on the Weatherization Assistance Program, receive updates from key members of EERE, and update members of the Board on routine business matters.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Julie Hughes at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the STEAB Web site, *www.steab.org.*

Issued at Washington, DC, on July 22, 2014.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–17727 Filed 7–25–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Expanding Bioeconomy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: DOE's Bioenergy Technologies Program on behalf of the interagency Biomass Research and Development (R&D) Board today announces an open meeting and call for information to solicit information and viewpoints from interested parties on the challenges and opportunities of expanding the bioeconomy. This notice is being published less than 15 days prior to the meeting date due to logistical issues that had to be resolved prior to the meeting date.

DATES: July 31, 2014 7:30 a.m.—5:30 p.m.

ADDRESSES: Walter E. Washington Convention Center, 801 Mt Vernon Pl., NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Alicia Lindauer, Designated Federal Official for the Workshop, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585, email *alicia.lindauer@ee.doe.gov,* 720–356–1356.

SUPPLEMENTARY INFORMATION:

Purpose of the meeting: To receive comments and input on a national vision for a bioeconomy based on the use of biomass for biofuels, bioproducts, and biopower. The Biomass R&D Board intends to hear from interested parties on the challenges and opportunities currently facing the bioenergy sector.

Tentative Agenda: The workshop will include presentations from Biomass R&D Board Agency representatives on ongoing activities in the bioenergy field. The meeting will feature three sessions for public comment on challenges and opportunities in Feedstocks and Logistics, Conversion Technologies, and Distribution and End Use.

Public Participation: Members of the public are encouraged to attend, however, there is limited seating available and only the first 120 registrants will be allowed to attend the workshop. If you would like to register to attend the workshop, or to attend the workshop and provide oral comments during one of the comment sessions, please contact Ashley Rose at *Ashley.rose@ee.doe.gov.* The deadline for registration is July 30, 2014. If you are unable to attend the event and would like to submit written comments for consideration, please email them to *Ashley.rose@ee.doe.gov.*

Instructions: Any information, input, and data as part of written or oral comments may be made available to the public. Do not include any personal information or information claimed to

be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute in either written or verbal form.

The maximum time allowed for oral comments at the meeting is five (5) minutes per individual. The maximum number of speakers from the same organization will be limited to one (1). Those speaking are asked to provide written comments in advance of the meeting if possible. No slides or handouts will be allowed. The agency representatives may ask clarifying questions during the oral presentations but will not respond to the presentations during the meeting. Written statements and supporting information submitted before the deadline will be considered with the same weight as oral comments presented at the workshop.

Please designate which session you are providing written and oral comments to:

- Session One: *Opportunities and Challenges Facing the Industry—Feedstock Production and Logistics*
- Session Two: *Opportunities and Challenges Facing the Industry—Conversion Technologies*
- Session Three: *Opportunities and Challenges Facing the Industry—Distribution and End Use*

Issued in Washington, DC, on July 22, 2014.

Jonathan Male,

Director, Bioenergy Technologies Office.

[FR Doc. 2014–17713 Filed 7–25–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1179–020.

Applicants: Southwest Power Pool, Inc.

Description: Integrated Marketplace Fourth Compliance Filing to be effective 3/1/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5072.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2232–001.

Applicants: Capital Energy LLC.

Description: Amendment to 1 to be effective 6/21/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5044.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2450–000.

Applicants: Duke Energy Florida, Inc.

Description: New Smyrna Beach PPA—RS 218 (3rd Amendment) to be effective 9/15/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5043.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2451–000.

Applicants: Great Lakes Hydro America, LLC.

Description: Great Lakes Hydro America, LLC MBR Filing to be effective 7/17/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5047.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2452–000.

Applicants: Louisville Gas and Electric Company.

Description: Attachment L Tariff Revisions to be effective 9/15/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5060.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2453–000.

Applicants: Delaware City Refining Company LLC.

Description: DCRC and PBF Change in Status Filing to be effective 7/17/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5063.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2454–000.

Applicants: PBF Power Marketing LLC.

Description: DCRC and PBF Change in Status Filing to be effective 7/17/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5064.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2455–000.

Applicants: Hawks Nest Hydro LLC.

Description: Hawks Nest Hydro LLC MBR Filing to be effective 7/17/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5067.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2456–000.

Applicants: Indianapolis Power & Light Company.

Description: IPL Market Based Rate Tariff to be effective 6/27/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5068.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2457–000.

Applicants: Puget Sound Energy, Inc.

Description: Errata re Order No. 792 Compliance Filing to be effective 7/18/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5070.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2458–000.

Applicants: Mesa Wind Power Corporation.

Description: Mesa Wind Power Corporation submits tariff filing per 35.13(a)(2)(iii: Mesa Wind Power Corporation MBR Filing to be effective 7/18/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5079.

Comments Due: 5 p.m. ET 8/7/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 17, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–17616 Filed 7–25–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2822–006; ER11–2112–005; ER10–2828–001; ER10–2285–004; ER10–2423–004; ER10–2404–004; ER12–2649–001; ER10–1725–001; ER10–2994–010; ER10–3001–002; ER10–3002–001; ER10–3004–002; ER12–422–003; ER10–2301–002; ER10–3010–001; ER10–2306–002; ER12–96–003; ER11–2488–004.

Applicants: Atlantic Renewable Projects II LLC, Blue Creek Wind Farm LLC, Casselman Windpower LLC, Central Maine Power Company, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, Groton Wind, LLC, Hardscrabble Wind Power LLC, Iberdrola Renewables, LLC, Lempster Wind, LLC, Locust Ridge Wind Farm, LLC, Locust Ridge Wind Farm II, LLC, New England Wind, LLC, New York State Electric & Gas Corporatio, PEI Power II, LLC, Providence Heights

Wind, LLC, Rochester Gas & Electric Corporation, South Chestnut LLC, Streator-Cayuga Ridge Wind Power LLC.

Description: Second Supplement to December 30, 2013 Updated Market Power Analysis for the Northeast Region of the Iberdrola MBR Sellers ER10–2822, et. al.

Filed Date: 7/16/14.

Accession Number: 20140716–5187.

Comments Due: 5 p.m. ET 8/6/14.

Docket Numbers: ER10–3301–002; ER10–2756–002; ER10–2757–002.

Applicants: Arlington Valley, LLC, Griffith Energy LLC, GWF Energy LLC.

Description: Second Supplement to June 28, 2013 Triennial Market Power Update for the Southwest Region of the GWF Energy LLC, et. al.

Filed Date: 7/16/14.

Accession Number: 20140716–5183.

Comments Due: 5 p.m. ET 8/6/14.

Docket Numbers: ER14–2443–001.

Applicants: Carr Street Generating Station, L.P.

Description: Carr Street Amendment to be effective 7/17/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5006.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2444–000.

Applicants: Coram California Development, L.P.

Description: Coram California Development, L.P. MBR Filing to be effective 7/16/2014.

Filed Date: 7/16/14.

Accession Number: 20140716–5153.

Comments Due: 5 p.m. ET 8/6/14.

Docket Numbers: ER14–2445–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–07–16 SRBPC Filing (Hurdle rate) to be effective 7/17/2014.

Filed Date: 7/16/14.

Accession Number: 20140716–5159.

Comments Due: 5 p.m. ET 8/6/14.

Docket Numbers: ER14–2446–000.

Applicants: Erie Boulevard Hydropower, L.P.

Description: Erie Boulevard Hydropower, L.P. MBR Filing to be effective 7/16/2014.

Filed Date: 7/16/14.

Accession Number: 20140716–5173.

Comments Due: 5 p.m. ET 8/6/14.

Docket Numbers: ER14–2447–000.

Applicants: Granite Reliable Power, LLC.

Description: Granite Reliable Power, LLC MBR Filing to be effective 7/16/2014.

Filed Date: 7/17/14.

Accession Number: 20140717–5000.

Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2448–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Termination of Hermiston Generation Project Transmission Agreement between PacifiCorp and BPA.

Filed Date: 7/16/14.

Accession Number: 20140716–5179.

Comments Due: 5 p.m. ET 8/6/14.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA14–3–000.

Applicants: FPL Energy Oklahoma Wind, LLC.

Description: FPL Energy Oklahoma Wind, LLC Petition for Waiver from Order Nos. 888, 889 and 890, and Request for Waiver of the 60-Day Rule.

Filed Date: 7/16/14.

Accession Number: 20140716–5182.

Comments Due: 5 p.m. ET 8/6/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 17, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–17615 Filed 7–25–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2013–0803; FRL–9913–82–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Toxic Chemical Release Reporting (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Toxic Chemical Release Reporting (Renewal)'' (EPA ICR No. 1363.23, OMB Control No. 2025–0009) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through October 31, 2014. Public comments were previously requested via the **Federal Register** (79 FR 11783) on March 3, 2014 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 August 27, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OEI–2013–0803 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.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 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: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–0753; email address: *vail.cassandra@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 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: Pursuant to section 313 of EPCRA, certain facilities that manufacture, process, or otherwise use specified toxic chemicals in amounts above reporting threshold levels must submit annually to EPA and to designated State or Tribal officials toxic chemical release forms containing information specified by EPA. 42 U.S.C. 11023. In addition, pursuant to section 6607 of the Pollution Prevention Act (PPA), facilities reporting under section 313 of EPCRA must also report pollution prevention and waste management data, including recycling information, for such chemicals. 42 U.S.C. 13106. EPA compiles and stores these reports in a publicly accessible database known as the Toxics Release Inventory (TRI).

Form numbers: 9350–1, 9350–2, 9350–3.

Respondents/affected entities: Private businesses.

Respondent's obligation to respond: Mandatory per 40 CFR part 372.

Estimated number of respondents: 23,116 (total).

Frequency of response: Annual.

Total estimated burden: 3,555,998 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $183,418,377 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is an increase of 33,262 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to the lifting of the Administrative Stay of hydrogen sulfide reporting requirements, the addition of ortho-nitrotoluene to the TRI chemical list, and an increase in the number of facilities reporting to TRI.

Spencer Clark,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–17618 Filed 7–25–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 03–185; DA 14–996]

Media Bureau Seeks Comment on Petition for Blanket Extension or Waiver

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that Media Bureau of the Federal Communications Commission is seeking comment on a Petition for Blanket Extension or Waiver filed by Advanced Television Broadcasting Alliance requesting that the Commission grant a ''blanket extension or waiver'' and extend the expiration date of all outstanding construction permits for new digital low power television and TV translator stations to the September 1, 2015 digital transition deadline.

DATES: Comments are due August 14, 2014. Reply comments are due August 29, 2014.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Division, Media Bureau, Federal Communications Commission, *Shaun.Maher@fcc.gov,* (202) 418–2324.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Media Bureau's Public Notice (Notice) in MB Docket No. 03–185; DA 14–996, released July 14, 2014. Advance Television Broadcasting Alliance (ATBA) filed its Petition requesting that the Federal Communications Commission (Commission) grant a ''blanket extension or waiver'' and extend the expiration date of all outstanding construction permits for new digital low power television (LPTV) and TV translator stations to the September 1, 2015 digital transition deadline. This proceeding will be treated as ''permit but disclose'' for purposes of the Commission's ex parte rules. See generally 47 CFR 1.1200–1.1216. As a result of the permit-but-disclose status of this proceeding, ex parte presentations will be governed by the procedures set forth in § 1.1206 of the Commission's rules applicable to non-restricted proceedings. Given that all comments will be posted to the Commission's Electronic Comment Filing System, the Media Bureau is waiving the requirement that parties be served hard copies of the comments and reply comments in this proceeding, pursuant to § 1.3 of the Commission's rules. Interested parties may file comments on or before August 14, 2014 and reply comments on or before August 29, 2014. All filings must reference MB Docket No. 03–185. In order to be considered part of the official record, comments must be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. Comments sent via email to the Commission that do not use the ECFS form described below will be considered informal and will not be part of the official record.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number: MB Docket No. 03–185. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov,* and include the following words in the body of the message: ''get form''. A sample form and instructions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail must be addressed to 445 12th Street SW., Washington, DC 20554.

One copy of each filing must be sent to Shaun Maher, Media Bureau, Video Division, Room 2–C864, 445 12th Street SW., Washington, DC 20554 or *Shaun.Maher@fcc.gov.* Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via email to *fcc@bcpiweb.com.*

Filings are available through ECFS and are also available for public inspection and copying during regular

business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554, telephone (202) 418–0270. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th St. SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.*

Alternate formats of this Public Notice (computer diskette, large print, audio recording, or Braille) are available to persons with disabilities by contacting the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

Federal Communications Commission.

David Brown,

Associate Chief, Video Division, Media Bureau.

[FR Doc. 2014–17714 Filed 7–25–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

[File No. 142 3121]

Made in the USA Brand, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 22, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/usabrandconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Made in the USA Brand, LLC—Consent Agreement; File No. 142 3121'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/usabrandconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Julia Solomon Ensor, Bureau of Consumer Protection, (202–326–2377), 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 22, 2014), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 22, 2014. Write ''Made in the USA Brand, LLC—Consent Agreement; File No. 142 3121'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/usabrandconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Made in the USA Brand, LLC—Consent Agreement; File No. 142 3121'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 22, 2014. You can find more information, including routine

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Made in the USA Brand, LLC. (''Respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves Respondent's marketing, sale, and distribution of licenses to use its ''Made in USA'' certification mark to companies wishing to make U.S.-origin claims for their products. According to the FTC's complaint, Respondent represented that products and entities using Respondent's certification mark were independently and objectively evaluated for compliance with Respondent's accreditation standard. These claims were false or misleading. Additionally, the complaint alleges that Respondent did not possess and rely upon a reasonable basis to substantiate its claims that entities promoted on its Web site sold products that are all or virtually all made in the United States. In fact, in numerous instances, entities promoted on Respondent's Web site have sold products containing significant imported content. Finally, the complaint alleges that Respondent distributed promotional materials to third-party marketers for use in the marketing and sale of those third parties' products, providing the means and instrumentalities to those marketers to commit deceptive acts or practices. Accordingly, the complaint concludes that Respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Specifically, Part I prohibits Respondent from representing, expressly or by implication, that covered entities meet Respondent's accreditation standard, unless: (1) An entity with no material connection to that covered entity conducted an independent and objective evaluation to confirm that the accreditation standard was met; or (2) Respondent's mark and marketing materials prominently disclose that the accreditation standard may be met through self-certification.

Part II prohibits Respondent from making any country of origin claim about a product authorized to use Respondent's certification mark unless: (1) The claim is true, not misleading, and Respondent has a reasonable basis substantiating the representation; or (2) for representations made through use of Respondent's certification mark, Respondents clearly and prominently disclose that covered entities may meet the accreditation standard through self-certification.

Part III prohibits Respondent from providing third-party retailers with the means and instrumentalities to make the claims prohibited in Part I.

Parts IV through VIII are reporting and compliance provisions. Part IV requires Respondent to keep and make available to the Commission on request: Copies of advertisements, labeling, packaging, and promotional materials containing the representations identified in Parts I and II; materials relied upon in disseminating those representations; evidence that contradicts, qualifies, or calls into question the representations or the basis relied upon for the representations; and all acknowledgments of receipt of the Order. Part V requires Respondent to disseminate the Order to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. Part VI requires notification to the FTC of changes in Respondent's corporate status. Part VII requires Respondent to submit an initial compliance report to the FTC within sixty (60) days of service and subsequent reports upon request.

Finally, Part VIII is a ''sunset'' provision, terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–17705 Filed 7–25–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-14–13AAI]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

ROPS Attributes Identified by Distribution Channel Intermediaries—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention.

High rates of traumatic injury are associated with the use of older tractors that are not equipped with rollover protective structures (ROPS), which have been proven to reduce tractor-rollovers, a leading cause of injury to agricultural workers. To reduce the incidence of traumatic injury among farm workers, NIOSH proposes to administer stated-preference questionnaires designed to assess preference among a group of tractor-parts dealers in Pennsylvania, New York, New Hampshire and Vermont, who have membership in the Northeast Equipment Dealers' Association (NEDA). NEDA is a trade group for tractor parts dealers and is active in 12 States in the Northeast and Mid-Atlantic States. This information will be used to assess the impediments and barriers to adoption, as well as the incentives, for the distribution and sale of ROPS.

ROPS are generally provided to end users by tractor parts dealers, who constitute distribution channel intermediaries between the manufacturer and the consumer. However, little is known about the decision processes that tractor parts dealers follow in deciding whether or not to provide ROPS to end users. The current project will generate ranking scores for the importance given to various items of concern to tractor parts dealers; these most-important items were previously developed through review of relevant research studies.

CDC proposes to collect customized information, from 520 NEDA establishments, over a one-month period. This information will be of three kinds: 1. General screening information as to the appropriateness of administering a survey to the respondent organization; 2. Limited respondent perception of the demographic characteristics on the client base served by the NEDA establishment, and 3. Importance ranking of attributes of the process of providing ROPS, or the ROPS configuration itself.

This information will allow CDC to compile a systematic, quantifiable inventory of preference data for a group that is considered representative of tractor parts dealers nationwide. It will also allow CDC to develop recommendations for overcoming the barriers that have compromised the effectiveness of occupational health and safety programs.

The total estimated burden for the one-time retrospective data collection is 43 hours as indicated in the table below. The average burden per response is 5 minutes. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
Tractor Parts Dealers	ROPS Questionnaire for Tractor Parts Dealers	520	1	5/60

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–17651 Filed 7–25–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3296–NC]

RIN 0938–ZB14

Medicare Program; Evaluation Criteria and Standards for Beneficiary and Family Centered Care Quality Improvement Organization Contract

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period describes the general criteria we intend to use to evaluate the effectiveness and efficiency of Beneficiary and Family Centered Care (BFCC) Quality Improvement Organizations (QIOs) that will enter into contracts with CMS under the 11th Statement of Work (SOW) in May 2014 titled, ''Beneficiary and Family Centered Care (BFCC) Quality Improvement Organization (QIO) Contract'' (HHSM–500–2014–RFP–BFCC–QIO). This contract allows for a transition period from the incumbent QIOs to the successor QIOs. The activities for the BFCC–QIO SOW begin August 1, 2014. The evaluation of a BFCC–QIO's performance related to the SOW will be based on evaluation criteria specified for the tasks set forth in Attachment J–10 of the BFCC–QIOs' SOW contract.

DATES: *Effective Date:* August 1, 2014 to July 31, 2019.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 27, 2014.

ADDRESSES: In commenting, refer to file code CMS–3296–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3296–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3296–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily

available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Alfreda Staton, (410) 786–4194.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Section 1153(h)(2) of the Social Security Act (the Act) requires the Secretary of the Department of Health and Human Services to publish in the **Federal Register** the general criteria and standards that will be used to evaluate the effective and efficient performance of contract obligations by the Quality Improvement Organizations (QIOs) and to provide the opportunity for public comment with respect to these criteria and standards. This notice describes the general criteria that will be used to evaluate the performance of Beneficiary and Family Centered Care (BFCC) Quality Improvement Organizations (QIOs) under the 11th Statement of Work (SOW) contract beginning August 1, 2014.

II. Provisions of the Notice With Comment Period

The purpose of the BFCC–QIO contract is to improve healthcare services for Medicare beneficiaries through BFCC performance of numerous statutory and regulatory review functions, including, but not limited to the following:

- Quality of care reviews, including beneficiary complaint reviews and general quality of care reviews;
- Beneficiary appeals of hospital discharges and terminations of service decisions, commonly referred to as *Grijalva, BIPA,* and *Weichardt* appeals.
- Medical necessity reviews;
- Appropriateness of setting reviews;
- Diagnosis Related Group (DRG) reviews;
- Readmission reviews;
- Reviews under Emergency Medical Treatment and Active Labor Act (EMTALA);
- Sanctions; and
- Monitoring of Physician Acknowledgement Statements under section 1156(a) of the Act and our regulations at 42 CFR 412.46.

The BFCC–QIO contract also imposes other BFCC–QIO responsibilities: Coordinating and collaborating with other QIOs; developing and making recommendations to promote responsiveness to beneficiary and family needs; providing opportunities for listening to and addressing beneficiary and family concerns; and providing resources for beneficiaries and caregivers in decision making. These QIO beneficiary and family centered efforts align with the National Quality Strategy, which encourages patient and family engagement. (See the BFCC–QIO Statement of Work, Solicitation Number: HHSM–500–2014–RFP–BFCC–QIO, which was posted on December 5, 2013 and is available at *https://www.fbo.gov/index?s=opportunity&mode=form&id=6a3acf7d9bd34efb1268e120a13b22e8.*)

III. Evaluation of the Tasks (See Sections C.6, H.2, H.5 and J–10 of the BFCC–QIO SOW)

We will conduct monitoring activities throughout the course of the contract and will act upon findings as necessary. Information used for these monitoring purposes includes but is not limited to:

- Deliverables submitted by the BFCC–QIO to CMS in accordance with the Section F ''Deliverables or Performance.''
- Provider/facility surveys and/or productivity measures, including cost benefit analysis.
- Data for measures indicated in Attachments J–4 and J–10 of the BFCC–QIO SOW.
- Data from the BFCC–QIO's Internal Quality Control Program.
- Other data submitted by BFCC–QIOs as required by CMS.
- Additional information gathered by email, telephone, video or in-person visits.

BFCC–QIOs must cooperate with the Contracting Officer Representative (COR) on all our monitoring processes and address any concerns identified by the COR. We will take appropriate contract action (for example, providing warning for the need for adjustment, instituting a formal correction plan, terminating an activity, or recommending early termination of a contract because of failure to meet contract timelines or performance as specified in the contract). This means that the BFCC–QIO must comply with the Contract, Tasks, Schedules of Deliverables, Evaluation Measures Tables, and any subsequent modifications (including Health Care Quality Improvement System and Transmission of Policy Memorandums) issued by CMS.

Additionally, there will be multiple periods of more formal evaluation under this contract. The first evaluation will occur at the end of the 12th month of the contract. Subsequent evaluations will occur at the end of the 24, 36, 48 and 54th month of the contract. The evaluations will be based on the most recent data available to us. The performance results of the evaluation at each evaluation period (that is, 12, 24, 36, 48 and 54th months) will be used, in addition to ongoing monitoring activities, to determine the BFCC–QIO's performance on the overall contract.

The BFCC–QIO measures for the 11th SOW are as follows:

- Quality of Review: Inter-Rater Reliability.
- 4-day Data Entry Compliance.
- Timeliness of Beneficiary Complaints and Other Quality of Care Reviews.
- Timeliness of Discharge/Service Termination Reviews.
- Timeliness of EMTALA and Higher Weighted Diagnosis-Related Group Reviews.
- Complainant Agreement to Complete Survey.
- Beneficiary Experience with Quality of Care Complaints.
- Beneficiary Experience with Appeal Reviews.

Annual and 54th Month Evaluation

Annual and 54th month evaluation criteria are specifically defined in Attachment J–10, ''Annual and 54th Month Evaluation Criteria Measures Table,'' of the BFCC–QIO SOW; the criteria for evaluating each deliverable are identified in Section F (''Deliverables or Performance'') of the 11th SOW. Further, the Contracting Officer will use the Contractor Performance Assessment Reporting System (CPARS) criteria in performing evaluations: Quality, Schedule/Timeliness, Cost/Price Control, Business Relations, Management, and Small Business. Performance on the evaluation criteria defined in Attachment J–10 will be considered for assessment of the Quality sub-factor for the CPARS assessment.

Overall Contract Evaluation

The results of the annual (12, 24, 36, 48th month) and 54th month evaluation periods, in addition to ongoing monitoring activities, will be used to determine how the contractor performed on the overall contract. If we choose, we may notify the BFCC–QIO of our intention not to renew the BFCC–QIO contract and inform the BFCC–QIO of their rights under the current statute.

Any failure at one or more of the annual or 54th month evaluations for any Task may result in the BFCC–QIO receiving an adverse past performance evaluation. Further, failure may impact on the BFCC–QIO's ability to continue similar work in or eligibility for future QIO Program awards.

We reserve the right at any point, prior to the notification of our intent not to renew the contract, to revise measures or adjust the expected minimum thresholds for satisfactory performance or remove criteria from a Task evaluation protocol for any reason, including, but not limited to, data gathered based on experience with the amount of improvement achieved during the contract cycle or in pilot projects currently in progress, information gathered through evaluation of the BFCC–QIO performance overall, or any unforeseen circumstances. Further, in accordance with standard contract procedures, we reserve the right at any time to discontinue all or part of one or more Tasks for one or more states or territories in the QIO area or any other part of this contract, regardless of BFCC–QIO performance on the Task.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Dated: June 3, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–17625 Filed 7–25–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Temporary Assistance for Needy Families/National Directory of New Hires Match Results Report.

OMB No.: 0970–0311.

Description

Section 453(j)(3) of the Social Security Act (the Act) allows for matching between the National Directory of New Hires (maintained by the Federal Office of Child Support Enforcement (OCSE)) and State TANF Agencies for purposes of carrying out responsibilities under programs funded under part A of Title IV of the Act. To assist OCSE and the Office of Family Assistance (OFA) in measuring savings to the TANF program attributable to the use of NDNH data matches, the State TANF Agencies have agreed to provide OCSE with a written description of the performance outputs and outcomes attributable to the State TANF Agency's use of NDNH match results. This information will help OCSE demonstrate how the NDNH supports the OCSE's mission and strategic goals.

Respondents

State TANF Agencies

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF/NDNH Match Results Report	40	4	0.17	27.20

Estimated Total Annual Burden Hours: 27.20.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: inforcollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–17664 Filed 7–25–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures

OMB No.: 0970–0230

Description: There is no longer a High Performance Bonus associated with this information collection. The Deficit Reduction Act of 2005 (Pub. L. 109–171) eliminated the funding for the High Performance Bonus (HPB), but we are still requesting that States continue to submit data necessary to calculate the work measures previously reported under the HPB.

Specifically, The TANF program was reauthorized under the Deficit Reduction Act of 2005. The statute eliminated the funding for the HPB under section 403(a)(4). Nevertheless the Department is required under section 413(d) to annually rank State performance in moving TANF recipients into private sector employment. We are, therefore, requesting that States continue to transmit monthly files of adult TANF recipients necessary to calculate the work measures performance data. To the extent States do not provide the requested information, we will extract the matching information from the TANF Data Report. This may result in calculation of the work performance measures based on sample data, which would provide us less precise information on States' performance.

The Transmission File Layouts form provides the format that States will continue to use for the quarterly electronic transmission of monthly data on TANF adult recipients. States that have separate TANF–MOE files on these programs are also requested to transmit similar files. We are not requesting any changes to the Transmission File Layouts form.

Respondents: Respondents may include any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	42	2	12	1,008

Estimated Total Annual Burden Hours: 1,008.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–17668 Filed 7–25–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Performance Information Report.

OMB No.: 0970–0427.

Description: The Office of Head Start within the Administration for Children and Families, United States Department of Health and Human Services, is proposing to renew authority to collect information using the Head Start Program Information Report, monthly enrollments, contacts, locations, and reportable conditions. All information is collected electronically through the Head Start Enterprise System (HSES). The PIR provides information about Head Start and Early Head Start services received by the children and families enrolled in Head Start programs. The information collected in the PIR is used to inform the public about these programs, to make periodic reports to Congress about the status of children in Head Start programs as required by the Head Start Act, and to assist the administration and training/technical assistance of Head Start programs.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Program Information Report	3,041	1	4	12,164
Grantee Monthly Enrollment Reporting	1,773	12	0.05	1,063.8
Contacts, Locations & Reportable Conditions	3,041	1	0.25	760.25

Estimated Total Annual Burden Hours: 13,988.05.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *Email: OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–17654 Filed 7–25–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0723]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Devices; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices; Reports of Corrections and Removals'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On April 8, 2014, the Agency submitted a proposed collection of information entitled ''Medical Devices; Reports of Corrections and Removals'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0359. The approval expires on July 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 22, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17633 Filed 7–25–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0079]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Animal Generic Drug User Fee Cover Sheet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Animal Generic Drug User Fee Cover Sheet'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On April 28, 2014, the Agency submitted a proposed collection of information entitled ''Animal Generic Drug User Fee Cover Sheet'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0632. The approval expires on July 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 23, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17712 Filed 7–25–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1008]

Exploring the Possibility of Proprietary Name Reservation for Drug Products; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to discuss issues related to reserving proprietary names for drug products. During the negotiations for the 2007 reauthorization of the Prescription Drug User Fee Amendments Act (PDUFA IV), FDA agreed to several performance goals related to the review of drug and biological product proprietary names to reduce medication error. Among those goals, FDA and industry expressed an

interest in exploring the possibility of ''reserving'' proprietary names for companies once the names have been tentatively accepted by the Agency. Accordingly, FDA is initiating a public process to discuss issues around reserving proprietary names.

DATES: Submit electronic or written comments by October 27, 2014.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kellie Taylor, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4418, Silver Spring, MD 20993–0002, 301–796–0157, *Kellie.Taylor@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *Stephen.Ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Proprietary Name Review Activities Under PDUFA IV

In conjunction with the 2007 reauthorization of PDUFA IV, FDA agreed to a number of performance goals related to the Agency's review of drug and biological product proprietary names to reduce medication error. For the first time, the Agency agreed to a process and timelines for notifying applicants of the tentative acceptance or nonacceptance of a proposed proprietary name. These proprietary name review performance goals and timelines are separate from the timelines for approval of underlying new drug applications and biologics license applications. These goals and timelines also permit sponsors or applicants to obtain such a notification as early as during the investigational new drug stage, any time after the completion of a Phase II study.

Pursuant to related PDUFA IV goals, the Agency also undertook several other measures intended to provide additional transparency regarding the methods and tools that FDA uses in considering whether a proposed proprietary name is likely to contribute to medication error or otherwise render the drug misbranded. (*See,* for example, Guidance for Industry, Contents of a Complete Submission for the Evaluation of Proprietary Names, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM075068.pdf* PDUFA Pilot Project, Proprietary Name Review, Concept Paper, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM072229.pdf* and *http://www.gpo.gov/fdsys/pkg/FR-2009-02-17/pdf/E9-3170.pdf.*) The guidance on Contents of a Complete Submission for the Evaluation of Proprietary Names also lays out the legal basis for FDA's review of drug proprietary names, derived from its authority over labeling and the requirements for product approval.

In accordance with the performance goals described above, since fiscal year (FY) 2008, FDA has provided a mechanism for applicants to be notified that the Agency considers a proprietary name to be unacceptable before final approval of the underlying product application. This process enables applicants to plan more effectively for postapproval marketing, for example, by seeking reconsideration of a proposed proprietary name that FDA considers problematic or by proposing an alternative name. However, because the ultimate approval of a proprietary name comes as part of the approval of the drug labeling, and thus is not final until the approval of a marketing application, the positive outcome of a proprietary name review that is completed before application approval is limited to a tentative acceptance of that name. It is possible that a name judged tentatively acceptable may later be found unacceptable for a number of reasons, including, for example, the intervening entry into the U.S. market of another product with a confusingly similar name, changes in the product's characteristics during review, or new information about the likelihood of error arising from postmarketing data about another product.

Stakeholders have indicated that the existing process does not provide applicants with sufficient certainty, prior to approval of their application, that a proposed proprietary name will be included in approved drug labeling. Some members of industry have suggested that they remain particularly concerned that a ''tentatively acceptable'' name may be subsequently rejected because of the intervening approval of another drug whose application was pending, but not public, at the same time as their own. In the documentation regarding its pilot program for proprietary name review, FDA acknowledged that it may be unable to disclose certain information to an applicant in connection with a proprietary name review. (*See* PDUFA Pilot Project, Proprietary Name Review, Concept Paper at 31–32, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM072229.pdf.*) (''[I]n some cases FDA has access to information that is not publicly available to applicants.'').

In such cases, FDA will communicate with the applicant to the extent permitted by law to describe the nature of this information. One example of this is where other proprietary names are being considered by the Agency at the same time, and the Agency believes that the proposed names would be likely to cause confusion or medication error. Under FDA's regulations, information in an unapproved application, including proposed proprietary names, is generally not publicly available (*see* 21 CFR 312.130, 314.430, 601.50, and 601.51). In such situations, FDA generally notifies applicants that their proposed proprietary name could result in medication errors due to confusion with another product that is also under review and informs the applicant that acceptability of a proposed proprietary name may be affected by prior approval of the other product.

B. Current Action: Establishment of a Public Docket To Discuss Issues Around ''Reserving'' Proprietary Names for Drugs

FDA is now establishing a public docket in furtherance of the following additional proprietary name review-related performance goal, contained in the PDUFA IV goals letter:

''FDA and industry are interested in exploring the possibility of ''reserving'' proprietary names for companies once the names have been tentatively accepted by the Agency. By the end of FY 08, FDA will initiate a public process to discuss issues around ''reserving'' proprietary names.''

In January 2009, staff from FDA met with representatives from the Pharmaceutical Research and Manufacturers of America (PhRMA) to discuss the proposed program. At that time, PhRMA offered to submit a draft guidance for comment. PhRMA did submit a draft guidance entitled ''Early Review of Proprietary Names'' to FDA for consideration. FDA has placed PhRMA's proposed guidance document in the newly established public docket for information pertaining to a possible name reserve program, so that it is available to all interested members of the public.

II. Comments

Interested persons may submit either written comments to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

FDA invites comment on all matters relating to a potential program for reserving proprietary names for drug products. This request is not limited to comments on the proposal described in the submission by PhRMA. FDA is particularly interested in comments and information regarding the following:

- Are there examples of drug market launches being delayed, or of drugs being launched without a proprietary name, because FDA's determination that a proposed proprietary name would not be acceptable came too close to the date of product approval? If so, please provide details, including how far in advance of approval the applicant submitted the proposed name to the Agency, whether the proposed name had been tentatively accepted, and how long the launch was delayed or how long the product was marketed without a proprietary name.
- Potential approaches for reserving proprietary names that would create more certainty for applicants than the current ''tentative acceptance'' process. For each proposed approach, please describe the following:
  - How the program would create certainty while balancing the need to avoid or minimize the risk of medication error.
  - The parameters of the proposed program, including whether participation in the program should be voluntary or mandatory; what conditions should be met before a name is ''reserved''; and for how long a name may be ''reserved.''
  - The procedural and legal framework for the proposed program.
  - Whether the ''reservation'' of a proprietary name for one applicant would be binding, such that a similar or identical proprietary name for another applicant's drug would be rejected, even in situations in which such drug is ready for approval before that of the applicant for whom the name is ''reserved.''
  - A discussion of the application of the program to over-the-counter monograph products and drugs that are manufactured for a private label distributor, under an existing approved application.
- Data and information regarding:
  - The number of applicants that would be interested in participating in a voluntary name reservation program.
  - Whether applicants would be willing to participate voluntarily if ''reservation'' of a name is not guaranteed to prevent the use of the name by all other drugs that enter the U.S. market prior to the drug for which the name is ''reserved.''
- In the absence of a binding name reservation program, what measures could be used to provide greater predictability to applicants about the likelihood that a name found tentatively acceptable will subsequently be approved? Can industry address this without FDA involvement, for example, through a voluntary posting of proposed names?
- Under current FDA regulations, information in an unapproved application, including proposed proprietary names, is generally not publicly available (*see* 21 CFR 312.130, 314.430, 601.50 & 601.51). What mechanisms could be used to provide notice to an applicant of possible confusion between its proposed proprietary name and other proposed proprietary names contained in pending applications?

Dated: July 22, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17691 Filed 7–25–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0652]

The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)].'' This guidance document describes FDA's current review practices for premarket notification (510(k)) submissions by describing in greater detail the regulatory framework, policies, and practices underlying FDA's review of traditional 510(k) submissions. This guidance document does not address the special and abbreviated 510(k) programs. FDA intends to finalize those sections separately.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)]'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Marjorie Shulman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1536, Silver Spring, MD 20993–0002, 301–796–6572; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance serves to identify, explain, and clarify each of the critical decision points in the decision-making process FDA uses to determine substantial equivalence under the 510(k) program. Since the program's inception in 1976, FDA has periodically published documents, including guidance

documents, which describe FDA's approach and any changes therein to the 510(k) program. On June 30, 1986, FDA published a Blue Book Memorandum entitled ''Guidance on the CDRH Premarket Notification Review Program, 510(k) Memorandum #K86–3'' (the ''#K86–3 Memorandum''). This document discussed general points regarding the process of determining substantial equivalence between a new device and a predicate device. On March 20, 1998, FDA published a guidance document entitled ''The New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications'' (''the New 510(k) Paradigm''). This guidance introduced two new 510(k) programs—the Special 510(k) and the Abbreviated 510(k)—as optional approaches available to device manufacturers and renames the original 510(k) program that had been in place since 1976 to the ''Traditional 510(k).'' Traditional, Special, and Abbreviated 510(k)s differ with respect to the scope and content of information that are included within the submission. It is noted that the #K86–3 Memorandum was issued as a final guidance prior to the February 27, 1997, implementation of FDA's Good Guidance Practices, 21 CFR 10.115. Neither the #K86–3 Memorandum nor the New 510(k) Paradigm has been updated since its initial publication. As further explained later in this section, this new guidance document will replace only the #K86–3 Memorandum.

On December 28, 2011, FDA announced the availability of ''Draft Guidance for Industry and Food and Drug Administration Staff: The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)]'' (76 FR 81510) (the ''Draft Guidance''). Interested persons were invited to comment by April 26, 2012. FDA received 26 sets of comments, totaling over 400 comments. While the sections on Special 510(k), technological characteristics, and predicate devices received the most comments, there were also requests for inclusion of examples to assist in defining the gray areas of how FDA interprets what would be considered substantially equivalent under the 510(k) program.

In response to these comments, the guidance was revised to provide a broader overview of the use of predicate devices and to explain more clearly the intent and value of defining a ''primary predicate'' device in the submission. Examples were added to several sections to clarify the boundaries and FDA's decision-making process for finding devices equivalent to a predicate that may have different indications for use, technological characteristics, or performance characteristics. There were requests for the addition of a ''fillable form'' to ensure consistency in the amount and type of detail expected in a 510(k) summary. In response, an appendix was added with a sample 510(k) summary, including clinical data, to demonstrate the level of detail that is expected in each regulatory mandated section upon finalization of the guidance to increase transparency.

Lastly, industry expressed concern relating to the inclusion of the Special 510(k) Program within this guidance, given the connection of this topic and determining when it is necessary to submit a new 510(k) for a device modification. In response, FDA elected to remove the sections addressing the alternatives to Traditional 510(k)s, specifically the Special and Abbreviated 510(k) programs that were included in the draft guidance. FDA intends to finalize these sections separately. Until FDA issues a new final guidance document on the Special and Abbreviated 510(k) Programs, the recommendations for Special and Abbreviated 510(k)s contained in the New 510(k) Paradigm remain in effect for these alternate submission types.

In response to other minor substantive and editorial comments, FDA revised the guidance document to clarify the processes and policies as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on ''The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)].'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)]'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1766 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130; the collections of information found in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: July 23, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17666 Filed 7–25–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 9, 2014, from 12 noon to 5 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 206302, nebivolol/valsartan fixed-dose combination tablets (5/80 milligrams (mg), 5/160 mg, 10/160 mg, 10/320 mg and 20/320 mg), submitted by Forrest Laboratories, Inc., for the proposed indication of the treatment of hypertension.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 25, 2014. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 15, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 18, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 23, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17665 Filed 7–25–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Progress Reports for Center for Global Health's Low and Mid-Income Countries; (LMICs) Global Health Collaborations

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Teri Brown, Center for Global Health, National Cancer Institute, 9609 Medical Center Dr., RM 3W530, Rockville, MD 20850 or call non-toll-free number 240–276–5810 or Email

your request, including your address to: *brownte@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Progress Reports for Center for Global Health's Low and Mid-Income Countries (LMICs) Global Health Collaborations, 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Center for Global Health's (CGH) Low and Mid-Income Countries (LMICs) Global Health Collaborations is proposing new program specific progress report guidelines. The CGH LMIC Global Health Collaborations are part of a pilot initiative and partnership, between the NCI CGH and the Office of Cancer Centers (OCC), to promote collaborations between the NCI designated Cancer Centers and foreign institutions from Low and Middle Income Countries (LMICs). This collaboration is designed to develop and implement mutually beneficial global cancer research programs by increasing the capability of these countries to participate and partner in cancer research. The proposed guidelines request information about award performance related to objectives, accomplishments, barriers and challenges, collaborators, and findings. The information is gathered six months into the award and 12 months after the award (upon expiry). This information is needed to monitor the performance of this special program within NCI, funded through three Request for Proposals (RFPs); the first was released April 18, 2013 and CGH expects to release another in 2014 and the final one in 2015. The respondents are the Principal Investigators of the awards. The information will be used to monitor individual award performance and the effectiveness of the program as a whole. Since these projects are funded through the contract mechanism, the PIs will not be required to submit interim and final progress reports like other National Institutes of Health grantees must.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 83.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Principal Investigators	6 Month Report	15	1	90/60	23
Principal Investigators	12 Month Report	15	1	4	60

Dated: July 22, 2014.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–17684 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review ;Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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: Center for Scientific Review Special Emphasis Panel; Small Business: HIV/AIDS Innovative Research Applications.

Date: August 1, 2014.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 22, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–17671 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Fellowship Review.

Date: August 7, 2014.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ernest W Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 22, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–17676 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Central Repositories Non Renewable Sample Access Review-PAR11–306-Kidney Diseases, Diabetes and HCC.

Date: August 28, 2014.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes Of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 22, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–17675 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Kidney Interagency Coordinating Committee Meeting

SUMMARY: The Kidney Interagency Coordinating Committee (KICC) will hold a meeting on September 12, 2014 about assessing public health interventions in chronic kidney disease (CKD). The meeting is open to the public.

DATES: The meeting will be held on September 12, 2014, 9 a.m. to 12 p.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

ADDRESSES: The meeting will be held in Building 31 on the NIH Campus at 9000 Rockville Pike, Bethesda, MD 20894.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, contact Dr. Andrew S. Narva, Executive Secretary of the Kidney Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A27, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–594–8864; FAX: 301–480–0243; email: *nkdep@info.niddk.nih.gov.*

SUPPLEMENTARY INFORMATION: The KICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), comprises members of the Department of Health and Human Services and other Federal agencies that support kidney-related activities, facilitates cooperation, communication, and collaboration on kidney disease among government entities. KICC meetings, held twice a year, provide an opportunity for Committee members to learn about and discuss current and future kidney programs in KICC member organizations and to identify opportunities for collaboration. The September 12, 2014 KICC meeting will focus on assessing public health interventions in CKD.

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future KICC meetings should send a request to *nkdep@info.niddk.nih.gov.*

Dated: July 10, 2014.

Camille M. Hoover,

Executive Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2014–17685 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 USC, as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Pain Consortium Centers of Excellence in Pain Education (4422).

Date: August 4–5, 2014.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Preparation and Distribution of Research Drug Products (7792).

Date: August 26, 2014.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; GMP Synthesis of Bulk Drug Substances (8915).

Date: August 28, 2014.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 22, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–17673 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposal and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposal, 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; Human Specimen Repository.

Date: August 15, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposal.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health, And Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@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: July 22, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–17672 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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: Center for Scientific Review Special Emphasis Panel; Neuronal Development.

Date: August 8, 2014.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 23, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–17670 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 3, 2014.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Bldg. 31, ''C'' Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 3:45 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bldg. 31, ''C'' Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: September 3, 2014.

Closed: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bldg. 31, ''C'' Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Open: 2:00 p.m. to 3:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Bldg. 31, ''C'' Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: September 3, 2014.

Open: 1:00 p.m. to 2:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Bldg. 31, ''C'' Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bldg. 31, ''C'' Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: September 3, 2014.

Open: 1:00 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Bldg. 31, ''C'' Wing, 6th Floor, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

Closed: 2:45 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bldg. 31, ''C'' Wing, 6th Floor, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 22, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–17674 Filed 7–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Identifying Core Competencies of Peer Workers in Behavioral Health Services (Behavioral Health Services—NEW)

SAMHSA's Center for Mental Health Services' project, Bringing Recovery Supports to Scale Technical Assistance Center Strategy (BRSS TACS) is requesting the Office of Management and Budget's (OMB) approval for a data collection project entitled, ''Identifying Core Competencies of Peer Workers in Behavioral Health Services.'' The BRSS TACS team intends to use two instruments to collect original data to inform the ongoing development of core competencies for peer workers in behavioral health care services. These instruments are:

- Core Competencies Survey with Peer Workers
- Telephone Interview of Peer Workers

The primary purpose for this information is to appraise the importance of specific competencies to the work of peer workers who are currently employed in behavioral health settings. The Core Competencies Survey will collect peer workers' ratings of the importance of different competencies to their work. The Telephone Interview of Peer Workers will collect peer workers' experiences with and opinions about the competencies on the survey. They will also be asked how they might use the competencies in their work. The Core Competencies Survey and the Telephone Interview are seen as critical to the development of core competencies for peer workers because they integrate the perspective of people who are currently employed as peer workers in the behavioral health care

workforce and have been judged as competent by another colleague.

While peer workers have become critical components of recovery-oriented systems, paid peer positions and roles are relatively new additions to the behavioral health workforce. There are basic questions about how to define these roles. There are additional uncertainties about how best to prepare people in recovery for the role of peer worker and how to supervise and evaluate the job performance of peer workers. Developing a set of core competencies is an important step in responding to these questions and may be a valuable activity in expanding peer roles in behavioral health.

Although training programs for peer workers in the behavioral health system have existed for over a decade, there have been no attempts to standardize the content or the models of training. To date, no national consensus defines standards for peer worker training programs. Training programs differ in length, ranging from 30 to 105 hours of face-to-face training and vary widely in the knowledge and skills that they teach trainees (SAMHSA, 2012).

The Core Competency Project will describe the foundational knowledge, skills, and attitudes required by peer workers to perform their roles in a wide variety of behavioral health programs and services. Peer-provided recovery support services typically involve providing social support, linking people to community resources, assisting with decision-making activities, and a host of educational and recreational activities (CSAT, 2009; SAMHSA, 2012). In addition, peer workers facilitate educational and support groups and advocate for service improvements. SAMHSA defines peer-provided recovery support as, ''a set of non-clinical, peer-based activities that engage, educate and support an individual successfully to make life changes necessary to recover from disabling mental illness and/or substance use disorder conditions'' (CSAT, 2009). While some peer workers are performing advanced or specialized competencies within the behavioral health field, the core competencies described will include the foundational competencies required by all peer workers working in a variety of environments and with a diversity of people.

It is critical to communicate to the behavioral health field and behavioral health authorities about the foundational knowledge, skills, and attitudes needed by peer workers. Because of the anticipated continued demand for peers in the behavioral health workforce, SAMHSA has prioritized the development of peer-delivered recovery support services across mental health and substance use disorder services. In an effort to deliver services of uniformly high quality, the core competencies of peer workers will be described so that states and other credentialing bodies will be able to establish uniform standards for peer workers.

In addition, clear descriptions of core competencies will assist behavioral health authorities with their strategic workforce planning efforts. The description of core competencies will inform services and peer workforce training programs of the basic requirements needed by peer workers in behavioral health services. The competencies will provide guidance to behavioral health programs when writing job descriptions and performances evaluations. In many communities, job descriptions lack uniformity and specificity and do not reflect accurately the focus of peer-provided recovery support services.

The results of these surveys will contribute to the creation of competency descriptions that will provide guidance to organizations, programs, states, and regions to strengthen their peer workforce development efforts. These core competencies will inform training programs and state certification entities about the essential skills, knowledge, and attitudes needed by peer workers in a range of roles in behavioral health services. Currently, 33 states offer certification for their peer workers and a growing number of states use Medicaid funds to reimburse for peer support services (Daniels et al., 2014). Despite the growth of the behavioral health peer workforce; there are inconsistencies in the requirements for these certifications across different states.

For behavioral health organizations and programs, core competencies will provide guidance for job descriptions for peer workers and improve the recruitment of potential workers by providing fair and unbiased criteria for hiring and making sure everyone is assessed against the same framework. Core competency descriptions have the potential to strengthen the workforce through improved training and preparation of peer workers. Behavioral health programs and organizations can use the core competencies to improve performance evaluations by providing a framework to discuss and assess performance.

Core competencies have the potential to contribute to a ''culture of competence'' in which peer workers could use the competencies to engage in accurate self-assessment and seek out experiences to improve their competencies. For peer workers, core competencies could help to clarify what is expected in their role and will assist them in assessing their own strengths and limitations as a provider of peer support.

At this time, SAMHSA is requesting approval to use these two forms. The forms are described here:

1. *Core Competencies Survey:* The Core Competencies Survey was developed through an extensive process of literature reviews, synthesis of the competencies, expert panel review, and consensus-building activities. The Core Competencies Survey has 61 items and uses a 5-point Likert scale from 1-unimportant to 5-very important. The items on the survey are specific competencies that were developed by the BRSS TACS team, their partners, and experts in peer-provided services in behavioral health. Respondents to the Core Competencies Survey will also complete a section on demographic characteristics of the participant's gender, age, race/ethnicity, geographic location, level of education, monthly income, length of time as a peer worker, current field of employment, and certification status. Demographic data will be used to describe the survey respondents. The response to the current field of employment question will be used to categorize the respondent as working primarily in addiction services, mental health services, or services for people with co-occurring disorders, a variable that will be included in specific analyses of the data.

2. *Peer Worker Telephone Interviews:* Peer worker interviews will be conducted by telephone with 20 peer workers to gather descriptive details about the interviewees' use of the core competencies included in the quantitative surveys, their opinions about specific competencies, and their beliefs about the usefulness of articulating core competencies for their peer worker roles. Qualitative interviews may also produce examples of how peer workers use specific competencies.

The information gathered by the Core Competencies Survey and the Peer Worker Telephone Interview will help SAMHSA guide the behavioral health field with workforce development efforts related to peer workers. This information is crucial to providing technical assistance to states, behavioral health organizations, peer-run and recovery community organizations, and organizations and institutions that

provide training to peer workers in behavioral health.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total annual burden hours
Peer workers for interview	20	1	20	1	20
Peer workers for survey	100	1	100	1	200
Total	120	.....	120	.....	220

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by September 26, 2014.

Summer King,

Statistician.

[FR Doc. 2014–17646 Filed 7–25–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1418]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 27, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1418, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Maricopa County, Arizona, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Avondale	Development and Engineering Services Department, 11465 West Civic Center Drive, Avondale, AZ 85323.
City of Chandler	Transportation and Development, 215 East Buffalo Street, Chandler, AZ 85255.
City of Goodyear	Engineering Department, 14455 West Van Buren Street, Suite D 101, Goodyear, AZ 85338.
City of Mesa	Engineering Department, City Hall, 20 East Main Street, 5th Floor, Mesa, AZ 85211.
City of Phoenix	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.
City of Scottsdale	Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.
Town of Gila Bend	Town Hall, 644 West Pima Street, Gila Bend, AZ 85337.
Town of Gilbert	Development Engineering, 90 East Civic Center Drive, Gilbert, AZ 85296.
Unincorporated Areas of Maricopa County	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.
Sierra County, California, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Unincorporated Areas of Sierra County	Sierra County Department of Planning, 101 Courthouse Square, Downieville, CA 95936.
Adams County, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Northglenn	11701 Community Center Drive, Northglenn, CO 80233.
City of Thornton	12450 Washington Street, Thornton, CO 80241.
Unincorporated Areas of Adams County	4430 South Adams County Parkway, Suite W2000B, Brighton, CO 80601.
City and County of Broomfield, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *www.fema.gov/preliminaryfloodhazarddata*	
City and County of Broomfield	City Hall, Engineering Department, One Descombes Drive, Broomfield, CO 80020.
Jefferson County, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *www.fema.gov/preliminaryfloodhazarddata*	
City of Arvada	Engineering Department, 8101 Ralston Road, Arvada, CO 80001.
City of Westminster	4800 West 92nd Ave., Westminster, CO 80031.
Unincorporated Areas of Jefferson County	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.
Flathead County, Montana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Kalispell	Planning Director, Planning Department, 17 2nd Street East, Suite 211, Kalispell, MT 59901.
City of Whitefish	Planning Director, Planning & Building Department, 1005C Baker Avenue, Whitefish, MT 59937.
Unincorporated Areas of Flathead County	Planning Director, Planning & Zoning Office, 1035 1st Avenue West, Kalispell, MT 59901.
Stillwater County, Montana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Columbus	Stillwater County West Annex, 431 Quarry Road, Columbus, MT.
Unincorporated Areas of Stillwater County	Stillwater County West Annex, 431 Quarry Road, Columbus, MT.

Community	Community map repository address
Mecklenburg County, North Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Charlotte	Mecklenburg County Storm Water Services Office, 700 North Tryon Street, Charlotte, NC 28202.
Town of Cornelius	Town Hall, 21445 Catawba Avenue, Cornelius, NC 28031.
Town of Huntersville	Planning Department, 101 Huntersville-Concord Road, Huntersville, NC 28078.
Town of Pineville	Town Hall, 200 Dover Street, Pineville, NC 28134.
Unincorporated Areas of Mecklenburg County	Mecklenburg County Storm Water Services Office, 700 North Tryon Street, Charlotte, NC 28202.
Davis County, Utah, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Bountiful	City Hall, 790 South 100 East, Bountiful, UT 84010.
City of Centerville	Community Development Department, 655 North 1250 West, Centerville, UT 84014.
City of Farmington	City Hall, 160 South Main Street, Farmington, UT 84025.
City of Fruit Heights	City Hall, 910 South Mountain Road, Fruit Heights, UT 84037.
City of Kaysville	City Hall, 23 East Center Street, Kaysville, UT 84037.
City of Layton	City Center, 437 North Wasatch Drive, Layton, UT 84041.
City of South Weber	City Hall, 1600 East South Weber Drive, South Weber, UT 84405.
City of West Bountiful	City Hall, 550 North 800 West, West Bountiful, UT 84087.
City of Woods Cross	City Hall, 1555 South 800 West, Woods Cross, UT 84087.
Unincorporated Areas of Davis County	Davis County Administration Building, 61 South Main Street, Farmington, UT 84025.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–17620 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1339]

Proposed Flood Hazard Determinations for Weld County, Colorado and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (hereinafter referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Weld County, Colorado and Incorporated Areas.

DATES: This withdrawal is effective July 28, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1339, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On July 22, 2013, FEMA published a proposed notice at 78 FR 43911, proposing flood hazard determinations for Weld County, Colorado and Incorporated Areas. FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: July 10, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–17622 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1404]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; Correction.

SUMMARY: On April 25, 2014, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 79 FR 23008. The table provided here represents the proposed flood hazard determinations and communities affected for Daviess County, Missouri, and Incorporated Areas.

DATES: Comments are to be submitted on or before October 27, 2014.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1404, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@ fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 79 FR 23008 in the April 25, 2014, issue of the **Federal Register**, FEMA published a table titled Daviess County, Missouri, and Incorporated Areas. This table contained inaccurate information as to the community map repository for Town of Lock Springs featured in the table. In this document, FEMA is publishing the accurate information. The correct address for the Town of Lock Springs, which should be used in lieu of the address listed in the previously published table, is: Lock Springs Town Hall, 200 Lake Street, Jamesport, MO 64648.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–17642 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1404]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On April 25, 2014, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 79 FR 23007. The table provided here represents the proposed flood hazard determinations and communities affected for Sullivan County, New York (All Jurisdictions).

DATES: Comments are to be submitted on or before October 27, 2014.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1404, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the

appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://www.fema.gov/pdf/media/factsheets/2011/srp_fs.pdf.*

Correction

In the proposed flood hazard determination notice published at 79 FR 23007 (April 25, 2014), the table contained inaccurate information as to the watershed or communities affected by the proposed flood hazard determinations, or the associated community map repository or web addresses also featured in the table. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Community	Community Map Repository Address
Sullivan County, New York (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Neversink	Neversink Town Hall, 273 Main Street, Grahamsville, NY 12740.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–17624 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1413]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On May 13, 2014, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 79 FR 27339. The table provided here represents the proposed flood hazard determinations and communities affected for Plumas County, California, and Incorporated Areas.

DATES: Comments are to be submitted on or before October 27, 2014.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1413, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations

shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 79 FR 27339 in the May 13, 2014, issue of the **Federal Register**, FEMA published a table titled ''Plumas County, California, and Incorporated Areas''. This table contained inaccurate information as to the community map repository for the Unincorporated Areas of Plumas County featured in the table. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

Community	Community map repository address
Plumas County, California, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Unincorporated Areas of Plumas County	Plumas County Engineering/Planning Department, 555 Main Street, Quincy, CA 95971.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–17541 Filed 7–25–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Extension of the Air Cargo Advance Screening (ACAS) Pilot Program and Reopening of Application Period for Participation

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: On October 24, 2012, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** that announced the formalization and expansion of the Air Cargo Advance Screening (ACAS) pilot program that would run for six months. On April 23, 2013, CBP published a notice in the **Federal Register** extending the pilot period for another six months. On October 23, 2013, CBP published a notice in the **Federal Register** extending the pilot period for an additional nine months. This document announces that CBP is extending the pilot period for an additional year and reopening the application period for new participants for 60 days. The ACAS pilot is a voluntary test in which participants submit a subset of required advance air cargo data to CBP at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States.

DATES: CBP is extending the ACAS pilot program through July 26, 2015, and reopening the application period to accept applications for new ACAS pilot participants through September 26, 2014. Comments concerning any aspect of the announced test may be submitted at any time during the test period.

ADDRESSES: Applications to participate in the ACAS pilot must be submitted via email to *CBPCCS@cbp.dhs.gov*. In the subject line of the email, please use ''ACAS Pilot Application''. Written comments concerning program, policy, and technical issues may also be submitted via email to *CBPCCS@cbp.dhs.gov*. In the subject line of the email, please use ''Comment on ACAS pilot''.

FOR FURTHER INFORMATION CONTACT: Regina Kang, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *regina.kang@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2012, CBP published a general notice in the **Federal Register** (77 FR 65006, corrected in 77 FR 65395 [1]) announcing that CBP is formalizing and expanding the ACAS pilot to include other eligible participants in the air cargo environment. The notice provides a description of the ACAS pilot, sets forth eligibility requirements for participation, and invites public comments on any aspect of the test. In brief, the ACAS pilot revises the time frame for pilot participants to transmit a subset of mandatory advance electronic information for air cargo. CBP regulations implementing the Trade Act of 2002 specify the required data elements and the time frame for submitting them to CBP. Pursuant to title 19, Code of Federal Regulations (19 CFR) 122.48a, the required advance information for air cargo must be submitted no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations.

The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required 19 CFR 122.48a data elements (ACAS data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. The ACAS data is used to target high-risk air cargo. CBP is considering possible amendments to the regulations regarding advance information for air cargo. The results of the ACAS pilot will help determine the relevant data elements, the time frame within which data must be submitted to permit CBP to effectively target, identify and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

Extension of the ACAS Pilot Period and Reopening of the Application Period

The October 2012 notice announced that the ACAS pilot would run for six months. The notice provided that if CBP determined that the pilot period should be extended, CBP would publish another notice in the **Federal Register**. The October 2012 notice also stated that applications for new ACAS pilot participants would be accepted until November 23, 2012. CBP subsequently published several notices extending the pilot period and/or reopening the application period to new participants for limited periods. On December 26, 2012, CBP published a notice in the **Federal Register** (77 FR 76064)

[1] This **Federal Register** notice, published on October 26, 2012, corrected the email address under the **ADDRESSES** heading for submitting applications or comments. The correct email address is *CBPCCS@cbp.dhs.gov*.

reopening the application period for new participants until January 8, 2013. On January 3, 2013, the **Federal Register** published a correction (78 FR 315) stating that the correct date of the close of the reopened application period was January 10, 2013. On April 23, 2013, CBP published a notice in the **Federal Register** (78 FR 23946) extending the ACAS pilot period through October 26, 2013, and reopening the application period through May 23, 2013. Finally, on October 23, 2013, CBP published a notice in the **Federal Register** (78 FR 63237) extending the ACAS pilot period through July 26, 2014, and reopening the application period through December 23, 2013.

CBP would like to extend the pilot further to enable CBP to continue to strengthen its capability to target high-risk cargo earlier in the supply chain and provide greater opportunity for additional members of the air cargo community to participate and prepare for possible proposed regulatory changes. There are current participants that are in the process of testing and development that still need time to become fully operational participants and there continue to be members of the air cargo community who have informed CBP that they are interested in participating in the pilot.

For these reasons, CBP is extending the ACAS pilot period through July 26, 2015, and reopening the application period through September 26, 2014.

Anyone interested in participating in the ACAS pilot should refer to the notice published in the **Federal Register** on October 24, 2012, for additional application information and eligibility requirements.

Dated: July 23, 2014.

John P. Wagner,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 2014–17724 Filed 7–25–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY910000 L16100000.XX0000]

Call for Nominations for the Wyoming Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations to fill four positions for the Bureau of Land Management (BLM) Wyoming 10-member Resource Advisory Council (RAC). The RAC provides advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within Wyoming.

DATES: All nominations must be received no later than September 11, 2014.

ADDRESSES: Nominations should be sent to Mr. Christian Venhuizen, Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003, (307) 775–6103; or email *cvenhuizen@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Venhuizen, Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; (307) 775–6103; or email *cvenhuizen@blm.gov*.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA).

As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands.

The RAC has one vacancy in category one (holders of federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation), one vacancy in category two (representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations), and two vacancies in category three (representatives of state, county, or local elected office; employees of a state agency responsible for management of natural resources; representatives of Indian tribes within or adjacent to the area for which the council is organized; representatives of academia who are employed in natural sciences; or the public-at-large). The individuals selected to fill the positions in category one, and two, and one of the positions in category three will fill the positions for three years from the date of appointment. The remaining category three position will be filled for the remainder of the vacated term that expires March 16, 2016. Nominees must be residents of Wyoming. The BLM will evaluate nominees based on their education, training, experience, and their knowledge of the geographic area. Nominees should demonstrate a commitment to collaborative resource decision making. The Obama Administration prohibits individuals who are currently federal-registered lobbyists to serve on all FACA and non-FACA boards, committees or councils. The following must accompany all nominations:

—Letters of reference from represented interests or organizations;
—A completed background information nomination form; and
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM Wyoming State Office will issue a media release providing additional information for submitting nominations. Nomination forms may also be downloaded from *http://www.blm.gov/wy/st/en/advcom/rac.html*.

Certification Statement: I hereby certify that the BLM Wyoming Resource Advisory Council is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Buddy Green,

Acting State Director, Wyoming.

[FR Doc. 2014–17667 Filed 7–25–14; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16149; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Pennsylvania Museum of Archaeology and Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of

any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Pennsylvania Museum of Archaeology and Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Pennsylvania Museum of Archaeology and Anthropology at the address in this notice by August 27, 2014.

ADDRESSES: Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from various sites in Florida.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA professional staff in consultation with representatives of the Alabama-Quassarte Tribal Town; Kialegee Tribal Town; Miccosukee Tribe of Indians; Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); and The Muscogee (Creek) Nation.

Representatives of the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Coushatta Tribe of Louisiana; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town were also invited to consult, but did not participate.

History and Description of the Remains

At an unknown date before 1838, human remains representing, at minimum, one individual (97–606–707) were removed from an unknown location 12 miles south of the Suwanne River in Northern Florida by Dr. Eugene H Abadie. This individual has been identified as ''Eoklo Emathla,'' a Seminole warrior identified in archival and published records. No associated funerary objects are present.

At an unknown date before 1838, human remains representing, at minimum, one individual (97–606–0708) were removed from an unknown location in Florida by Dr. Eugene Abadie. No known individual was identified. No associated funerary objects are present.

Between December 7 and December 30, 1837, human remains representing, at minimum, two individuals (97–606–0727 and 97–606–0726.1) were removed from an unknown site near Fort Gardener, FL, by Dr. Eugene Abadie. Collection records identify one of these individuals (97–606–0727) as a ''Seminole woman of rank'' (Meigs, 1857). No individuals were identified. No associated funerary objects are present.

On November 20, 1837, human remains representing, at minimum, one individual (97–606–0728) were removed from an unknown location near Pease Creek between Fort Brooke and Fort Gardner, FL, by Dr. Eugene Abadie. Archival records identify the human remains as ''another boy belonging to a party of Seminoles headed by John Cavallo or Cow-a-gee.'' No known individual was identified. No associated funerary objects are present.

In November 1837, human remains representing, at minimum, one individual (97–606–0729) were removed from an unknown location in the vicinity of Tampa, FL, by Dr. Eugene Abadie. Dr. Abadie identified the human remains as belonging to the ''tribe of Black Dirt emigrated [to Oklahoma] in 1836 by Gen. Scott.'' No known individual was identified. No associated funerary objects are present.

On January 31, 1838, human remains representing, at minimum, two individuals (97–606–0730 and 97–606–0732) were removed from the north shore of the battlefield of Lake Okeechobee, FL, by Eugene H. Abadie. No known individuals were identified. No associated funerary objects are present.

In December 1837, human remains representing, at minimum, one individual (97–606–0733) were removed from an unknown location in the vicinity of Fort Bassinger, FL, by Dr. Eugene Abadie. Museum and published records identify the human remains as belonging to the ''MICCO–SUKIE tribe of the Seminole nation,'' who were hostile to removal by U.S. Government forces during the Second Seminole War. No known individual was identified. No associated funerary objects are present.

Dr. Eugene H. Abadie, an assistant surgeon for the U.S. Army during the Second Seminole War, obtained the human remains of nine individuals described above, after 1836, but prior to February 1838. Dr. Abadie subsequently transferred the human remains to Dr. Samuel G. Morton, who accessioned these remains into his collection between 1838 and 1840.

At an unknown date before 1839, human remains representing, at minimum, one individual (97–606–0456) were removed from an unknown site in Gadsden, Jackson, or Leon Counties, FL, by Hardy B. Croom, who subsequently sent the human remains to Dr. Samuel G. Morton. Dr. Morton accessioned these remains into his collection sometime prior to 1839. No known individual was identified. No associated funerary objects are present.

At an unknown date before 1839, human remains representing, at minimum, one individual (97–606–0604) were removed from the site of a battlefield near St. Augustine in St. John's County, FL, by an unknown person. Collection records and historical documents indicate that the human remains are of a ''Seminole warrior, slain at the battle of St. Joseph's, thirty miles below St. Augustine, in June 1836, by Captain Justin Dimmick.'' At an unknown date, the human remains were transferred to Dr. Gouverneur Emerson of Philadelphia by an unknown individual. Sometime prior to 1839, Dr. Emerson forwarded the human remains to Dr. Morton, who accessioned the human remains into his collection. No known individual was identified. No associated funerary objects are present.

At an unknown date before 1840, human remains representing, at minimum, one individual (97–606–0698) were removed from an unknown location in Florida by Colonel John James Abert, a topographical engineer for the U.S. Government who marked boundary lines between the Creek and Seminole Confederacies in the 1830s. Abert subsequently transferred the human remains to Dr. Morton at an

unknown date, but prior to 1840. No known individual was identified. No associated funerary objects are present.

At an unknown date before 1840, human remains representing, at minimum, one individual (97–606–0754) were removed from an unknown location in Florida by Dr. Joseph Walker, an Assistant Army Surgeon who was stationed in the Missouri Territory during 1839. Dr. Walker transferred the human remains to Dr. Morton sometime prior to 1840. No known individual was identified. No associated funerary objects are present.

In February or March of 1836, human remains representing, at minimum, one individual (97–606–1105) were removed from the site of the Dade Battle in Sumter County, FL, by Dr. Captain Francis Marion Robertson of the Richmond Blues. Captain Robertson subsequently forwarded the human remains to Dr. Morton for his collection sometime between 1842 and 1849. No known individual was identified. No associated funerary objects are present.

At an unknown date before 1848, human remains representing, at minimum, one individual (97–606–1286) were removed from an unknown location in Florida by James Couper. Collection records identify the human remains as a Seminole Indian of Florida (Morton 1849). In 1848, Couper transferred the human remains to Dr. Morton. No known individual was identified. No associated funerary objects are present.

At an unknown date before 1852, human remains representing, at minimum, one individual (97–606–1840) were removed from Florida by an unknown collector. At an unknown date, the human remains were obtained by Dr. Charles Delucena Meigs, a Philadelphia obstetrician and professor. Dr. Meigs subsequently donated the human remains to the Academy of Natural Sciences in Philadelphia in 1852 for inclusion in the Morton Collection. No known individual was identified. No associated funerary objects are present.

From approximately 1830 until Dr. Morton's death in 1851, the Academy of Natural Sciences in Philadelphia provided storage space for Dr. Morton's collection. In 1853, Dr. Morton's collection, including all of the human remains described above, was purchased from Dr. Morton's estate and formally presented to the Academy of Natural Sciences. In 1966, Dr. Morton's collection was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the University of Pennsylvania Museum.

At an unknown date, human remains representing, at minimum, one individual (97–29–1) were removed from an unknown location by an unknown person. The human remains were transferred to the Academy of Natural Sciences in Philadelphia by an unknown individual. According to the label attached to the cranium, the human remains are identified as a ''Seminole Indian killed in Florida War.'' No known individual was identified. No associated funerary objects are present.

At an unknown date before 1887, human remains representing, at minimum, one individual (CG95–7–19) were removed from the area of Oak Hill, FL, by an unknown collector. A label on the human remains identifies this individual as Seminole. At an unknown date after 1887, the human remains were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology by an unknown person. No known individual was identified. No associated funerary objects are present.

The eighteen human remains listed above have been identified as Native American based on the specific cultural and geographic attribution in the museum records. Archival and collection records, museum documentation, and published sources identify the human remains as Seminole.

Between February and April of 1838, human remains representing, at minimum, one individual (97–606–0726.2) were removed from a mound located on the southeast shore of Lake Okeechobee, FL, by Dr. Eugene Abadie. At an unknown date between 1838 and 1840, Dr. Abadie transferred the human remains to Dr. Samuel G. Morton. From approximately 1830 until Dr. Morton's death in 1851, the Academy of Natural Sciences in Philadelphia provided storage space for Dr. Morton's collection. In 1853, Dr. Morton's collection, including all of the human remains described above, was purchased from Dr. Morton's estate and formally presented to the Academy of Natural Sciences. In 1966, Dr. Morton's collection was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the University of Pennsylvania Museum. No known individuals were identified. No associated funerary objects are present. The human remains have been identified as Native American based on the specific cultural and geographic attribution in the museum records. Collection records, museum documentation, and published sources identify the human remains above as Yamasee.

Between November 1831 and March 1834, human remains representing, at minimum, one individual (97–606–0039) were removed from Fort Gibson, OK, by Dr. Zina Pitcher. The human remains were transferred to Dr. Morton sometime between 1834 and 1839. From approximately 1830 until Dr. Morton's death in 1851, the Academy of Natural Sciences in Philadelphia provided storage space for Dr. Morton's collection. In 1853, Dr. Morton's collection, including all of the human remains described above, was purchased from Dr. Morton's estate and formally presented to the Academy of Natural Sciences. In 1966, Dr. Morton's collection was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the University of Pennsylvania Museum. Dr. Pitcher identified the individual as ''Bill the Fifer,'' a Euchee man from Florida. No associated funerary objects are present. The human remains have been identified as Native American based on the specific cultural and geographic attribution in the museum records. Collection records, museum documentation, and published sources identify these human remains as Euchee.

Determinations Made by the University of Pennsylvania Museum of Archaeology and Anthropology

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of twenty individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2),there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Seminole Nation of

Oklahoma; and Thlopthlocco Tribal Town.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, by August 27, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town may proceed.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town that this notice has been published.

Dated: July 2, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17732 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16146; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Illinois State Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Illinois State Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Illinois State Museum at the address in this notice by August 27, 2014.

ADDRESSES: Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3500, telephone (217) 524–7903, email *warren@museum.state.il.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Illinois State Museum, Springfield, IL. The human remains were removed from the Crawford Farm archeological site, located on the south bank of the Rock River in Rock Island County, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Illinois State Museum professional staff in consultation with representatives of the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa.

History and Description of the Remains

Between 1956 and 1958, human remains representing, at minimum, one individual were removed from the Crawford Farm archeological site (11RI81) in Rock Island County, IL, by a group of amateur artifact collectors. The collectors later donated the human remains and other materials removed from the site to the Putnam Museum of History and Natural Science in Davenport, IA. In 1996, the Putnam Museum of History and Natural Science transferred its Crawford Farm collection to the Illinois State Museum in Springfield (Accession 1996–105). This collection includes artifacts, shells, and animal bones from 34 pit features. In 2013, the Illinois State Museum loaned part of its Crawford Farm collection to the Illinois State Archeological Survey in Champaign-Urbana for an analysis of animal remains. During this analysis, one fragmentary human tarsal bone (left cuboid) was discovered in a bag of animal bone from Pit 10. The age and gender of the individual are not known. No known individuals were identified. No associated funerary objects are present.

Based on archeological evidence and historical records, the Crawford Farm site has been identified as the second of several historic Saukenuk villages occupied by Sauk Indians from about A.D. 1790 to 1830. The presence of horse remains in Pit 10 affirms that the human remains found in this feature were associated with the historic Saukenuk village occupation at the site. The human remains are likely Native American because they were associated with a village occupied by as many as 100 lodges of Sauk Indians in the early nineteenth century. Historical records linking Saukenuk village with the Sauk Indian tribe include maps and reports prepared by American explorers and Indian agents. Members of other tribes (Ho-Chunk/Winnebago, Menominee, Ottawa, and Potawatomi) occasionally visited Saukenuk village, but the primary occupants were Sauk and/or Mesquaki (Fox).

Determinations Made by the Illinois State Museum

Officials of the Illinois State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3500, telephone (217) 524–7903, email *warren@museum.state.il.us,* by August 27, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa may proceed.

The Illinois State Museum is responsible for notifying the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa that this notice has been published.

Dated: July 2, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17749 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16147: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Illinois State Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Illinois State Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Illinois State Museum at the address in this notice by August 27, 2014.

ADDRESSES: Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3500, telephone (217) 524–7903, email *warren@museum.state.il.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Illinois State Museum, Springfield, IL. The human remains were removed from the vicinity of Barrow, North Slope Borough, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Illinois State Museum professional staff in consultation with representatives of the Inupiat Community of the Arctic Slope and the Native Village of Barrow Inupiat Traditional Government.

History and Description of the Remains

In 1930–1931, human remains representing, at minimum, two individuals were removed from the ground surface in the vicinity of Barrow in North Slope Borough, AK. The remains were collected by Mollie Ward Greist, a native of Indiana who lived in Barrow from 1921–1936 with her husband, Dr. Henry Greist, a physician and Presbyterian missionary, and their son David. Mollie Greist was an avid collector of bird eggs and nests, which she processed and shipped to several zoologists in the United States. In June of 1930, Greist collected a nest containing six eggs of the Lapland Longspur (*Calcarius lapponicus*) that had been built inside a human cranium. Greist shipped the nest, eggs, and cranium to Richard M. Barnes, a zoologist with a large bird-egg collection and museum in Lacon, IL. In July of 1931, following a severe snow storm that killed many birds, Greist collected another nest containing six eggs of the Snow Bunting (*Plectrophenax nivalis*) that had also been built inside a human cranium. As before, she shipped the nest, eggs, and cranium to Richard M. Barnes.

In 1947, Richard M. Barnes donated a large collection of zoological materials to the Illinois State Museum (ISM 1947–8), including both of the aforementioned sets of crania, nests, and eggs from the Barrow area. The crania were discovered by ISM zoologists during a rehabilitation of the Illinois State Museum's bird-nest collection. The cranium with the Lapland Longspur nest (Individual B; ISM NAGPRA–7449) is that of an adult female. It is relatively complete, but lacks dentition and is eroded by weathering. The cranium collected with the Snow Bunting nest (Individual A; ISM NAGPRA–7448) is also an adult female. It is not as weathered as Individual B, but it is fragmented and less complete (dentition and parts of the maxilla and other elements are missing). No known individuals were identified. No associated funerary objects are present.

Both human remains have been determined to be Native American based on metric analysis and physical characteristics of the cranial vault. In addition, catalog information recorded by Richard M. Barnes indentifies Individual A as ''Esquamo.'' The remains are likely to be culturally affiliated with the Inupiat Eskimo based on their surface provenance, weathered condition, and the concordance of these factors with historical Inupiat funerary practices in the Barrow area. First, both remains were obtained from the ground surface. Although the original location is not known, the crania probably were found on the tundra ''inland from Barrow,'' where Mollie Greist and David Greist reported seeing hundreds of Native American skeletons lying on the

ground, sometimes in association with remnants of wooden coffins. Second, erosion of the cranial surfaces indicates that both human remains were exposed to weathering for a period of time. Third, historical observations of Inupiat cemeteries and funerary practices have shown that the standard treatment of the dead was to wrap each body in animal skins or cloth, remove it from the village by sled, and place it in a cemetery where the bodies ''sleep on the ground.'' A cemetery associated with Utqiaġvik, a precontact Inupiat community located at modern-day Barrow, was located about 1.5 miles south of Barrow near the banks of Isatkoak Lagoon. A series of investigators removed more than one-hundred Inupiat human remains from this cemetery in the late nineteenth and early twentieth centuries, and it is the most likely source of the human remains collected by Mollie Greist.

Determinations Made by the Illinois State Museum

Officials of the Illinois State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Inupiat Community of the Arctic Slope and the Native Village of Barrow Inupiat Traditional Government.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Robert E. Warren, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3500, telephone (217) 524–7903, email *warren@museum.state.il.us,* by August 27, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to Inupiat Community of the Arctic Slope and the Native Village of Barrow Inupiat Traditional Government may proceed.

The Illinois State Museum is responsible for notifying the Inupiat Community of the Arctic Slope and the Native Village of Barrow Inupiat Traditional Government that this notice has been published.

Dated: July 2, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17750 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16117; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Montezuma Castle National Monument, Camp Verde, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Montezuma Castle National Monument has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Montezuma Castle National Monument. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Montezuma Castle National Monument at the address in this notice by August 27, 2014.

ADDRESSES: Dorothy FireCloud, Superintendent, Montezuma Castle National Monument, P.O. Box 219, Camp Verde, AZ 86322, telephone (928) 567–5276, email *dorothy_firecloud@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Montezuma Castle National Monument, Camp Verde, AZ. The human remains were removed from Yavapai County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Montezuma Castle National Monument.

Consultation

A detailed assessment of the human remains was made by Montezuma Castle National Monument professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

History and Description of the Remains

At unknown dates, human remains representing, at minimum, five individuals were removed from unknown locations in Yavapai County, AZ. The human remains were found in Montezuma Castle National Monument collections and so were likely removed from sites within the boundaries of Montezuma Castle National Monument. No known individuals were identified. No associated funerary objects are present.

At unknown dates, human remains representing, at minimum, three individuals were removed from unknown sites in the Verde Valley in Yavapai County, AZ. The remains were given to Montezuma Castle National Monument by multiple donors. It is unclear when each set of remains was donated. No known individuals were identified. No associated funerary objects are present.

Prior to 1933, human remains representing, at minimum, one individual were removed from Oak Creek Highway in Yavapai County, AZ during roadwork by an Arizona State Highway Department road grader. The remains were gifted to Montezuma Castle National Monument at an unknown date. No known individuals were identified. No associated funerary objects are present.

Prior to 1942, human remains representing, at minimum, two individuals were removed from Osborn Ranch Ruin in Yavapai County, AZ. The remains were collected from disturbed burials in the trash dump of the site. They were donated to Montezuma Castle National Monument at an unknown date. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Montezuma Castle National Monument

Officials of Montezuma Castle National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and the known archeological context of Montezuma Castle National Monument.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 11 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Fort McDowell Yavapai Nation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Tonto Apache Tribe of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona).
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
- Other credible lines of evidence, including relevant and authoritative governmental determinations and information gathered during government-to-government consultation from subject matter experts, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and Zuni Tribe of the Zuni Reservation, New Mexico.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dorothy FireCloud, Superintendent, Montezuma Castle National Monument, P.O. Box 219, Camp Verde, AZ 86322, telephone (928) 567–5276, email *dorothy_firecloud@nps.gov,* by August 27, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Montezuma Castle National Monument is responsible for notifying The Tribes that this notice has been published.

Dated: June 26, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17743 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16150; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The Wistar Institute, Philadelphia, PA, and University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wistar Institute and the University of Pennsylvania Museum of Archaeology and Anthropology have completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Pennsylvania Museum of Archaeology and Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Pennsylvania Museum of Archaeology and Anthropology at the address in this notice by August 27, 2014.

ADDRESSES: Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wistar Institute and in the physical custody of the University of Pennsylvania Museum of Archaeology and Anthropology. The Wistar Institute retains control of the human remains but has authorized the University of Pennsylvania Museum of Archaeology

and Anthropology to handle the NAGPRA process on its behalf. The human remains were removed from Fisherman's Key in Lee County, FL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology professional staff on behalf the Wistar Institute in consultation with representatives of Alabama-Quassarte Tribal Town; Kialegee Tribal Town; Miccosukee Tribe of Indians; Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); and The Muscogee (Creek) Nation.

Representatives of the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Coushatta Tribe of Louisiana; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town were also invited to consult, but did not participate.

History and Description of the Remains

At an unknown date in 1895, human remains representing, at minimum, one individual (41228) were removed from a surface cemetery on Fisherman's Key on the southwest coast of Florida by Frank Hamilton Cushing. Cushing was leading an expedition funded by the University of Pennsylvania Museum of Archaeology and Anthropology to explore Florida's prehistoric cultures. From 1901 to 1915, the human remains were housed at the University of Pennsylvania Museum of Archaeology and Anthropology. On January 11, 1915, the human remains were donated to the Wistar Institute in Philadelphia (15490).The human remains were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology on a long-term loan in 1956 (L–1011–464), where they are currently housed. No known individual was identified. No associated funerary objects are present.

The human remains have been identified as Native American based on the specific cultural and geographic attribution identified in museum records. Museum documentation identifies the human remains as those of a Seminole chief. A physical assessment indicates this individual is female whose approximate age is between 35 to 50 years.

Determinations Made by the Wistar Institute Through Its Agent the University of Pennsylvania Museum of Archaeology and Anthropology

Officials of the Wistar Institute, through its agent the University of Pennsylvania Museum of Archaeology and Anthropology, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Julian Siggers, Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, by August 27, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town may proceed.

The Wistar Institute, through its agent the University of Pennsylvania Museum of Archaeology and Anthropology, is responsible for notifying the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town that this notice has been published.

Dated: July 2, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17733 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16116; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Tuzigoot National Monument, Clarkdale, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Tuzigoot National Monument has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Tuzigoot National Monument. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization

not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Tuzigoot National Monument at the address in this notice by August 27, 2014.

ADDRESSES: Dorothy FireCloud, Superintendent, Tuzigoot National Monument, P.O. Box 219, Camp Verde, AZ 86322, telephone (928) 567–5276, email *dorothy_firecloud@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Tuzigoot National Monument, Clarkdale, AZ. The human remains were removed from multiple locations in Yavapai County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Tuzigoot National Monument.

Consultation

A detailed assessment of the human remains was made by Tuzigoot National Monument professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location in Yavapai County, AZ. The remains were donated to Tuzigoot National Monument in 1939 by a Clarkdale man who reported removing them from a site on a creek on the upper Verde River. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from the vicinity of Coon's Ranch in Yavapai County, AZ. The remains were donated to Tuzigoot National Monument by the Coon brothers before 1940. No known individuals were identified. No associated funerary objects are present.

At unknown dates, human remains representing, at minimum, four individuals were removed from unknown locations on a tributary of the Verde River in Yavapai County, AZ. No known individuals were identified. No associated funerary objects are present.

At unknown dates, human remains representing, at minimum, 17 individuals were removed from unknown locations in Yavapai County, AZ. The remains were found in collections at Tuzigoot National Monument and so were likely removed from the area of the monument. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals were removed from the tailings area near Tuzigoot National Monument in Yavapai County, AZ. No known individuals were identified. No associated funerary objects are present.

At unknown dates, human remains representing, at minimum, 10 individuals were removed from unknown locations in Yavapai County, AZ. The remains were found in Tuzigoot National Monument collections at the National Park Service's Western Archeological and Conservation Center and so were likely removed from the area of the monument. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from a location near Clarkdale's sewer outlet in Yavapai County, AZ. No information is available regarding the donor or the date of receipt. No known individuals were identified. No associated funerary objects are present.

In 1913, human remains representing, at minimum, two individuals were removed from the west bank of the Verde River in Yavapai County, AZ. The remains were donated to Tuzigoot National Monument in 1954 by Russel E. Hill. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Tuzigoot National Monument

Officials of Tuzigoot National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 38 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Fort McDowell Yavapai Nation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Tonto Apache Tribe of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona).
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; and White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
- Other credible lines of evidence, including relevant and authoritative governmental determinations and information gathered during government-to-government consultation from subject matter experts, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of

Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and Zuni Tribe of the Zuni Reservation, New Mexico.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dorothy FireCloud, Superintendent, Tuzigoot National Monument, P.O. Box 219, Camp Verde, AZ 86322, telephone (928) 567–5276, email *dorothy_firecloud@nps.gov,* by August 27, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Tuzigoot National Monument is responsible for notifying The Tribes that this notice has been published.

Dated: June 26, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17744 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16065; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Hubbell Trading Post National Historic Site, Ganado, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Hubbell Trading Post National Historic Site has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Hubbell Trading Post National Historic Site. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Hubbell Trading Post National Historic Site at the address in this notice by August 27, 2014.

ADDRESSES: Lloyd Masayumptewa, Superintendent, Hubbell Trading Post National Historic Site, P.O. Box 150, Ganado, AZ 86505–0150, telephone (928) 755–3475, email *lloyd_masayumptewa@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Hubbell Trading Post National Historic Site, Ganado, AZ. The human remains were removed from Hubbell Trading Post National Historic Site, Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Hubbell Trading Post National Historic Site.

Consultation

A detailed assessment of the human remains was made during a region-wide, multi-park process by Hubbell Trading Post National Historic Site professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate in the face-to-face consultation meeting: Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California); Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Kiowa Indian Tribe of Oklahoma; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of

the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Tonto Apache Tribe of Arizona; Walker River Paiute Tribe of the Walker River Reservation, Nevada; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown site, likely within the boundaries of Hubbell Trading Post National Historic Site, and donated to the Trading Post by the Hubbell family. No known individuals were identified. No associated funerary objects are present.

In 1989, human remains representing, at minimum, two individuals were removed from site AZ K:6:8 in Apache County, AZ, during excavations prior to replacing the wareroom floor. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Hubbell Trading Post National Historic Site

Officials of Hubbell Trading Post National Historic Site have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and site location.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains were removed is the aboriginal land of the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.
- Other credible lines of evidence, including relevant and authoritative governmental determinations and information gathered during government-to-government consultation from subject matter experts, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and Zuni Tribe of the Zuni Reservation, New Mexico.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lloyd Masayumptewa, Superintendent, Hubbell Trading Post National Historic Site, P.O. Box 150, Ganado, AZ 86505–0150, telephone (928) 755–3475, email *lloyd_masayumptewa@nps.gov,* by August 27, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed.

Hubbell Trading Post National Historic Site is responsible for notifying The Consulted Tribes and The Invited

Tribes that this notice has been published.

Dated: June 18, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17738 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16148; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bishop Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Bishop Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Bishop Museum at the address in this notice by August 27, 2014.

ADDRESSES: Noa Dettweiler, Bishop Museum, 1525 Bernice Street Honolulu, HI 96817, telephone (808) 847–8216, email *noa@bishopmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Bishop Museum, Honolulu, HI. The human remains were removed from Nu'alolo Kai, Kauai Island, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Bishop Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, and the Na Pali Coast 'Ohana.

History and Description of the Remains

In 1964, 40 small fragments of apparent human remains representing, at minimum, three individuals were removed from Nu'alolo Kai on the island of Kauai, HI, by Bishop Museum archeologist Dr. Kenneth P. Emory and staff. Permission to excavate on state lands was granted by the State of Hawaii Board of Land and Natural Resources (BLNR); however, control of the excavated materials was to be kept by the state. The Bishop Museum has recently been granted permission to move forward with the repatriation process by the BLNR.

The remains were excavated from a Native Hawaiian habitation and worksite at Nu'alolo Kai on the island of Kauai in an area designated as Hawaii State Site No. 50–30–01–196. University of Hawai'i publications indicate that a burial was encountered in Feature K5, although it is unclear from Bishop Museum field notes if the human remains listed in this notice are from this particular burial. The bones were originally thought to be from animals, but subsequent studies have indicated they are more likely to be human remains. No known individuals were identified. No associated funerary objects are present.

Nu'alolo Kai is located in a valley on the northwestern side of the island of Kauai. Radiocarbon dating suggests the site was inhabited from around A.D. 1400 until the nineteenth century.

Determinations Made by the Bishop Museum

Officials of the Bishop Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of at least three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Na Pali Coast 'Ohana.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human should submit a written request with information in support of the request to Noa Dettweiler, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone (808) 847–8216, email *noa@bishopmuseum.org,* by August 27, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Na Pali Coast 'Ohana may proceed.

The Bishop Museum is responsible for notifying Hui Malama I Na Kapuna O Hawai'i Nei and the Na Pali Coast 'Ohana that this notice has been published.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17731 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16152; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Land Management, New Mexico State Office, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, New Mexico State Office, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects and objects of cultural patrimony. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Bureau of Land Management, New Mexico State Office. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to

the Bureau of Land Management, New Mexico State Office at the address in this notice by August 27, 2014.

ADDRESSES: Mr. Jesse Juen, State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–0115, telephone (505) 954–2222.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Bureau of Land Management, New Mexico State Office, Santa Fe, NM, that meet the definition of sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 2013, four cultural items were relinquished to the BLM by an individual investigated as part of a law enforcement action. The cultural items include a Tsa'kwayna Katsina Friend (mask), Raven Bride Katsina Friend (mask), Nataska Ogre Katsina Friend (mask), and a One-Horn ritual headdress. The Katsina Friends (masks) consist of painted wood, cloth, leather, and feathers. The headdress consists of a painted gourd. They were acquired pursuant to a search warrant and through undercover purchase operations in 2008 and 2009 by BLM law enforcement agents as part of a multi-state investigation into the trafficking of artifacts and cultural materials code-named ''Cerberus Action.'' During the course of the ensuing criminal investigation, the Hopi Tribe of Arizona was contacted by law enforcement agents, and in subsequent meetings, members of the Hopi Tribe of Arizona identified the confiscated materials as sacred objects and objects of cultural patrimony. This information was needed to pursue prosecution under the criminal penalties for violating NAGPRA. Ultimately, the Department of Justice declined to prosecute and pursued several non-prosecution agreements that included relinquishment of some of the confiscated materials, including these four sacred objects/objects of cultural patrimony.

Tribal cultural authorities of the Pueblo of Acoma, New Mexico; the Hopi Tribe of Arizona; the Pueblo of Laguna, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico, were contacted by BLM cultural resources staff, and the Hopi Tribe of Arizona identified the objects as sacred objects and objects of cultural patrimony eligible for repatriation under NAGPRA. The tribal cultural authorities recognized the materials used in the construction of the objects, as well as the objects' style and type. Consequently, these tribal consultants were able to determine that the items are culturally affiliated specifically with the Hopi Tribe of Arizona.

Determinations Made by the Bureau of Land Management, New Mexico State Office

Officials of the Bureau of Land Management, New Mexico State Office have determined that*:*

- Pursuant to 25 U.S.C. 3001(3)(C), the four cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the four cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the four sacred objects/objects of cultural patrimony and the Hopi Tribe of Arizona.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Mr. Jesse Juen, State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–0115, telephone (505) 954–2222, by August 27, 2014. After that date, if no additional claimants have come forward, transfer of control of the sacred objects/objects of cultural patrimony to the Hopi Tribe of Arizona may proceed.

The Bureau of Land Management, New Mexico State Office is responsible for notifying the Hopi Tribe of Arizona, the Pueblo of Acoma, New Mexico; the Pueblo of Laguna, New Mexico, and the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 2, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17735 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16151: PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Cowlitz County Historical Museum, Kelso, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Cowlitz County Historical Museum, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Cowlitz County Historical Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Cowlitz County Historical Museum at the address in this notice by August 27, 2014.

ADDRESSES: Bill Watson, Collections Curator, Cowlitz County Historical Museum, 405 Allen Street, Kelso, WA 98626, telephone (360) 577–3119, email *watsonb@co.cowlitz.wa.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Cowlitz County Historical Museum, Kelso, WA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25

U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In or around the first decade of the 20th century, 60 cultural items were removed from the Columbia River in the vicinity of the town of Chelan, in Chelan County, WA. The catalog form for these items includes the notation, ''Mr. Urban Fisher found these in an Indian Grave in the Upper Columbia River.'' Urban Fisher is found in the 1900 and 1910 Federal Censuses in the town of Chelan, in Chelan County, WA, ages 6 and 16, respectively. In the 1920 Federal Census, Urban Fisher is found in Kelso, in Cowlitz County, WA. At some point between when Mr. Fisher moved to Kelso and 1960, he gave or sold these items to Sanford Lord, a Kelso collector of Native objects. City Directories in our collection indicate Mr. Fisher and Mr. Lord worked together in the Kelso Post Office for over 30 years. On January 4, 1960, Sanford Lord donated the bulk of his collection of Native objects to the Cowlitz County Historical Museum. The 60 unassociated funerary objects consist of short necklace fragments: One containing 7 copper beads and 13 shell beads, one containing 5 copper bead fragments and 3 shell beads, and one containing 3 copper beads and 4 shell beads; and 25 loose copper beads of various sizes.

These items were taken from the Columbia River in the vicinity of Chelan, WA, which falls within the traditional lands of the Confederated Tribes of the Colville Reservation. The determination of the cultural affiliation of the unassociated funerary objects is based upon geographical, archeological, oral tradition, and historical evidences. The unassociated funerary objects described above are consistent with cultural items typically found in context with Native American burials in eastern Washington State and the upper Columbia River. Extensive museum documentation, the general geographic locations of the site, burial patterns, and consultation with the Confederated Tribes of the Colville Reservation verify that the cultural items were removed from the area that is within the aboriginal territory of the Chelan Indians, a constituent tribe of the Confederated Tribes of the Colville Reservation.

Determinations Made by the Cowlitz County Historical Museum

Officials of the Cowlitz County Historical Museum have determined that*:*

- Pursuant to 25 U.S.C. 3001(3)(B), the 60 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Reservation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Bill Watson, Collections Curator, Cowlitz County Historical Museum, 405 Allen Street, Kelso, WA 98626, telephone (360) 577–3119, email *watsonb@co.cowlitz.wa.us,* by August 27, 2014. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects described in this notice to the Confederated Tribes of the Colville Reservation may proceed.

The Cowlitz County Historical Museum is responsible for notifying the Confederated Tribes of the Colville Reservation that this notice has been published.

Dated: July 2, 2014.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–17734 Filed 7–25–14; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: International Trade Commission.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, U.S. International Trade Commission has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.).

DATES: Comments must be submitted August 25, 2014.

ADDRESSES: Written comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington DC 20503, *Attention:* Docket Librarian. Copies of any comments should be provided to Bob Reiss, Acting Chief Information Officer, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). Also, general information about the Commission can be obtained from its Internet server (*http://www.usitc.gov*).

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Jeremy Wise at 202–205–3190.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

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

directly to the improvement of program management.

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

The U.S. International Trade Commission received no comments in response to the 60-day notice published in the **Federal Register** of June 3, 2012 (79 FR 31981).

Below we provide the U.S. International Trade Commission's projected average estimates for the next three years:[1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 3.

Respondents: 728.

Annual Responses: 728.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 387.

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 Office of Management and Budget control number.

Dated: July 22, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17636 Filed 7–25–14; 8:45 am]

BILLING CODE 7020–02–P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average Number of Respondents per Activity: 200.

Annual Responses: 5,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden hours: 2,500,000.

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On July 22, 2014, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States of America* v. *OSRAM SYLVANIA Inc. and Philips Electronics North America Corporation* 3:14–cv–1621.

The Complaint in this matter, filed simultaneously with the Consent Decree, alleges that OSRAM SYLVANIA Inc. (''OSRAM'') and Philips Electronics North America Corporation (''Philips'') are liable under Section 107(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') because they generated hazardous substances and arranged for the disposal of those substances at the Ottawa Lead Superfund Site (''Site'') in the Village of Ottawa, Putnam County, Ohio. The Consent Decree would require OSRAM and Philips to pay $450,000 and $120,000, respectively, in past costs for the removal action that took place at the Site from October 4, 2010 to January 6, 2011.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *OSRAM SYLVANIA Inc. and Philips Electronics North America Corporation,* D.J. Ref. No. 90–11–3–10705.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Acting Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–17652 Filed 7–25–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; IMS Global Learning Consortium, Inc.

Notice is hereby given that, on July 2, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Baltimore County Public Schools, Baltimore, MD; Houston Independent School District, Houston, TX; and University of Phoenix, Phoenix, AZ, have been added as parties to this venture.

Also, Jes & Co., Seattle, WA; and Scantron Corporation, Eagan, MN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global

intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on April 7, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 8, 2014 (79 FR 26455).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–17722 Filed 7–25–14; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Fresenius Kabi USA, LLC

ACTION: Notice of registration.

SUMMARY: Fresenius Kabi USA, LLC applied to be registered as an importer of a basic class of narcotic controlled substance. The Drug Enforcement Administration grants Fresenius Kabi USA, LLC registration as an importer of this controlled substance.

SUPPLEMENTARY INFORMATION: By notice dated December 31, 2013, and published in the **Federal Register** on January 10, 2014, 79 FR 1888, Fresenius Kabi USA, LLC, 3159 Staley Road, Grand Island, New York 14072, applied to be registered as an importer of a certain basic class of controlled substance. No comments or objections were submitted for this notice.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Fresenius Kabi USA, LLC to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of remifentanil (9739), a basic class of narcotic controlled substance listed in schedule II.

The company plans to import remifentanil for product development and preparation of stability batches.

Dated: July 21, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–17681 Filed 7–25–14; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, July 31, 2014.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance) Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's Rules and Regulations, Federal Credit Union Ownership of Fixed Assets.

2. Call Federal Credit Union (Richmond, Virginia), Request for Community Charter Expansion.

3. National Credit Union Share Insurance Fund Quarterly Report.

4. NCUA Guaranteed Notes Performance Report.

5. NCUA's 2014 Mid-Year Operating Budget.

RECESS: 11:30 a.m.

TIME AND DATE: 11:45 a.m., Thursday, July 31, 2014.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Share Insurance Appeals (2). Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2014–17808 Filed 7–24–14; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Agency Information Collection Activities; Proposals, Submissions, and Approvals

ACTION: Notice and request for comments.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery, This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection,

DATES: Consideration will be given to all comments received by September 27, 2014.

ADDRESSES: Submit comments by one of the following methods:

- *Web site: www.regulations.gov.* Direct comments to Docket ID OMB–2010–0021.
- *Email: research@arts.gov.*
- *Fax:* 202–682–5577.

Comments submitted in response to this notice may be made available to the public through posting on a government Web site. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Sunil Iyengar, National Endowment for the Arts, 400 7th Street SW., Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax (202) 682–5677.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

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

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

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

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Extension of approval for a collection of information.

Type of Review: Extension.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents Across All Three Years: 15,000.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of activities: 3.

Average number of Respondents per Activity: 1,667.

Annual responses: 5,000.

Frequency of Response: Once per request.

Average minutes per response: 15.

Average Expected Annual Burden hours: 1,167.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection Regulations.gov.

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 Office of Management and Budget control number.

Dated: July 23, 2014.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines & Panel Operations.

[FR Doc. 2014–17649 Filed 7–28–14; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Wednesday, August 20, 2014, from 2:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be held by teleconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after October 1, 2014. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993.

Dated: July 22, 2014.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2014–17706 Filed 7–25–14; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Executive Committee, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Wednesday, July 30, 2014 from 2:30 to 3:30 p.m. EDT.

SUBJECT MATTER: (1) Chairman's opening remarks; and (2) Discussion of agenda for August 2014 meeting.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A public listening line will be available. Members of the public must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public listening number.

UPDATES & POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Peter Arzberger, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–17825 Filed 7–24–14; 4:15 pm]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31156; 812–14323]

Wells Fargo Funds Management, LLC and Wells Fargo Exchange-Traded Funds Trust; Notice of Application

July 15, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Wells Fargo Funds Management, LLC (''WFFM'') and Wells Fargo Exchange-Traded Funds Trust (the ''Trust'').

SUMMARY: Summary of Application: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: Filing Dates: The application was filed on June 20, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 11, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: WFFM and the Trust: 525 Market Street, 12th Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Mark Zaruba, Senior Counsel, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6814 (Division of Investment Management, Office of Chief Counsel).

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. The Trust is a statutory trust organized under the laws of Delaware and will register with the Commission as an open-end management investment company. Applicants currently intend that the initial series of the Trust will be the Wells Fargo Advantage Ultra Short-Term Bond ETF (the ''Initial Fund''). The Initial Fund will seek current income consistent with capital preservation by investing principally in short-term income-producing debt securities, including U.S. Government obligations, corporate debt securities, bank loans and mortgage- and asset-backed securities.

2. WFFM, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Adviser Act of 1940 (''Advisers Act''), and will be the investment adviser to the Initial Fund. The Advisor (as defined below) may enter into sub-advisory agreements with investment advisers to act as sub-advisors with respect to the Funds (as defined below) (each a ''Sub-Advisor''). Applicants state that any Sub-Advisor will be registered, or not subject to registration, under the Advisers Act. A registered broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (the ''Exchange Act'') will be selected and approved by the Board (as defined below) to act as the distributor and principal underwriter of the Funds (the ''Distributor'').

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust or of any other open-end management companies that may utilize active management investment strategies (collectively, ''Future Funds''). Any Future Fund will (a) be advised by WFFM or an entity controlling, controlled by, or under common control with WFFM (WFFM and each such other entity and any successor thereto included in the term ''Advisor''),[1] and (b) comply with the terms and conditions of the application.[2] The Initial Fund and Future Funds together are the ''Funds''.[3] Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. and/or non-U.S. markets, and derivatives, other assets, and other investment positions (''Portfolio Instruments'').[4] Funds may invest in ''Depositary Receipts''.[5] Each Fund will operate as an actively managed exchange-traded fund (''ETF'').

4. Applicants request that any exemption under section 12(d)(1)(J) of the Act apply to: (a) With respect to section 12(d)(1)(B), any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Fund and any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (b) with respect to 12(d)(1)(A), each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds, and that enters into a FOF Participation Agreement (as defined below) to acquire Shares of a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together, ''Investing Funds''). Investing Funds do not include the Funds.[6]

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares. Applicants anticipate that the trading price of a Share will range from $10 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A Broker or other participant, in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (''DTC Participant'').

6. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business Day,[8] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[9] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate

[1] For the purposes of the requested order, a ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Advisor to a Future Fund will be registered as an investment adviser under the Advisers Act.

All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[3] Applicants further request that the order apply to any future Distributor of the Funds, which would be a Broker and would comply with the terms and conditions of the application. The Distributor of any Fund may be an affiliated person of the Advisor and/or Sub-Advisors.

[4] If a Fund invests in derivatives, then (a) the board of trustees (''Board'') of the Fund will periodically review and approve the Fund's use of derivatives and how the Advisor assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[5] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund will not invest in any Depositary Receipts that the Advisor or Sub-Advisor deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, any Future Fund, any Advisor or any Sub-Advisor will serve as the depositary bank for any Depositary Receipts held by a Fund.

[6] An Investing Fund may rely on the order only to invest in Funds and not in any other registered investment company.

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[8] Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[9] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

fractional shares or lots that are not tradeable round lots;[10] or (c) TBA Transactions,[11] short positions and other positions that cannot be transferred in kind[12] will be excluded from the Creation Basket.[13] If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investment (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[14]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

9. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the ''Transaction Fee''). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Advisor to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[15] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists or market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[16] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[17] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

13. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund''. Instead, each Fund will be marketed as an ''actively managed exchange-traded fund''. In any advertising material where features of obtaining, buying or selling Shares

[10] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[11] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[12] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[13] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[14] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[15] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[16] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Stock Exchange (including NYSE Arca), one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on that Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

[17] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

traded on the Stock Exchange are described, there will be an appropriate statement to the effect that Shares are not individually redeemable.

14. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[18]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 2(a)(32) and 5(a)(1) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days

[18] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for its NAV calculation at the end of such Business Day.

following the tender of a Creation Unit.[19]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state each Global Fund's statement of additional information (''SAI'') will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not affect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Advisor''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Sub-Advisor''), any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor (''Investing Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [20] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[21]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

[19] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[20] An ''Investing Fund Affiliate'' is any Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[21] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[22] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or second-tier affiliates.[23]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[24] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Sub-Advisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting

[22] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[23] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that may accompany such sales and redemptions.

[24] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company,

including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17617 Filed 7–25–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31165; 812–14298]

TrimTabs Asset Management, LLC, et al.; Notice of Application

July 22, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: TrimTabs Asset Management, LLC (''TrimTabs''), TrimTabs ETF Trust (the ''Trust''), TrimTabs Index Services, LLC, and Foreside Fund Services, LLC (the ''Distributor'').

FILING DATES: The application was filed on April 7, 2014, and amended on July 11, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 18, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: TrimTabs Asset Management, LLC, 3 Harbor Drive, Suite 112, Sausalito, California 94965.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or David P. Bartels, 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. The Trust is a Delaware statutory trust and will register under the Act as an open-end management investment company with multiple series. Each series will operate as an exchange traded fund (''ETF'').

2. TrimTabs will be the investment adviser to the initial series of the Trust (''Initial Fund''). TrimTabs is, and any other Adviser (as defined below) will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust's Distributor is a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as distributor and principal underwriter for the Initial Fund. The Distributor is not and will not be affiliated with any Exchange (defined below) on which Shares are listed. Applicants ask that the requested order also apply to future distributors of the Trust that comply with the terms and conditions of the requested order.

4. Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (''Future Funds'' and together with the Initial Fund, ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by TrimTabs or an entity controlling, controlled by, or under common control with TrimTabs (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.[1]

5. Each Fund will hold certain securities, currencies, other assets, and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. The Underlying Indexes will be comprised solely of equity and/or fixed income securities issued by one or more of the following

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[2] and in the case of Foreign Funds, Component Securities and Depositary Receipts [3] representing Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index [4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[5] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which TrimTabs Index Services, LLC or another affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[7] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each day that a Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. In addition to the existing protections under the Act and the Advisers Act, Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below), or in case of a sub-licensing agreement, the Adviser, must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] The Affiliates Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(s) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent wit the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transaction with a Fund.

also provide an effective additional mechanism for addressing any such potential conflicts of interest.

12. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[8]

13. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, TrimTabs has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Securities Exchange Act of 1934 (''Exchange Act'') or the rules thereunder, of material non-public information by the Current Adviser or an associated person (''Inside Information Policy''). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [9] and Inside Information Policy of the Adviser and any Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit [10] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission. Applications for prior orders granted to Self-Indexing Funds have received relief to operate such funds on the basis discussed above.[11]

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[12] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) [13] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [14] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind [15] will be excluded from the Deposit Instruments and the Redemption Instruments; [16](d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [17] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a

[8] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[9] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[10] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

[11] *See, e.g.,* Emerging Global Advisors, LLC, *et al.,* Investment Company Act Release Nos. 30910 (Feb. 10, 2014) (notice) and 30975 (Mar. 7, 2014) (order); J.P. Morgan Exchange-Traded Fund Trust, *et al.,* Investment Company Act Release Nos. 30898 (Jan. 30, 2014) (notice) and 30927 (Feb. 24, 2014) (order); IndexIQ ETF Trust, *et al.,* Investment Company Act Release Nos. 30843 (Dec. 23, 2013) (notice) and 30888 (Jan. 22, 2014) (order); and Guggenheim Funds Investment Advisors, LLC, *et al.,* Investment Company Act Release Nos. 30560 (June 14, 2013) (notice) and 30598 (July 10, 2013) (order).

[12] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[13] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[14] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[15] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[16] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[17] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [18] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[19]

17. Creation Units will consist of specified large aggregations of Shares (*e.g.,* 25,000 Shares) as determined by the Adviser, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' i.e., a Broker or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order for any reason.

18. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund may impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[20] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[21] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To

[18] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[19] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[20] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[21] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[22]

[22] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect

Continued

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[23] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in

any obligations Applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[23] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[24]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[25] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[26] Applicants believe that any

[24] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[25] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[26] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund

Continued

proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for the Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-l under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board

of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17655 Filed 7–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, July 30, 2014 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

institution and settlement of administrative proceedings; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 24, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17810 Filed 7–24–14; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72655; File No. TP 14–12]

Order Granting Limited Exemptions from Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to First Trust Dorsey Wright International Focus 5 ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

July 22, 2014.

By letter dated July 22, 2014 (the ''Letter''), as supplemented by

conversations with the staff of the Division of Trading and Markets, counsel for First Trust Exchange-Traded Fund VI (the ''Trust'') on behalf of the Trust, First Trust Dorsey Wright International Focus 5 ETF (the ''Fund''), any national securities exchange on or through which shares issued by the Fund (''Shares'') may subsequently trade, First Trust Portfolios L.P., and persons or entities engaging in transactions in Shares (collectively, the ''Requestors'') requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended (''Exchange Act'') and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares (''Creation Units'').

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (''1940 Act''), as an open-end management investment company. The Fund seeks to track the performance of an underlying index developed by Dorsey, Wright & Associates, LLC called the Dorsey Wright International Focus Five Index (''Index''). The Index is designed to provide targeted exposure to the five First Trust country or region-based exchange traded funds (''ETFs'') (*i.e.,* country or region-based ETFs also advised by the investment adviser to the Fund) that the index provider believes offer the greatest potential to outperform the other First Trust country or region-based ETFs. The Fund intends to operate as an ''ETF of ETFs'' by seeking to track the performance of its underlying Index through investing at least 90% of its net assets (plus the amount of any borrowings for investment purposes) in the ETFs which comprise the Index. Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner identical to the ETFs that are included in the Index.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (''NAV'') and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on the Nasdaq Stock Market LLC or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the ''Exchange'');[1]
- All ETFs in which the Fund is invested will meet all conditions set forth in a relevant class relief letter,[2] will have received individual relief from the Commission, or can rely on applicable class relief for actively-managed ETFs;[3]
- All the components of the Index will have publicly available last sale trade information;
- The intra-day proxy value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the Fund's custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of the Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share and (ii) every 15 seconds throughout the trading day, a calculation of the intraday indicative value of a Share;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Fund, ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Fund will invest solely in liquid securities;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[4] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that

[1] Further, the Letter states that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that are effective pursuant to Section 19(b) of the Exchange Act.

[2] Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie. Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007). *See also* Staff Legal Bulletin No. 9, ''Frequently Asked Questions About Regulation M'' (Apr. 12, 2002) (regarding actively-managed ETFs).

[3] *See, e.g.,* Exchange Act Rel. No. 67215 (Jun. 19, 2012); 77 FR 37941 (Jun. 25, 2012).

[4] While ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.[5]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[6]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Fund under the circumstances described above and in the Letter, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17641 Filed 7–25–14; 8:45 am]

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[5] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

[6] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[7] 17 CFR 200.30–3(a)(6) and (9).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72651; File No. SR–NYSEArca–2014–79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposing To List and Trade Shares of InfraCap Active MLP ETF Under NYSE Arca Equities Rule 8.600

July 22, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 9, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): InfraCap Active MLP ETF. The text of the proposed rule change is available on the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares [4] on the Exchange: InfraCap Active MLP ETF (the ''Fund'').[5] The Shares of the Fund will be offered by ETFis Series Trust I (the ''Trust''). The Trust will be registered with the Securities and Exchange Commission (''Commission'') as an open-end management investment company.[6] Etfis Capital LLC will serve as the investment adviser to the Fund (the ''Adviser''). ETF Distributors LLC (the ''Distributor'') will be the principal distributor of the Fund's Shares. Infrastructure Capital Advisors, LLC (the ''Sub-Adviser'') will serve as sub-adviser for the Fund. The Bank of New York Mellon will serve as the administrator, accountant, custodian and transfer agent for the Fund (''Administrator,'' ''Accountant,'' ''Custodian'' and ''Transfer Agent,'' respectively).

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition of and/or changes to such investment company portfolio. Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not registered as a broker-dealer; however the Adviser (but not the Sub-Adviser) is affiliated with a broker-dealer and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. In the event (a) the Adviser or any sub-adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, they will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Fund Investments

According to the Registration Statement, the Fund seeks total return primarily through investments in equity securities of publicly-traded master limited partnerships and limited liability companies taxed as partnerships (''MLPs'').[8] The Fund will seek to achieve its investment objective by normally [9] investing up to 100% (but

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing and trading of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF).

[6] The Trust is registered under the 1940 Act. On February 26, 2014, the Trust filed a post-effective amendment to its registration statement on Form N–1A under the Securities Act of 1933 (the ''1933 Act'') (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–187668 and 811–22819) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Trust filed an Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14080), dated June 19, 2013 (''Exemptive Application''). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30607 (July 23, 2013) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] According to the Registration Statement, the Fund may invest in MLP units, securities of companies holding primarily general partner or managing member interests in MLPs, securities that themselves own interests in MLPs (e.g., exchange-traded funds (''ETFs''), exchange-traded notes (''ETNs'') and open-end and closed-end other investment companies that invest in MLPs).

[9] The term ''normally'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. According to the Registration Statement, the Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions. According to the Registration Statement, when the Fund takes a temporary defensive

not less than 80%) of its total assets in exchange-traded securities of MLPs in the energy infrastructure sector. The Fund will focus on investing in MLPs selected by the Sub-Adviser that trade on the New York Stock Exchange (''NYSE'') or the NASDAQ Stock Market (''Nasdaq'') and that, as their principal business, operate assets used in the gathering, transporting, processing, storing, refining, distributing, mining or marketing of natural gas, natural gas liquids, crude oil, refined petroleum products or coal (collectively, ''Energy Products'').

According to the Registration Statement, the Fund will typically focus on ''midstream'' MLPs which are MLPs that collect, gather, process, transport and store natural resources and their byproducts (primarily crude oil, natural gas and refined petroleum products), generally without taking ownership of the energy products.[10]

The Fund expects to typically invest in a portfolio of between 25 to 50 MLPs, however there is no limit on the number of MLPs in which the Fund will invest.[11] The Sub-Adviser's investment decisions will be based on a variety of quantitative, qualitative and relative valuation factors. The Sub-Adviser will typically evaluate potential investments with respect to certain key variables that the Sub-Adviser believes make a business successful over time, including, without limitation, a company's competitive position, its perceived ability to earn a high return on capital, the historical and projected stability and reliability of its earnings and cash flow, its anticipated ability to generate cash in excess of its growth needs and its access to additional capital. The Sub-Adviser also expects to utilize its personnel's experience in evaluating energy infrastructure investments and long-term relationships with energy industry participants to help identify investment opportunities.

Other Fund Investments

According to the Registration Statement, although the Fund will normally invest not less than 80% of its total assets as described above, the Fund has flexibility to invest the remaining 20% of its assets in other types of securities, including exchange-traded equity securities of large, medium and small capitalization companies, money market mutual funds, ETFs and other open-end and closed-end investment companies unrelated to the energy infrastructure sector, when the Sub-Adviser believes they offer more attractive opportunities or to meet liquidity, redemption or short-term investing needs.

According to the Registration Statement, the Fund may invest up to 20% of its total assets in securities convertible into common stock. Convertible securities eligible for purchase by the Fund will be exchange-traded and include convertible bonds, convertible preferred stocks, and warrants. The Fund will not invest directly in real estate, but may invest in exchange-traded readily marketable securities issued by companies that invest in real estate or interests therein. The Fund may also invest in readily marketable interests in real estate investment trusts.

According to the Registration Statement, the Fund may invest in money market instruments, foreign debt or equity securities traded on U.S. exchanges, in over-the-counter markets or in the form of American Depositary Receipts.

According to the Registration Statement, the Fund may also use leverage (including margin borrowing) to the extent permitted by the 1940 Act. However, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of an index. The Fund may also invest, or establish short positions, in ETFs, exchange-traded options or futures contracts in an effort to hedge against market, interest rate or commodity risks in the Fund's portfolio.

General Limitations

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed to be illiquid by the Sub-Adviser.[12] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[13]

The Fund may lend portfolio securities in an amount equal to up to 33% of its total assets to broker-dealers, major banks, or other recognized domestic institutional borrowers of securities which the Sub-Adviser has determined are creditworthy under guidelines established by the Board of Trustees. The Fund may not lend securities to any company affiliated with the Sub-Adviser. Each loan of securities will be collateralized by cash, securities, or letters of credit. The Fund might experience a loss if the borrower defaults on the loan.

The Fund will not invest in swaps. The Fund's investments will be consistent with its investment objective.

The Fund will not invest in unsponsored ADRs. The Fund will invest only in ADRs, futures and options that are traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'') in aggregations of 50,000 Shares (''Creation Units'').

The consideration for purchase of a Creation Unit of the Fund generally consists of an in-kind deposit of a designated portfolio of securities (the ''Deposit Securities'') per each Creation

position, it may not be able to achieve its investment objective.

[10] According to the Registration Statement, Midstream MLPs may also operate ancillary businesses, including the marketing of energy products and logistical services related thereto, but are typically not engaged in the mining, production or distribution of energy products.

[11] According to the Registration Statement, under normal circumstances, the Fund will not invest more than 15% of its total assets in any one issuer.

[12] According to the Registration Statement, in determining the liquidity of the Fund's investments, the Sub-Adviser may consider various factors including: (i) The frequency of trades and quotations; (ii) the number of dealers and prospective purchasers in the marketplace; (iii) dealer undertakings to make a market; (iv) the nature of the security (including any demand or tender features); and (v) the nature of the marketplace for trades (including the ability to assign or offset the Fund's rights and obligations relating to the investment).

[13] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash (the ''Cash Component''). Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component shall be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component shall be such negative amount and the creator will be entitled to receive cash from the Fund in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

The Administrator, through the National Securities Clearing Corporation (''NSCC''), makes available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit is applicable in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund changes as rebalancing adjustments and corporate action events are reflected from time to time by the portfolio managers with a view to the investment objective of the Fund. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash to be added to the Cash Component to replace any Deposit Security which may not be available. The Adviser represents that, to the extent that cash is substituted to replace any Deposit Security, such transactions will be effected in the same manner for all Authorized Participants. In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through the NSCC, also makes available on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

All purchase orders must be placed by or through an ''Authorized Participant.'' An Authorized Participant must be either a broker-dealer or other participant in the Continuous Net Settlement System (''Clearing Process'') of the NSCC or a participant in The Depository Trust Company (''DTC'') with access to the DTC system, and must execute an agreement with the Trust, the Distributor and the Administrator that governs transactions in the Fund's Creation Units. All orders to create Creation Units must be received by the Distributor no later than the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. Eastern Time) on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Fund Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. The Trust will not redeem Shares in amounts less than Creation Units.

The redemption proceeds for a Creation Unit generally will consist of securities held by the Fund (the ''Fund Securities'') (as announced on the Fund's Web site prior to the commencement of trading on the business day of the request for redemption received in proper form) plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the Exchange is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the Exchange is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable [14]; or (4) in such other circumstance as is permitted by the Commission.

Detailed descriptions of the Fund's procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*www.infracapmlp.com*), as applicable.

Determination of Net Asset Value

According to the Registration Statement, the NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern time) on each day that the Exchange is open.

Exchange-traded securities will be valued at market closing price or, if no sale has occurred, at the last quoted bid price on the primary exchange on which they are traded. Price information for exchange-traded securities, including equity securities of MLPs and large, medium and small capitalization companies, ETFs, ETNs, ADRs, convertible securities and options will be taken from the exchange where the security is primarily traded.

Futures will be valued at the settlement price determined by the applicable exchange.

Investment company securities, including money market mutual funds and open-end and closed-end investment companies, will be valued at NAV, utilizing pricing services.

In computing the Fund's NAV, the value of the Fund's portfolio holdings is based on such holdings' closing price on local markets when available. When a portfolio holding's market price is not readily available or does not otherwise accurately reflect the fair value of such security, the Fund will use such holding's fair value as determined in good faith in accordance with the Fund's fair value pricing procedures, which will be approved by the Board of

[14] Pursuant to NYSE Arca Equities Rule 7.34(a)(5), trading in the Shares will be halted if the Fund's NAV is not disseminated to all market participants at the same time.

Trustees. Fair value pricing may be used, for example, in situations where (i) portfolio holdings, such as holdings with small capitalizations, are so thinly traded that there have been no transactions for that portfolio holding over an extended period of time; (ii) an event occurs after the close of the exchange on which a portfolio holding is principally traded that is likely to change the value of the portfolio holding prior to the Fund's NAV calculation; (iii) the exchange on which the portfolio holding is principally traded closes early; or (iv) trading of the particular portfolio holding is halted during the day and does not resume prior to the Fund's NAV calculation. In addition, the Fund may fair value foreign equity portfolio holdings each day the Fund calculates its NAV. Accordingly, the Fund's NAV may reflect certain portfolio holdings' fair values rather than their market prices.

In valuing non-exchange traded securities, the Fund will first use publicly-available pricing sources, including Bloomberg, IDC, and Reuters. Non-exchange traded securities will only be fair valued if their market prices are not readily available.

To the extent the assets of the Fund are invested in the other open-end investment companies that are registered under the 1940 Act, the Fund's NAV is calculated based upon the NAVs reported by such registered open-end investment companies, and the prospectuses for these companies explain the circumstances under which they will use fair value pricing and the effects of using fair value pricing.

Availability of Information

The Fund's Web site (*www.infracapmlp.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[15] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[16]

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's Web site: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket will represent one Creation Unit of Shares of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's shareholder reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and any underlying securities that are exchange-listed, including equity securities of MLPs and large, medium and small capitalization companies, ETFs, ETNs, ADRs and convertible securities will be available via the Consolidated Tape Association (''CTA'') high-speed line. Information relating to futures will be available from the exchange on which such futures are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Information for investment companies, including money market mutual funds and open-end and closed-end investment companies, will be available from publicly-available pricing souces [sic], including Bloomberg, IDC and Reuters. In addition, the Indicative Optimized Portfolio Value (''IOPV''),[17] which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[18]

The IOPV will be calculated by an independent third party calculator and will be calculated based on the same portfolio holdings disclosed on the Fund's Web site.

The dissemination of the IOPV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio

[15] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[16] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[17] The IOPV calculations will be estimates of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. The quotations of certain Fund holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States. Premiums and discounts between the IOPV and the market price may occur. This should not be viewed as a ''real-time'' update of the NAV per Share of the Fund, which will be calculated only once a day.

[18] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs taken from the CTA or other data feeds.

holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[19] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [20] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[21] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded securities held by the Fund with other markets that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-traded securities held by the Fund from such markets or other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded securities held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[22]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (4) how information regarding the IOPV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[23] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Adviser is affiliated with a broker-dealer

[19] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[20] 17 CFR 240.10A–3.

[21] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[22] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[23] 15 U.S.C. 78f(b)(5).

and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, they will implement a ''fire wall'' with respect to their relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. FINRA, on behalf of the Exchange, may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Fund will invest only in ADRs, futures and options that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund may invest up to 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Sub-Adviser.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and FINRA, on behalf of the Exchange, may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments will be consistent with its investment objective.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or 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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–79 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–2014–79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–79, and should be submitted on or before August 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17639 Filed 7–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72654; File No. SR–NASDAQ–2014–034]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Disapprove a Proposed Rule Change Relating to Proposed Changes To Remove From the Exchange Rules Fee Provisions Regarding Re-Transmission of ''Third-Party Data''

July 22, 2014.

I. Introduction

On April 7, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' 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 remove from its rules all provisions relating to the market data feeds that NASDAQ receives from other registered exchanges and other non-NASDAQ sources and then re-transmits to its co-located firms, including the provisions setting fees for providing this market data to its co-located firms. The proposed rule change was published for comment in the **Federal Register** on April 28, 2014.[3] The Commission received no comments on the proposal. On June 5, 2014, the Commission extended the time to act on the proposal until July 25, 2014. This order institutes proceedings under Section 19(b)(2)(B) of the Act[4] to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

NASDAQ offers co-location services for clients at its co-location facility. NASDAQ Rule 7034 lists the services and the fees provided under its co-location program, which include cabinet space, electric power, installation and use of cables, and connectivity to various affiliated market centers. NASDAQ Rule 7034 also offers co-located clients connectivity to market data feeds from a variety of sources and lists the fees for these market data feeds.

The current proposal would remove from NASDAQ's rules the provisions relating to all third-party market data feeds (*i.e.,* all market data feeds other than NASDAQ's own market data feeds) that NASDAQ makes available to co-located member firms. NASDAQ does not propose to cease offering third-party data feeds to its co-located clients or to cease assessing the associated fees; it simply proposes to eliminate these offerings and fees from the NASDAQ rulebook.

NASDAQ argues that this proposed change is consistent with the Act because third-party data feeds are not a ''facility'' of the Exchange.[5] As described in the Notice,[6] NASDAQ argues that the third-party data it provides to its co-located member firms are facilities of the exchanges that originally produce the data, not a facility of an exchange that receives and distributes the data as a voluntary service to its member firms.

III. Proceedings To Determine Whether To Disapprove SR–NASDAQ–2014–034 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether the proposal should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposals. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposal.

Pursuant to Section 19(b)(2)(B),[8] the Commission is providing notice of the grounds for disapproval under consideration. NASDAQ's proposal, if approved, would allow a national securities exchange to offer third-party market data (*e.g.,* the proprietary data feeds of other exchanges in the National Market System) to member firms that are co-located on the exchange's premises at its trading facilities, and to charge fees for that market data, without Commission oversight through the proposed rule change process. An exchange's provision of third-party market data feeds to co-located clients appears to be an integral feature of its co-location program, and co-location programs are subject to the rule filing process. The Commission believes that permitting exchanges to provide third-party data feeds to co-located clients without subjecting the offerings and associated fees to review through the Rule 19b–4 process presents a novel issue that warrants further consideration.

Accordingly, the Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with Section 3(a)(2) of the Act, which defines the term ''facility'' when used with respect to an exchange to include its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service; Section 6(b)(1) of the Act, which requires that a national securities exchange be so organized and have the capacity to be able to carry out the purposes of the Act; Section 6(b)(4) of the Act, which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities; Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71990 (Apr. 22, 2014), 79 FR 23389 (''Notice'').

[4] 15 U.S.C. 78s(b)(2)(B).

[5] *See* Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2) (defining the term ''facility'' as applied to an exchange).

[6] *See, supra,* n.3.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See id.*

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 system, and in general to protect investors and the public interest; and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Sections 3(a)(2), 6(b)(1), 6(b)(4), 6(b)(5), and 6(b)(8) of the Act or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[9]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule changes should be [approved or] disapproved by August 18, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 2, 2014.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–034. 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. 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2014–034 and should be submitted on or before August 18, 2014. Rebuttal comments should be submitted by September 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17640 Filed 7–25–14; 8:45 am]

BILLING CODE 8011–01–P

[9] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72649; File No. SR–FINRA–2014–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 2081, Prohibited Conditions Relating to Expungement of Customer Dispute Information

July 22, 2014.

I. Introduction

On April 14, 2014, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 adopt Rule 2081 to prohibit member firms and associated persons from conditioning or seeking to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer's agreement to consent to, or not to oppose, the firm's or associated person's request to expunge the customer dispute information which was the subject of the settlement from the Central Registration Depository (CRD®). The proposal was published for comment in the **Federal Register** on April 23, 2014.[3] The Commission received 15 comments on the proposal.[4] The Commission also received a letter from FINRA responding to commenters.[5] This order approves the proposed rule change.

II. Description of the Proposal

A. Background

The CRD is the central licensing and registration system for the securities industry. In general, information in the CRD is provided by broker-dealers, associated persons, and regulatory authorities in response to questions on the uniform registration forms.[6] These forms require the disclosure of administrative and disciplinary information about registered personnel, including customer complaints, arbitration claims, and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings ("customer dispute information").[7] FINRA, state regulators, and other regulators use this information in connection with their licensing and regulatory activities. Firms also use the information when making hiring decisions. In addition, the information that FINRA releases to the public through BrokerCheck® is a subset of the information in the CRD. Thus, any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71959 (April 17, 2014), 79 FR 22734 (SR–FINRA–2014–020) ("Notice").

[4] *See* Exhibit A for a list of comment letters.

[5] *See* Letter to Kevin O'Neill, Deputy Secretary, Commission, from Victoria Crane, Associate General Counsel, FINRA, dated July 18, 2014 ("FINRA Response Letter").

[6] Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form).

[7] *See Notice to Members* ("NTM") 04–16 (March 2004). *See also* Section 15A(i) of the Act.

information that is removed from CRD is no longer available through BrokerCheck.

Brokers who wish to have customer dispute information removed from the CRD because, for example, they believe that the allegations made against them are unfounded or that they have been incorrectly identified, must seek expungement pursuant to FINRA Rule 2080 (formerly NASD Rule 2130).[8] Rule 2080 requires firms and associated persons seeking expungement of customer dispute information from the CRD to obtain a court order that either directs expungement or confirms an arbitration award containing expungement relief. The rule requires that firms and associated persons seeking a court order or confirmation of an arbitration award name FINRA as a party to the proceeding. Upon request, FINRA may waive the obligation to be named as a party if FINRA determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (1) The claim, allegation or information is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false.[9]

FINRA states that it has long had concerns about the practice of firms and associated persons conditioning settlement agreements for the purpose of obtaining expungement relief and, thereby, removing information from CRD that could be useful to investors. FINRA notes that it has taken numerous steps over the years to address its concerns regarding expungement. For example, in proposing NASD Rule 2130, the NASD (now FINRA) stated that the affirmative determination requirement imposed by the Rule on arbitrators would reduce, if not eliminate, the risk of expunging information that is critical to investor protection and regulatory interests based on an agreement between the parties.[10] In NTM 04–43, NASD cautioned firms and associated persons that negotiating settlements with customers in return for exculpatory affidavits that the firm or associated person knows or should know are false or misleading is a violation of NASD rules.[11]

In 2008, FINRA proposed and the Commission approved, Rule 12805 to require arbitrators to perform additional fact finding before recommending expungement of customer dispute information from the CRD.[12] Rule 12805 requires arbitrators, among other things, to review settlement documents, the amount of payments made to any party, and any other terms and conditions of the settlement. In addition, the Rule requires arbitrators to indicate in the award which of the grounds in Rule 2080 serves as the basis for their expungement recommendation and to provide a brief written explanation of the reasons for recommending expungement. FINRA stated that it believed that these requirements would address concerns about arbitrators recommending expungement under what might appear to be questionable facts and circumstances (*e.g.,* cases that include payment of significant monetary compensation to the customer).[13]

FINRA states that due to concerns about the high percentage of expungement recommendations made in connection with settled arbitration claims, in 2013, FINRA sent to arbitrators, and published on its Web site, guidance stating that arbitrators should inquire whether a party conditioned settlement on an agreement not to oppose a request for expungement relief in determining whether to recommend expungement relief in settled arbitration claims.[14]

B. Proposal

Despite these measures, FINRA states that it continues to have concerns regarding the practice of firms and associated persons conditioning settlement agreements for the purpose of obtaining expungement relief in settlements involving customer disputes, as well as those related to arbitration claims. FINRA believes these agreements should be prohibited even if the customer offers not to oppose expungement as part of negotiating a settlement agreement. Further, FINRA believes that firms and associated persons should be prohibited from otherwise compensating customers in return for the customer's agreement not to oppose a request for expungement relief which would remove customer dispute information from the CRD.

Accordingly, FINRA proposed Rule 2081 to expressly prohibit this conduct. Specifically, Rule 2081 would provide that: ''No member or associated person shall condition or seek to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer's agreement to consent to, or not to oppose, the member's or associated person's request to expunge such customer dispute information from the CRD system.'' [15]

FINRA states the prohibition would apply to both written and oral agreements, and the proposal would apply to agreements entered into during the course of settlement negotiations, as well as to any agreements entered into separate from such negotiations. For example, the proposed rule change would preclude a firm or associated person from conditioning the settlement of a customer's claim on the customer's agreement to consent to, or not to oppose, the firm's or associated person's

[8] *See* Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003) (Order Approving File No. SR–NASD–2002–168). *See also* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009) (Order Approving File No. SR–FINRA–2009–016).

The National Association of Securities Dealers, Inc. (NASD) changed its name to FINRA in 2007. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) Order Approving File No. SR–NASD–2007–053.

[9] *See* Rule 2080(b)(1). FINRA stated that while expungement of customer dispute information is an extraordinary measure, it is nevertheless appropriate where the information being expunged meets one of the criteria specified in Rule 2080 and has no meaningful investor protection or regulatory value. *See* Notice, *supra* note 3, 79 FR 22734 at 22735.

[10] *See* Letter from Shirley H. Weiss, Associate General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC, dated September 11, 2003. *See also* Securities Exchange Act Release No. 48933, *supra* note 8, 68 FR 74667.

[11] In addition, NASD noted that ''[a]s a general matter, in connection with settling arbitration claims and/or other complaints, members may not engage in any conduct that impedes the ability of [FINRA] or any other securities industry regulator to investigate potential violations of [FINRA] rules or the securities laws. Such conditions would include . . . procuring, as a condition to settlement, affidavits or other statements from customers that falsely or misleadingly repudiate or otherwise contradict prior claims or complaints made by customers.'' *See* NTM 04–43 (June 2004).

[12] *See* Securities Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086 (November 6, 2008) (Order Approving File No. SR–FINRA–2008–010), which also adopted Rule 13805 to establish procedures that arbitrators must follow when considering requests for expungement relief in connection with intra-industry disputes.

[13] *See* Securities Exchange Act Release No. 57572 (March 27, 2008), 73 FR 18308 (April 3, 2008) (Notice of File No. SR–FINRA–2008–010).

[14] *See* Notice to Arbitrators and Parties on Expanded Expungement Guidance, available at *http://www.finra.org/arbitrationandmediation/arbitration/specialprocedures/expungement/* (''Expanded Expungement Guidance''). Specifically, the guidance states: ''Arbitrators should inquire and fully consider whether a party conditioned a settlement of the arbitration upon agreement not to oppose the request for expungement in cases in which the investor does not participate in the expungement hearing or the requesting party states that an investor has indicated that he or she will not oppose the expungement request.''

[15] The proposed rule change would not affect the processes relating to requests for expungement relief set forth in Rules 2080, 12805 and 13805. Thus, if an arbitration panel considers whether expungement is appropriate and consistent with Rule 12805, a customer would be free to express support for, or opposition to, the firm's or associated person's request for expungement as part of the recorded hearing session required by Rule 12805.

request for expungement. In addition, the proposed rule change would preclude a firm or associated person, following settlement of the underlying customer dispute, from compensating the customer in return for the customer not opposing the firm's or associated person's expungement request.

FINRA states that as an alternative to proposed Rule 2081, some industry representatives suggested that FINRA consider enhanced arbitrator training.[16] Since adopting NASD Rule 2130 in 2004, FINRA has required all arbitrators to take a training course on expungement. Recently, FINRA significantly revised its training for arbitrators regarding expungement. The revised training became available on FINRA's Web site on February 28, 2014.[17] The revised training highlights the importance of the information in the CRD and the arbitrator's critical role in maintaining the integrity of disclosure information contained in CRD. While FINRA recognizes the importance of arbitrator training in the expungement process, and anticipates that the revised training will further focus arbitrators' attention on the appropriate analysis associated with determining whether to recommend expungement, FINRA states that it remains concerned about parties to a settlement agreement ''bargaining for'' expungement relief as a condition to settlement. The proposed rule change would address this concern by expressly prohibiting firms and associated persons from conditioning settlement agreements, or otherwise compensating customers, for the purpose of obtaining expungement relief.

III. Summary of Comments and FINRA's Response

The Commission received 15 comment letters on the proposed rule change.[18] Twelve commenters support the proposal,[19] one of which requested clarification regarding the proposed rule.[20] Of the three remaining commenters, one commenter neither supports nor opposes the proposal; the commenter is against expungement under any circumstances.[21] Another commenter supports the concept but is against the proposal as drafted.[22] The third commenter did not opine on the merits of the proposal.[23]

Of the 12 commenters who support the proposal, five[24] express concern that the proposal may not go far enough ''in preventing expungements at unacceptably high rates,'' [25] ''ensuring expungements are the exception rather than the rule,'' [26] and addressing ''the multitude of other issues that are associated with expungement'' which ''undermine investor confidence and threaten the protection of investors.'' [27] Several of these commenters provide suggestions regarding additional steps that FINRA should take to improve the expungement process.[28] In response, FINRA states that it will continue to monitor the effectiveness of the training and other resource materials on expungement it has provided to arbitrators and make any additions or changes as necessary.[29] In addition, FINRA states that, while it believes these comments are outside the scope of the proposal, it is continuously looking at ways to improve the expungement process and appreciates commenters' suggestions.[30]

One commenter believes that certain statements in FINRA's Notice could constitute an additional substantive requirement for expungement relief—that the information being expunged has no meaningful investor protection or regulatory value.[31] In response, FINRA states that FINRA's references to expungement relief being appropriate when the information to be expunged has no meaningful investor protection or regulatory value is not a new requirement, as FINRA has made this statement several times in the past.[32] In addition, FINRA states that this reference is not intended to expand the criteria in Rule 2080, but rather to emphasize the investor protection and regulatory concerns relating to expungement of customer dispute information from the CRD.[33]

According to another commenter, who takes no issue with the concept, the proposal as drafted is overbroad.[34] That commenter believes a respondent should be able to openly ask a claimant ''to stipulate to the issue of expungement relief being withheld from the anticipated settlement for the purpose of further proceedings,'' believing that a respondent should retain the right to condition a settlement upon a stipulation that the parties will request the arbitrators to consider the remaining or outstanding issue of expungement relief.[35] In addition, this commenter believes that respondents should have the right to ask claimants whether they plan to be present at the expungement hearings, and what their stance will be on the issue of expungement.[36] In response, FINRA states that the proposal would not prevent parties from clarifying in the settlement agreement that expungement is not addressed in the agreement, nor would it preclude a respondent from inquiring whether any party intends to support or oppose a request for expungement relief.[37] However, FINRA states that it would consider any actions by a member firm to influence another party to a settlement agreement for purposes of obtaining expungement relief, whether expressly or otherwise, to be a potential violation of the proposed rule.[38]

One commenter asks FINRA to clarify whether member firms may include recitals in settlement agreements to the effect that: (i) The respondent intends to seek expungement relief; (ii) such expungement request was not a condition of the settlement agreement; (iii) respondent has not paid any consideration related to the expungement request; and (iv) claimant may participate in the hearing on expungement if he/she so chooses.[39] In response, FINRA states that the proposed rule change would not prohibit a respondent from including such recitals in the settlement agreement, and believes their inclusion would reinforce the concept that parties cannot offer or receive any consideration for expungement relief as a condition to settlement.[40] FINRA also notes that it will issue guidance, as needed, to clarify the rule's applicability

[16] *See* Notice, *supra* note 3, 79 FR 22734 at 22735.

[17] *See* FINRA Arbitrator Training Online Learning Courses, available at *http://www.finra.org/ArbitrationAndMediation/Arbitrators/Training/AdvancedTraining/P124939.* All arbitrator applicants must complete this training to become eligible to serve on arbitration cases.

[18] *See supra,* note 4.

[19] *See* Aidikoff, Amato, Bakhtiari, Caruso, Friedman, FSI, GSU, NASAA, Pace, PIABA, SIFMA, and Steiner letters.

[20] *See* SIFMA letter.

[21] *See* Estell letter.

[22] *See* Ryder letter.

[23] *See* Jacobowitz letter. The commenter provided information regarding the decrease in the percentage of expungements granted after FINRA issued the Expanded Expungement Guidance. *See supra* note 13.

[24] *See* Caruso, GSU, PIABA, NASAA, and Steiner letters.

[25] *See* PIABA letter at 2.

[26] *See* GSU letter at 2. *See also* PIABA letter at 3.

[27] *See* Caruso letter. The letter does not specify the other issues to which it refers.

[28] *See, e.g.,* GSU, PIABA, NASAA, and Steiner letters.

[29] *See* FINRA Response Letter at 6.

[30] *Id.*

[31] *See* SIFMA letter at 2–3.

[32] *See* FINRA Response Letter at 7.

[33] *Id.*

[34] *See* Ryder letter.

[35] *Id.*

[36] *Id.*

[37] *See* FINRA Response Letter at 4.

[38] *Id.*

[39] *See* SIFMA letter at 1–2.

[40] *See* FINRA Response Letter at 4.

to particular facts and circumstances as questions arise.[41]

One commenter is concerned with how FINRA will enforce the new rule. This commenter believes that firms or associated persons may attempt to skirt the rule and include prohibited conditions to settlement in cover letters or emails that are not seen by arbitrators, or enter into unrecorded oral agreements with customers.[42] The commenter states that there should be a specific enforcement mechanism and clear consequences for failing to comply with the rule.[43] While concerned about how the rule will be enforced, the commenter states that the rule ''would further prevent firms from using expungement as a bargaining chip in settlement negotiations and could allow for a more balanced presentation to the arbitrators of the facts of a dispute.'' [44] In response to this commenter's concerns, FINRA states that the proposal's prohibition would apply to written and oral agreements and agreements entered into during the course of, and separate from, settlement negotiations, regardless of when or in what form.[45] In addition, FINRA states that it will update its arbitrator guidance to incorporate the new rule and to further emphasize the importance of arbitrators inquiring whether a party conditioned settlement on an agreement that the customer not oppose a request for expungement. In response to concerns regarding enforcement, FINRA states that a violation of the proposed rule would subject member firms and their associated persons to a variety of applicable sanctions, including possible disciplinary action for violation of FINRA Rules, including Rule 2010 (Standards of Commercial Honor and Principles of Trade), and other penalties, and refers the commenter to Rule 8310 (Sanctions for Violations of Rules).[46]

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[47] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[48] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, prohibiting member firms and associated persons from conditioning or seeking to condition settlement of a dispute with a customer on, or otherwise compensating the customer for, the customer's agreement to consent to, or not to oppose, the firm's or associated person's request to expunge information regarding customer disputes and arbitration claims from the CRD should help assure that accurate and complete customer dispute information remains available to the investing public, regulators, and broker-dealers. As discussed above, current FINRA rules, on their face, permit expungement only in very narrow circumstances and after a series of procedural steps has been satisfied. In the first instance, FINRA rules set a high bar for arbitrators before they grant expungement of customer dispute information, requiring a finding that the claim or allegation is factually impossible, clearly erroneous or false, or that the registered person was not involved in the alleged wrongdoing.[49] FINRA has emphasized to arbitrators that expungement is an extraordinary remedy that should be granted only when the information to be expunged has no meaningful investor protection or regulatory value, and that arbitrators should ensure that they have all of the information necessary to make an informed and appropriate recommendation on expungement.[50] A court order directing expungement or confirming an arbitration award containing expungement relief also is required.[51] Furthermore, FINRA must be named as a party in the judicial proceedings, and may waive its right to be named only if FINRA determines that the expungement relief is based on affirmative judicial or arbitral findings that the claim or allegation is factually impossible, clearly erroneous or false, or that the registered person was not involved in the alleged wrongdoing.[52] Despite the very narrow permissible grounds and procedural protections designed to assure expungement is an extraordinary remedy, however, arbitrators appear to grant expungement relief in a very high percentage of settled cases.[53]

The completeness of information in the CRD, including accurate customer dispute information, is critical for the protection of investors and effective regulatory oversight. In the context of settlement or other negotiations, the aggrieved customer's individual interest in compensation or other remedies may dominate, without due consideration for the effect of expungement on the public or regulatory interests. The proposed rule change, by eliminating the ability of parties to a customer dispute to bargain for expungement relief as a condition to a settlement agreement or otherwise, should help assure that negotiated customer consents or non-objections do not unduly influence the judicial or arbitral decision that expungement is appropriate. This should enhance the integrity of information in the CRD, to the benefit of the investing public and regulators. In addition, the Commission believes the proposed rule's application to both written and oral agreements, as well as any agreements separate from the negotiations, and the prohibition from compensating the customer following settlement for not opposing an expungement request are important aspects of the proposed rule change.

Although the proposed rule change is a constructive step to help assure that the expungement of customer dispute information is an extraordinary remedy

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[41] *Id.*

[42] *See* NASAA letter at 3.

[43] *Id.*

[44] *Id.* at 2.

[45] *See* FINRA Response Letter at 3.

[46] *Id.*

[47] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[48] 15 U.S.C. 78*o*–3(b)(6).

[49] *See* FINRA Rules 2080 and 12805. Among other things, in cases involving settlements, the arbitrators must review the settlement documents and consider the amount of payments made to any party and other terms and conditions of the settlement.

[50] *See* Expanded Expungement Guidance, *supra* note 14. FINRA also reminded arbitrators of their obligation to provide a written explanation of the reasons for finding one of the narrow enumerated grounds applies to the facts of the case before them, and stated that such written explanation should be complete and not just a recitation of one of the enumerated grounds or of language in the expungement request. Specifically, arbitrators should identify the reason(s) for granting the expungement request and any specific documentary or other evidence they relied upon in so doing.

[51] *See* FINRA Rule 2080.

[52] *Id.* Under extraordinary circumstances FINRA may waive its right to be named a party if it determines that the expungement relief and accompanying findings are meritorious and the expungement would have no material adverse effect on investor protection, the integrity of the CRD, or regulatory requirements.

[53] *See* PIABA letter at 2. The PIABA Expungement Study found that for the time period January 1, 2007 through mid-May 2009, expungement was granted in 89 percent of the cases resolved by stipulated awards or settlement, and for the time period mid-May 2009 through the end of 2011, expungement relief was granted in 96.9 percent of the cases resolved by settlements or stipulated awards.

that is permitted only in the appropriate narrow circumstances contemplated by FINRA rules, the Commission notes the high number of cases where arbitrators grant brokers' expungement requests. When information is expunged from the CRD, it is no longer available to regulators, broker-dealers, or the investing public. Both regulators and the investing public are disadvantaged when factual information is removed from the CRD.[54] The Commission encourages FINRA to conduct a comprehensive review of its expungement rules and procedures to determine whether additional rulemaking is necessary or appropriate to assure that expungement in fact is treated as an extraordinary remedy that is permitted only where the information to be expunged has no meaningful investor protection or regulatory value.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–FINRA–2014–020), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Kevin M. O'Neill,

Deputy Secretary.

Exhibit A—List of Comment Letters Received for SR–FINRA–2014–020

1. Steven B. Caruso, Maddox Hargett Caruso, P.C., dated April 21, 2014 (''Caruso'')
2. Nicole Iannarone, Assistant Clinical Professor, Tim Guilmette, Student Intern, and Nataliya Obikhod, Student Intern, Georgia State University College of Law, dated May 1, 2014 (''GSU'')
3. Philip M. Aidikoff, Aidikoff, Uhl and Bakhtiari, dated May 1, 2014 (''Aidikoff'')
4. Ryan K. Bakhtiari, Aidikoff, Uhl and Bakhtiari, dated May 5, 2014 (''Bakhtiari'')
5. Richard P. Ryder, dated May 5, 2014 (''Ryder'')
6. Leonard Steiner, Steiner & Libo, PC, dated May 6, 2014 (''Steiner'')
7. Barry D. Estell, dated May 7, 2014 (''Estell'')
8. George H. Friedman, George H. Friedman Consulting, LLC, dated May 13, 2014 (''Friedman'')
9. Jason Doss, President, Public Investors Arbitration Bar Association, dated May 13, 2014 (''PIABA'')
10. David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, dated May 14, 2014 (''FSI'')
11. Andrea Seidt, North American Securities Administrators Association (''NASAA'') President and Ohio Securities Commissioner, dated May 14, 2014 (''NASAA'')
12. Jill Gross, Director, Elissa Germaine, Supervising Attorney, and Michelle N. Robinson, Student Intern, John Jay Legal Services, Inc., Pace University School of Law, dated May 14, 2014 (''Pace'')
13. Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated May 14, 2014 (''SIFMA'')
14. Ronald M. Amato, Amato Law Firm, LLC, dated May 15, 2014 (''Amato'')
15. Harry A. Jacobowitz, Database Manager, Securities Arbitration Commentator, Inc., dated May 16, 2014 (''Jacobowitz'')

[FR Doc. 2014–17614 Filed 7–25–14; 8:45 am]

BILLING CODE 8011–01–P

[54] Indeed, Section 15A(i) of the Act requires FINRA to collect and make available ''information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law or exchange or association rule, and the source and status of such information. *See* 15 U.S.C. 78*o*–3(i)(5).

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Final Environmental Impact Statement; Washington, DC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to Prepare a Supplemental Final Environmental Impact Statement (SFEIS).

SUMMARY: The U.S. Federal Highway Administration (FHWA) in coordination with the District of Columbia Department of Transportation (DDOT) in Washington, DC is issuing this notice to advise agencies and the public that a Supplemental Final Environmental Impact Statement (SFEIS) will be prepared for the South Capitol Street Project (the Project). The Project proposes to make major changes to the South Capitol Street Corridor from Firth Sterling Avenue SE to Independence Avenue and the Suitland Parkway from Martin Luther King, Jr. Avenue SE., to South Capitol Street, including replacing the existing Frederick Douglass Memorial Bridge over the Anacostia River.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1990 K Street NW., Suite 510, Washington, DC 20006–1103, (202) 219–3513, email: *michael.hicks@dot.gov*; or the District of Columbia Department of Transportation: Mr. E.J. Simie, PE, Project Manager, 55 M Street SE., Suite 400, Washington, DC 20003, (202) 671–2800, email: *ej.simie@dc.gov*.

SUPPLEMENTARY INFORMATION: In March 2011, the FHWA in conjunction with DDOT approved release of the Final Environmental Impact Statement (FEIS) for the Project. The availability of the FEIS was announced in the April 8, 2011 **Federal Register**. The alternatives examined in detail in the FEIS included a No Build Alternative and three build alternatives: Build Alternatives 1 and 2 and the Preferred Alternative, which was a modification of Build Alternative 2. A movable arched bascule was selected for the new Frederick Douglass Memorial Bridge. The alignment of the new bridge would be at an angle from the existing bridge to allow the swing span on the existing bridge to remain operational during construction, which meant that right-of-way would be needed from Joint Base Anacostia-Bolling (JBAB). Build Alternatives 1 and 2 were eliminated from consideration in the FEIS and, therefore, will not be considered in the SFEIS.

Since publication of the FEIS, FHWA and DDOT have considered major changes regarding the design of the FEIS Preferred Alternative. Most notably, DDOT reconsidered the need to obtain right-of-way from JBAB, which resulted in changing the alignment of the proposed new Frederick Douglass Memorial Bridge to a location immediately south of and parallel to the existing bridge. In addition, new information about current and planned navigation along the Anacostia River, including the navigation requirements of the U.S. Navy (USN), led to the decision to make the new bridge a fixed span structure instead of a movable span structure. Other notable design revisions made to the FEIS Preferred Alternative include the conversion of the east side traffic circle to a traffic oval similar in size to the proposed west traffic oval, and changes to the proposed ramps or ramp modifications between South Capitol Street and I–695, Suitland Parkway and I–295, and Martin Luther King, Jr. Avenue SE. and Suitland Parkway. Due to these and other design changes, a Revised Preferred Alternative was developed.

The SFEIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, *et seq.*), Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), FHWA Code of Federal Regulations (23 CFR 771.101–771.137, *et seq.*), and all

applicable Federal, State, and local government laws, regulations, and policies. The SFEIS will describe the proposed changes to the FEIS Preferred Alternative, update the affected environment, and describe the anticipated environmental impacts of the Revised Preferred Alternative in comparison to the anticipated environmental impacts disclosed in the FEIS for the FEIS Preferred Alternative. The Purpose and Need of the Project did not change from the FEIS. The U.S. Navy; U.S. Army Corps of Engineers; U.S. Coast Guard; the National Park Service; and the District of Columbia Department of the Environment will continue to serve as Cooperating Agencies for the Project.

A 30-day review period will be provided following the Notice of Availability of the SFEIS in the **Federal Register**, and a public meeting will be held within this review period. The public meeting will be conducted by DDOT and announced a minimum of 15 days in advance of the meeting. DDOT will provide information for the public meeting, including date, time and location through a variety of means including the Project Web site (*http://www.southcapitoleis.com*) and by newspaper advertisement.

To ensure that the full range of issues is identified early in the process, comments are invited from all interested and/or potentially affected parties. Comments or questions concerning this Notice should be directed to the FHWA and DDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations and implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 23, 2014.

Joseph C. Lawson,

Division Administrator, District of Columbia Division, Federal Highway Administration.

[FR Doc. 2014–17679 Filed 7–25–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notices with a 60-day and a 30-day comment period were published on February 27, 2012 (77 FR 11626) and on December 23, 2013 (78 FR 77554), respectively. No comments were received on this matter.

This document describes the collection of information for which NHTSA intends to seek OMB approval. The collection of information described is the ''Consolidated Child Restraint System Registration, Labeling and Defect Notification.'' (OMB Control Number: 2127–0576)

DATES: Comments must be submitted on or before August 27, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Cristina Echemendia at U.S. Department of Transportation, NHTSA, 1200 New Jersey Avenue SE., West Building Room W43–447, NVS–113, Washington, DC 20590. Mrs. Cristina Echemendia's telephone number is (202) 366–6345 and fax number is (202) 366–7002.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Consolidated Child Restraint System Registration, Labeling and Defect Notifications.

OMB Control Number: 2127–0576.

Type of Request: Label revision of a currently approved collection.

Abstract: A final rule published on February 27, 2012 (77 FR 11626) amended the Federal motor vehicle safety standard for child restraint systems (CRSs) to expand its applicability to child restraints sold for children weighing up to 80 pounds (lb). The final rule also added a sentence to the printed instructions and labeling of certain CRSs (those that have internal harnesses, and that are recommended for older children). Currently, child restraint manufacturers are required to provide printed instructions with step by-step information on how the restraint is to be used. Without proper use, the effectiveness of these systems is greatly diminished. Each CRS must also have a permanent label.[1] A permanently attached label gives ''quicklook'' information on whether the restraint meets the safety requirements, recommended installation and use, and warnings against misuse. The requested revision is to add a sentence to the existing instructions brochure and labeling that will inform the consumer that the lower anchors of a Lower Anchors and Tethers for Children (LATCH) system may only be used for children weighing ''x'' lb or less, where the ''x'' value depends on the weight of the CRS. The purpose of this label is to reduce consumer confusion about using LATCH, and to assure that the lower anchors will be able to withstand the forces generated by the child and CRS in virtually all crashes.

Under the final rule, CRSs equipped with internal harnesses to restrain the child and with components to attach to a child restraint anchorage system, will be required to be labeled with a child weight limit for using the lower anchors to attach the child restraint to the vehicle. The child weight limit depends on the weight of the CRS.

On February 25, 2014 the agency published a final rule responding to petitions for reconsideration (79 FR 10396) of the February 2012 final rule. The petitions stated, among other things, that the label that was required by the 2012 rule was unclear and could be misunderstood. In response, NHTSA made minor adjustments to the labeling requirement to make it clearer and more reader friendly.

NHTSA anticipates a change to the hour burden or costs associated with the revised child restraint labels and written instructions. Child restraint manufacturers produce, on average, a total of approximately 4,500,000 child restraints per year. The label would apply to approximately 50 percent of the total annual production (2,250,000 units). The hour burden associated with the revised label consists of the child restraint manufacturer: (1) Determining the maximum allowable child weight when using the lower anchor attachments as a means of installation and (2) adding this information on an existing label and instruction manual. We estimate 2 seconds of additional burden per child restraint for the determination of the maximum allowable weight and the addition of the information on the existing label and instruction manual (2 seconds × 2,250,000 units = 4,500,000 seconds = 1,250 hours).

[1] FMVSS No. 213 also requires child restraint manufacturers to provide owner-registration cards and to keep records relating to owner registration information, so that owners can be notified about noncompliance or defect recall campaigns. These owner registration requirements are not affected by the final rule (77 FR 11626).

Affected Public: Businesses, Individuals and Households.

Estimated Additional Annual Burden: 1,250 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

David M. Hines,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–17634 Filed 7–25–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before August 12, 2014.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 17, 2014.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
Modification Special Permits				
012116–M		Proserv UK Ltd, East Tullos, Aberdeen.	49 CFR 173.201, 173.302a, 173.304a and 173.301(f).	To modify the special permit to authorize a carboxysilicon coating to be applied and to certain cylinders.
14447–M		Taminco US Inc, Allentown, PA.	49 CFR 177.834(i), 172.203(a), and 172.302(c).	To modify the special permit to authorize the addition of Division 2.1, new Division 6.1, and new Class 3 and 8 materials.

[FR Doc. 2014–17508 Filed 7–25–14; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 27, 2014.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHI–I–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 17, 2014.

Donald Burger,

Chief, General Approvals and Permits.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
16181–N ..	.....	Arc Process, Inc., Pflugerville, TX.	49 CFR 178.50(e)	To authorize the manufacture, marking, sale and use of certain non-DOT specification cylinders similar to a DOT 4B except for the valve protection ring. (modes 1, 2, 3, 4).
16185–N ..	.....	SMI Companies, Inc., Franklin, LA.	49 CFR 171.8	To authorize the manufacture, marking, sale and use of a non-DOT specification portable tank with a capacity of 150 liters similar to a UN Portable T20 Tank for the transportation of bromoacetone. (modes 1, 2).
16187–N ..	.....	Sandia National Laboratories, Albuquerque, NM.	49 CFR 173.222(e)(1)	To authorize the transportation in commerce of 70 pounds of solid lithium with an argon blanket in a non-DOT specification pressure vessel by motor vehicle. (mode 1).
16188–N ..	.....	UTLX Manufacturing, LLC, Alexandria, LA.	49 CFR 179.100–4 and 179.100–12(b).	To authorize the manufacture, marking, sale and use of DOT 120J100W and 120J200W tank cars for transportation of Class 3 flammable and combustible liquids. (mode 2).
16190–N ..	.....	Digital Wave Corporation, Centennial, CO.	49 CFR 180.205(g)	To authorize the transportation in commerce of certain cylinders that have been alternatively pressure tested. (modes 1, 2, 3, 4, 5).
16191–N ..	.....	Solvay Fluorides LLC, Houston, TX.	49 CFR 173.205	To authorize the transportation in commerce of Iodine Pentafluoride in a non-DOT specification welded, steel non-bulk packaging designed and constructed in accordance with Section VIII Division 1 of the ASME Code. (modes 1, 2, 3).
16193–N ..	.....	CH&I Technologies, Inc., Santa Paula, CA.	49 CFR 180.209(a)	To authorize the transportation in commerce of certain DOT 4BW cylinders that are requalified every 10 years instead of every 5 years when used exclusively in non-corrosive service. (mode 1).
16194–N ..	.....	U.S. Department of Defense (DOD), Scott AFB, IL.	49 CFR 171.23(a)	To authorize the transportation in commerce of certain compressed gases in non-DOT specification pressure receptacles. (modes 1, 3, 4).
16195–N ..	.....	Jaguar Instruments, Inc., Houston, TX.	49 CFR 173.302a and 173.304a.	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders made in conformance with DOT Specification 3E with exceptions, for shipment of certain Division 2.1 and Division 2.2 gases. (modes 1, 2, 3, 4).
16198–N ..	.....	Fleischmann's Vinegar Company, Inc., CERRITOS, CA.	49 CFR 172.300; 172.400; 172.700; 174.55; 177.834; 173.30; 173.31(d).	To authorize the transportation in commerce of vinegar solution in bulk without certain hazardous communication requirements by highway and rail. (modes 1, 2).

[FR Doc. 2014–17506 Filed 7–25–14; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Special Permits; Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given of the actions on special permits applications in (June to June 2014) The mode of transportation involved is identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on July 17, 2014.

Donald Burger,

Chief, Special Permits and Approval.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
		MODIFICATION SPECIAL PERMIT GRANTED	
11373–M	Marlin Company, Inc., Lenoir, NC.	49 CFR 177.848(d)	To modify the special permit to authorize 1 H2 drums as additional packaging.
14313–M	Airgas USA, LLC., Tulsa, OK	49 CFR 173.302a(b)(2), 180.205, 172.203(a), 172.301(c).	To authorize the use of ultrasonic inspection as an alternative retest method for certain cylinders manufactured under a DOT special permit.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
14999–M	Classic Helicopter Group, LLC, Woods Cross, UT.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, and 175.75.	To modify the special permit to authorize additional Division 1.1 materials and remove the requirement that the propane cylinders must be transported in approved netting.
14283–M	U.S. Department of Energy, Washington, DC.	49 CFR 172.203(g)(1), 172.302(a), 172.331, 172.332, 174.59, 172.310(b) and (c), 172.403, 173.427(b), 173.443(c) and (d), 174.715(a), and 177.843(a) and (b), and 174.26.	To modify the special permit to authorize an increase in the payload weight.
14467–M	Brenner Tank, LLC, Fond Du Lac, WI.	49 CFR 178.345–2, 178.346–2, 178.347–2, and 178.348–2.	To modify the special permit to authorize additional duplex stainless steel grades.
13127–M	American Pacific Corporation, Cedar City, UT.	49 CFR 172.101 Column 7, Special Provision 1136 and 172.102(c)(4), Table 1.—IBC CODES, IBC Code IB6.	To modify the special permit to authorize cargo vessel as an additional mode of transportation.
		NEW SPECIAL PERMIT GRANTED	
15999–N	National Aeronautics and Space Administration (NASA), Washington, DC.	49 CFR Part 172 and 173	To authorize the transportation in commerce of certain hazardous material as part of the Orion space capsule without requiring shipping papers, marking and labeling. (modes 1, 3).
16030–N	Seattle Children's Hospital dba Seattle Children's Research Institute, Seattle, WA.	49 CFR 49 CFR 173.24(b)	To authorize the transportation in commerce of a specification cylinder containing medical grade oxygen with the valve opened and connected to a system designed to maintain vital conditions needed to keep tissue samples viable for research use. (mode 1).
16065–N	American Spraytech, North Branch, NJ.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of certain aerosols containing a Division 2.2 compressed gas in certain non-refillable aerosol containers which are not subject to the hot water bath test. (mode 1).
16074–N	Welker Inc., Sugar Land, TX ..	49 CFR 173.201, 173.202, and 173.203.	To authorize the transportation in commerce of certain Class 3 liquids in non-DOT specification cylinders. (modes 1, 2, 3, 4).
16081–N	Cabela's Inc., Sidney, NE	49 CFR 178.602	To authorize the transportation in commerce of certain Division 1.4 primers and powders in packaging that has not been tested for each specific configuration. (modes 1, 2, 3, 4).
16088–N	Golden Eagle Outfitters Inc., Delta Jet, AK.	49 CFR 49 CFR 172.101 Column (8C), 173.241, 173.242, 175.310.	To authorize the transportation in commerce of certain flammable and combustible liquids in alternative packaging having a capacity of 119 gallons or more by air. (modes 1, 4).
16111–N	Allen Institute for Brain Science, Seattle, WA.	49 CFR 173.24(b)(1)	To authorize the transportation in commerce of living human brain tissue continuously fed by oxidizing compressed gas. (mode 1).
16114–N	Global Nuclear Fuel-Americas, LLC, Wilmington, NC.	49 CFR 173.410 and 173.417	To authorize the transportation in commerce of fissile uranium hexafluoride in alternative packaging shipped pursuant to US DOT CoC USA/0411/AF for repairs. (mode 1).
16119–N	Pathfinder Aviation, Inc., Homer, AK.	49 CFR § 172.101 Column (9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), §§ 172.200, 172.300, 172.400, 173.302(f)(3) and § 175.75.	To transport in commerce of certain hazardous materials by cargo aircraft including 14 CFR Part 133 Rotorcraft External Load operations, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4).
16120–N	Pacific Helicopter Tours, Inc., Kahului, HI.	49 CFR 49 CFR Table § 172.101, Column(9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), § 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4).
16129–N	Ryan Air Inc., Anchorage, AK	49 CFR 172.101 Column (9B) and § 172.62(c).	To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4).
16130–N	The Federal Bureau of Investigation (FBI), Quantico, VA.	49 CFR 173.21(i)	To authorize the transportation in commerce of lighters without LA approvals for law enforcement purposes. (modes 1, 4).

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
16133–N	Cryovat International BV (The Rootselaar Group).	49 CFR 178.274(b) and 178.277(b)(1).	To authorize the manufacture, marking, sale and use of UN portable tanks conforming to portable tank code T75 that have been designed, constructed and stamped in accordance with the latest edition of Section VIII, Division 1 of the ASME Code with a design margin of 3.5:1 (modes 1, 2, 3).
16140–N	ERA Helicopters LLC, Lake Charles, LA.	49 CFR 172.101 Table Column (9A).	To authorize the transportation in commerce of certain hazardous materials which exceed the authorized quantity limitations for passenger-carrying aircraft. (mode 5).
16145–N	Bering Air, Inc., Nome, AK	49 CFR 49 CFR 172.101 Column (8C), 173.241, 173.242, 175.310.	To authorize the Column transportation in commerce of certain flammable and combustible liquids in alternative packaging having a capacity of 119 gallons or more by air. (modes 1, 4).
16169–N	JCR Construction Company, Inc., Raymond, NH.	49 CFR 49 CFR Table § 172.101, Column (9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), § 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4).
EMERGENCY SPECIAL PERMIT GRANTED			
15428–M	National Aeronautics and Space Administration and (NASA), Washington, DC.	49 CFR 172.300, 172.400 and Part 173.	To modify the special permit to authorize Divison 1.3C, 1AC and 1.4S materials in non-DOT specification packagings. (modes 1, 3).
16180–N	U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Washington, DC.	49 CFR 173.56 and 172.320 ..	To authorize the one-way transportation in commerce of unapproved fireworks for use in a research testing project. (mode 1).
DENIED			
12629–M	Request by TEA Technologies, Inc., Amarillo, TX, June 11, 2014. To modify the special permit to authorize testing to be performed by a person that is certified by TEA Technologies.		
16091–N	Request by Four Turkeys LLC, De Witt, NE, June 25, 2014. To authorize the manufacture, mark and sale of 50 gallon to 105 gallon refueling tanks as intermediate bulk containers a system for use in transporting various Class 3 hazardous materials.		

[FR Doc. 2014–17507 Filed 7–25–14; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety Special Permits; Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New Application
M—Modification Request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on July 17, 2014.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
MODIFICATION TO SPECIAL PERMITS			
15854–M	Colmac Coil Manufacturing, Inc., Colville, WA	4	07–31–2014
11911–M	Transfer Flow, Inc., Chico, CA	4	08–31–2014
9610–M	ATK Small Caliber Systems, Independence, MO	4	07–31–2014
11826–M	Linde Gas North America, LLC., Murray Hill, NJ	4	07–31–2014
11650–M	Autoliv ASP, Inc., Ogden, UT	4	08–31–2014

Application No.	Applicant	Reason for delay	Estimated date of completion
15642–M	Praxair Distribution, Inc., Danbury, CT	4	07–31–2014
NEW SPECIAL PERMIT APPLICATIONS			
15767–N	Union Pacific Railroad Company, Omaha, NE	1	07–31–2014
15973–N	Codman & Shurtleff, Inc., Raynham, MA	4	07–31–2014
15971–N	National Aeronautics and Space Administration (NASA), Houston, TX	4	07–31–2014
15955–N	Thompson Tank, Inc., Lakewood, CA	4	07–31–2014
16022–N	Zhejiang Juhua Equipment Manufacturing Co., Ltd., Quzhou, Zhejiang	4	07–31–2014
16013–N	Chem Technologies. Ltd., Middlefield, OH	4	07–31–2014
15991–N	Dockweiler Neustadt-Glewe, Germany	4	07–31–2014
16011–N	Americase, Waxahache, TX	4	08–31–2014
16001–N	VELTEK, Malvern, PA	4	07–31–2014
16039–N	UTLX Manufacturing LLC, Alexandria, LA	4	07–31–2014
16040–N	Multistar Ind., Inc., Othello, WA	4	07–31–2014
16067–N	E.I. duPont de Nemours and Company, Wilmington, DE	4	08–31–2014
15977–N	NORA	4	07–31–2014
RENEWAL SPECIAL PERMITS APPLICATIONS			
11602–R	East Tennessee Iron & Metal, Inc., Rogersville, TN	4	08–31–2014
13083–R	Rockwood Pigments NA, Inc., St. Louis, MO	4	07–31–2014
11860–R	GATX Corporation, Chicago, IL	4	08–31–2014
15580–R	Wisconsin Central Ltd., Homewood, IL	4	08–31–2014
15537–R	Orica USA, Inc., Watkins, CO	4	08–31–2014

[FR Doc. 2014–17509 Filed 7–25–14; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 303 (Sub-No. 44X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Forest County, Wis.

Wisconsin Central Ltd. (WCL) [1] has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 6.4-mile rail line on its Pembine Subdivision, between milepost 242.21 (formerly milepost 243.00 on the old Shawano Subdivision) in Argonne and milepost 235.85 (formerly milepost 249.38) at Crandon, in Forest County, Wis. (the Line). The Line traverses United States Postal Service Zip Codes 54511 and 54520.

WCL has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line to be rerouted; (3) no formal complaint has been filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line and no such complaint is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 27, 2014, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 7, 2014. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 18, 2014, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WLC's representative: Audrey L. Brodrick, Fletcher & Sippel LLC, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WLC has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by August 1, 2014. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WLC shall file a notice of consummation with the Board to signify that it has exercised the authority

[1] WCL is a wholly owned subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

granted and fully abandoned the Line. If consummation has not been effected by WLC's filing of a notice of consummation by July 28, 2015, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: July 21, 2014.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–17693 Filed 7–25–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board.

ACTION: 60-day notice of request for approval: Extension of Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

SUMMARY: The Surface Transportation Board (STB or Board), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Extension of Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on the Board's service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

Comments are requested concerning: (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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Extension of Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

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

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Board's services will be unavailable.

The Board will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and not for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information, and the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. Such data uses would require more rigorous designs than the collections covered by this notice.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

OMB Control Number: 2140–0019.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Customers and stakeholders of the Board.

Number of Respondents, Frequency, Estimated Time per Response, and Total Burden Hours: A variety of instruments and platforms will be used to collect information from respondents. The estimated annual burden hours (277) are based on the number of collections we expect to conduct over the requested period for this clearance, as set forth in the table below.

ESTIMATED ANNUAL REPORTING BURDEN

Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Focus Group	15	1	2	30
Comment Card/Brief Survey	200	2	.17	67
Surveys	150	2	.6	180

DATES: Comments on this information collection should be submitted by September 26, 2014.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *PRA@stb.dot.gov.* When submitting comments, please refer to ''Extension of Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' For further information regarding this generic clearance, contact *PRA@stb.dot.gov.* [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. Comments submitted in response to this notice may be made available to the public through the Board's Web site at *http://stb.dot.gov/stb/index.html.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an electronic comment (e-file or email), your email address is automatically captured and may be accessed by the public through the Board's Web site as part of a service mailing list. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

Dated: July 23, 2014.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–17648 Filed 7–25–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 23, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before August 27, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–1465.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8668–(Final) Environmental Settlement Funds—Classification.

Abstract: Section 7701 and the regulations thereunder classify entities for federal tax purposes as partnerships, associations, and trusts. Section 671 requires a grantor treated as an owner of a portion of a trust to include items in income. This regulation provides reporting rules.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 2,000.

OMB Number: 1545–1548.

Type of Review: Extension without change of a currently approved collection.

Title: Rev. Proc. 2013–30, Uniform Late S Corporation Election Revenue Procedure.

Abstract: The information will help the IRS determine whether a taxpayer has met the requirements of the Revenue Procedure and whether a taxpayer has reasonable cause for failing to make a timely election. The collection is required to make a late election pursuant to this Revenue Procedure. This information will be used to determine whether the eligibility requirements for obtaining relief have been met.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 50,000.

OMB Number: 1545–1760.

Type of Review: Revision of a currently approved collection.

Title: Payments From Qualified Education Programs (Under Sections 529 and 530).

Form: 1099–Q.

Abstract: Form 1099–Q, Payments From Qualified Education Programs (Under Sections 529 and 530), is used to report distributions from private and state qualified tuition programs as required under Internal Revenue Code sections 529 and 530. A Form 1099–Q is filed if you (a) are an officer or an employee, or the designee of an officer or employee, having control of a program established by a state or eligible educational institution; and (b) made a distribution from a qualified tuition program (QTP). A trustee of a Coverdell education savings account (ESA) must file Form 1099–Q to report distributions made from Coverdell ESAs. To lessen the burden for payers, Form 1099–Q was developed to report distributions from private and state qualified tuition programs. A copy of the Form 1099–Q must be furnished to the recipient.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 530,090.

OMB Number: 1545–1835.

Type of Review: Revision of a currently approved collection.

Title: Application for Registration (for Certain Excise Tax Activities) and Questionnaires.

Form: 637.

Abstract: The authority for the requirement for registration is found in

Internal Revenue Code sections 4101 (Fuel Taxes), 4222 (Retailers and Manufacturers Excise Taxes), 4682 (Ozone-depleting Chemicals Tax), and the regulations. Form 637, Application for Registration (For Certain Excise Tax Activities) is used to apply for excise tax registration for activities under sections 4101, 4222, and 4682. Common activities for which persons are registered include that of a refiner, terminal operator, position holder, throughputter, ultimate vendor, first retail seller of certain heavy vehicles, and manufacturer of sport fishing equipment. The information will be used to make an informed decision on whether the applicant/registrant qualifies for registration.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 30,499.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014–17682 Filed 7–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 22, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before August 27, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0101.

Type of Review: Extension without change of a currently approved collection.

Title: Marks and Notices on Packages of Tobacco Products, TTB REC 5210/13.

Abstract: TTB requires that tobacco products be identified by information on the packages and, in some cases, shipping containers of tobacco products. TTB uses this information to ensure that the tax is paid on tobacco products and that products removed without payment of tax for export are easily identified if diverted into the domestic market.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

OMB Number: 1513–0121.

Type of Review: Extension without change of a currently approved collection.

Title: Labeling of Major Food Allergens.

Abstract: The collection of information involves voluntary labeling of major food allergens used in the production of alcohol beverages and also involves petitions for exemption from full allergen labeling. The collection corresponds to the amendments to the FD&C Act in Title II of Public Law 108–282, 118 Stat. 905.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 730.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014–17637 Filed 7–25–14; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Subordinated Debt

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of its information collection titled, ''Subordinated Debt.'' It is also giving notice that it has submitted the collection to OMB for review.

DATES: Comments must be submitted on or before August 27, 2014.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0320, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0320, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: oira *submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include

agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

In connection with issuance of the interim final rule entitled ''Basel III Conforming Amendments Related to Cross-References, Subordinated Debt and Limits Based on Regulatory Capital,'' OMB provided a six-month approval for this information collection. 79 FR 11300 (February 28, 2014). The OCC is proposing to extend OMB approval of the collection for the standard three years.

Title: Subordinated Debt.

OMB Control No.: 1557–0320.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 184.

Burden per Respondent: 1.3 hours.

Total Burden: 239 hours.

Description: Federal law and OCC regulations require that, under certain circumstances, a national bank or Federal savings association (collectively, ''institution'') must receive OCC approval to issue or prepay subordinated debt and include subordinated debt in tier 2 capital. The OCC uses information contained in various applications submitted by institutions to decide whether to grant approval for requests to issue or prepay subordinated debt and/or include subordinated debt in tier 2 capital.

The OCC uses the collected information to determine whether to approve an institution's request to issue or prepay subordinated debt or include subordinated debt in tier 2 capital. In addition, the OCC uses the information to determine whether to require an institution to replace the subordinated debt with an instrument of an equivalent amount that satisfies the requirements for a tier 1 or tier 2 capital instrument. Also, when prepayment of subordinated debt is in the form of a call option and the subordinated debt is included in tier 2 capital, the OCC uses information provided by an institution to determine whether to require the institution to replace the instrument with an instrument that meets the criteria for tier 1 or tier 2 capital, and, if so, whether the replacement instrument would qualify as tier 1 or tier 2 capital. The information collected is used to ensure compliance with legal and regulatory requirements. In the case of a prepayment in the form of a call option, the OCC uses the additional information collected from institutions to implement a requirement in the OCC's capital regulations, as described below.

Through the interim final rule, the OCC revised the requirements of § 5.47. Specifically, all national banks now must receive prior OCC approval in order to prepay subordinated debt that is included in tier 2 capital, and certain banks must receive prior approval to prepay subordinated debt that is not included in tier 2 capital. If the prepayment is in the form of a call option and the subordinated debt is included in tier 2 capital, a national bank must submit the information required for general prepayment requests under paragraph (n)(1)(ii)(A) and also comply with paragraph (n)(1)(ii)(B)(2), which requires a national bank to submit either: (1) A statement explaining why the bank believes that following the proposed prepayment the bank would continue to hold an amount of capital commensurate with its risk; or (2) a description of the replacement capital instrument that meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20, including the amount of such instrument and the time frame for issuance.

The OCC also revised the requirements of § 163.81 in the interim rule. Specifically, the prepayment of subordinated debt securities or mandatorily redeemable preferred stock (''covered securities'') included in tier 2 capital now requires prior OCC approval. In addition, if the prepayment is in the form of a call option, a Federal savings association must submit the information required for general prepayment requests under paragraph (j)(2)(i) and also comply with paragraph (j)(2)(ii)(A), which requires a Federal savings association to submit either: (1) A statement explaining why the Federal savings association believes that following the proposed prepayment the savings association would continue to hold an amount of capital commensurate with its risk; or (2) a description of the replacement capital instrument that meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20, including the amount of such instrument and the time frame for issuance.

The OCC solicited comment on this collection for 60 days (79 FR 22762 (April 23, 2014)). No comments were received. Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: July 22, 2014.

Stuart E. Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2014–17717 Filed 7–25–14; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Electronic Operations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and Request for Comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of its information collection titled, ''Electronic Operations.''

DATES: Comments must be submitted on or before September 26, 2014.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0301, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington,

DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of its intention to renew the collection of information set forth in this document.

The OCC is proposing to extend OMB approval of this collection for three years:

Title: Electronic Operations.

OMB Control No.: 1557–0301.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 15.

Burden per Respondent: 2 hours.

Total Burden: 30 hours.

Description: Twelve CFR part 155 provides that Federal savings associations may use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices. The regulation requires each savings association to notify the OCC at least 30 days before establishing a transactional Web site. A transactional Web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services. Savings associations that present supervisory or compliance concerns may be subject to additional procedural requirements.

This information collection facilitates the OCC's ability to identify industry technology trends and better understand emerging technologies. The information is collected transactionally and is used to ensure that safety and soundness requirements are being met.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: July 22, 2014.

Stuart E. Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2014–17719 Filed 7–25–14; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''Community Reinvestment Act Regulations.'' The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before August 27, 2014.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0160, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that

you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0320, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

The OCC is proposing to extend OMB approval of the following information collection:

Title: Community Reinvestment Act Regulations.

OMB Control Number: 1557–0160.

Description: The Community Reinvestment Act (CRA) requires the Federal banking agencies (Agencies) to assess the record of banks and savings associations in helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities.[1] The CRA statute requires the Agencies to issue regulations to carry out its purposes.[2]

Each Agency must provide written CRA evaluations of the institutions they supervise. The public portion of each written evaluation must present the Agency's conclusions with respect to the CRA performance standards identified in its regulations; include the facts and data supporting those conclusions; and contain the institution's CRA rating and the basis for that rating.

The data collection requirements in the CRA regulations are necessary for the Agencies to examine, assess, and assign a rating to an institution's CRA performance and to prepare the public section of the written CRA performance evaluation.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,693.

Estimated Total Annual Burden: 142,463 hours.

Comments: The OCC issued a 60-day notice regarding this collection on April 25, 2014. 79 FR 23058. One comment was received. The commenter made a number of recommendations related to the OCC's supervisory uses of data in connection with the CRA regulation's service test.[3] However, the commenter's recommendations do not relate to the CRA regulation's data collection requirements, which are the subject of this continuing information collection.

In general, the commenter stated that using more data in the service test would make bank evaluations easier for banks and examiners. The commenter recommended that bank examiners consider additional information for the service test that would assist with the evaluation of: The distribution of bank branches and products; opening and closing of bank branches; accessibility and use of alternative financial services; and the impact of banking services on customers and communities. The commenter also suggested that, in addition to a qualitative evaluation, that examiners use quantitative data to evaluate a bank's programs and determine if, and to what degree, a bank's services benefit the community.

The OCC is carefully considering the recommendations made by the commenter in connection with the possible issuance of future CRA-related guidance addressing the service test.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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: July 22, 2014.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2014–17703 Filed 7–25–14; 8:45 am]

BILLING CODE 4810–33–P

[1] 12 U.S.C. 2903.

[2] 12 U.S.C. 2905.

[3] The service test evaluates a bank or Federal savings association's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services. 12 CFR 25.24 and 195.24.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the election to expense certain refineries.

DATES: Written comments should be received on or before September 26, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Gerald J. Shields, LL.M. at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election To Expense Certain Refineries.

OMB Number: 1545–2103.

Regulation Project Number: TD 9547.

Abstract: This document contains regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code, and affects taxpayers who own refineries located in the United States. These regulations reflect the Energy Policy Act of 2005.

Section 179C of the Internal Revenue Code provides that a taxpayer can elect to treat 50% of the cost of ''qualified

refinery property'' as a deductible expense not chargeable to capital account. The taxpayer makes an election under section 179C by entering the amount of the deduction at the appropriate place on the taxpayer's timely filed original federal income tax return for the taxable year in which the qualified refinery property is placed in service and by attaching a report specifying (a) the name and address of the refinery and (b) the production capacity requirement under which the refinery qualifies.

If the taxpayer making the expensing election described above is a cooperative described in section 1381, and one or more persons directly holding an ownership interest in the taxpayer are organizations described in section 1381, the taxpayer can elect to allocate all or a portion of the deduction allowable under section 179C to those persons. The allocation must be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer/cooperative.

Current Actions: There is a change due to final regulations being adopted. However, the taxpayer burden has not changed.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time per Respondent: 10 Hours.

Estimated Total Annual Burden Hours: 120.

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: July 16, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–17751 Filed 7–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8717 and Form 8717–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8717, User Fee for Employee Plan Determination Letter Request, and Form 8717–A, User Fee for Employee Plan Opinion or Advisory Letter Request.

DATES: Written comments should be received on or before September 26, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields, LL.M., Internal Revenue Service, Room 6231, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 8717, User Fee for Employee Plan Determination Letter Request, and Form 8717–A, User Fee for Employee Plan Opinion or Advisory Letter Request.

OMB Number: 1545–1772.

Form Number: 8717 and 8717–A.

Abstract: The Omnibus Reconciliation Act of 1990 requires payment of a ''user fee'' with each application for a determination letter. Form 8717 and Form 8717–A were created to provide filers the means to make payment and indicate the type of request.

Current Actions: There are changes being made to the forms at this time, because the user fees were updated by Rev. Proc. 2014–8, 2014–1 I.R.B. 242, and are effective for applications filed on or after February 1, 2014. Form 8717 has been renamed, User Fee for Employee Plan Determination Letter Request. Information previously on Form 8717 relating to opinion or advisory letter requests for Volume Submitter and Master or Prototype plans has been deleted. This information may now be found on new Form 8717–A, User Fee for Employee Plan Opinion or Advisory Letter Request.

Type of Review: Revision and extension of a currently approved collection.

Affected Public: Business or other for-profit organization, and not-for-profit institutions.

Estimated Number of Responses: 39,000.

Estimated Time per Response: 11 Hours, 24 minutes.

Estimated Total Annual Burden Hours: 445,770.

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: July 16, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–17752 Filed 7–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held September 11, 2014.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held at 999 North Capitol Street NE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Ruth M. Vriend until August 1, 2014, or Gretchen Wolf, C:AP:SO:AAS, 1111 Constitution Ave. NW., Washington, DC 20224. Telephone (202) 317–8975 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held at 999 North Capitol Street NE., Washington, DC 20003.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), of the Government in Sunshine Act and that the meeting will not be open to the public.

Kirsten B. Wielobob,

Chief, Appeals.

[FR Doc. 2014–17702 Filed 7–25–14; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 219
Control of Alcohol and Drug Use: Coverage of Maintenance of Way Employees, Retrospective Regulatory Review-Based Amendments (RRR); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA–2009–0039]

RIN 2130–AC10

Control of Alcohol and Drug Use: Coverage of Maintenance of Way Employees, Retrospective Regulatory Review-Based Amendments (RRR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation. (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to Congress' mandate in the Rail Safety Improvement Act of 2008 (RSIA), FRA is proposing to expand the scope of its alcohol and drug regulations to cover employees who perform maintenance-of-way (MOW) activities. In addition, FRA is proposing certain substantive amendments that either respond to National Transportation Safety Board (NTSB) recommendations or update and clarify the alcohol and drug regulations based on a retrospective regulatory review (RRR) analysis.

DATES: *Comments:* Submit comments on or before September 26, 2014.

Public Hearing: FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to August 27, 2014, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2009–0039 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading in the ''Supplementary Information'' section of this document for Privacy Act information related to any submitted comments or materials.

Proposed Revised Part 219 Available in Docket No. FRA–2009–0039

A revised version of part 219 incorporating all amendments proposed by this NPRM is available for review in the public docket of this rulemaking (docket no. FRA–2009–0039). Interested persons can review this document to learn how the proposed amendments would affect part 219 as a whole.

FOR FURTHER INFORMATION CONTACT: For program and technical issues, contact Gerald Powers, Drug and Alcohol Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6313), *gerald.powers@dot.gov.* For legal issues, contact Elizabeth A. Gross, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–1342), *elizabeth.gross@dot.gov;* or Patricia V. Sun, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6060), *patricia.sun@dot.gov.*

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  I. Part 219 would be amended to conform certain provisions to the final conductor certification rule
VI. Primary Clarifying Amendments
  A. Reasonable suspicion and reasonable cause testing would be separated into different subparts, resulting in the re-designation of other subparts
  B. Random alcohol and drug testing would be reorganized and clarified
  C. Substituting ''Drug and Alcohol'' for ''Alcohol and Drug''
VII. Section-by-Section Analysis
VIII. Regulatory Impact and Notices
  A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures
  B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment
  C. Paperwork Reduction Act
  D. Federalism Implications
  E. International Trade Impact Assessment
  F. Environmental Impact
  G. Unfunded Mandates Reform Act of 1995
  H. Energy Impact
  I. Privacy Act

I. Executive Summary

FRA has regulated the use of alcohol and drugs by certain railroad employees since 1985, when it issued a final rule establishing alcohol and drug use control regulations under 49 CFR part 219 (part 219). *See* 50 FR 31508, Aug. 2, 1985. The rule contained certain prohibitions on the use and possession of alcohol and drugs by covered employees, who were defined as employees who had been assigned to perform covered service subject to the Hours of Service Act (45 U.S.C. 61–64b).[1] *See id.* at 31569. The rule also contained requirements for post-accident toxicological (PAT) testing, discretionary reasonable cause and reasonable suspicion testing, co-worker and voluntary referral policies, pre-employment drug testing, and reporting. *See id.* at 31508. In 1988, FRA amended part 219 to require random drug testing of covered employees. *See* 53 FR 47102, Nov. 21, 1988. In 1994, FRA again amended part 219 to require random alcohol testing and reasonable suspicion testing, in conformance with the requirements of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) (reasonable cause testing remained discretionary). *See* 59 FR 7448, Feb. 15, 1994. FRA has not fundamentally revised part 219 since 1994.[2]

The Omnibus Act required the Department of Transportation (DOT or Department) to establish Federal workplace testing procedures for transportation employees. The Department's Procedures for Transportation Workplace Drug and Alcohol Testing Program are contained in 49 CFR part 40 (part 40), which is published by the DOT Office of the Secretary (OST). Only the DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) and the DOT Office of General Counsel (OGC) are authorized to interpret part 40 requirements. *See* 49 CFR 40.5.[3] Part 40 testing requirements and procedures apply to any drug or alcohol test required by DOT agency regulations, except for FRA's PAT testing and certain testing conducted pursuant to DOT-mandated peer prevention programs (including FRA's peer prevention program currently required by subpart E of part 219). *See* § 219.701. FRA's PAT testing program pre-dates the enactment of the Omnibus Act, which specifically exempts the program from part 40. *See* § 40.1(c).

In response to Congress' mandate in the RSIA, FRA is proposing to expand the scope of part 219 to cover employees who perform MOW activities. As used in this NPRM, the term ''employee'' includes employees, volunteers, and probationary employees of railroads and contractors (defined to include subcontractors) to railroads. In addition, because MOW employees are not subject to the HOS laws, FRA is proposing a new term-of-art—''regulated service''—that would encompass both covered service and MOW activities. Performance of regulated service would make an individual a ''regulated employee'' subject to part 219, regardless of whether the individual is employed by a railroad or a contractor to a railroad. This proposed expansion of part 219 would both comply with the RSIA mandate and respond in part to NTSB Recommendation R–08–07 (Apr. 10, 2008), *available at http://www.ntsb.gov/doclib/recletters/2008/R08_05_07.pdf.* In Recommendation R–08–07, the NTSB advised FRA to expand its alcohol and drug regulations to all railroad employees and contractors who perform FRA safety-sensitive functions as defined by §§ 209.301 and 209.303 (the regulations setting forth the purpose, scope and coverage of FRA's procedures for disqualifying individuals from performing certain safety-sensitive functions).

FRA is also proposing to amend part 219 in response to NTSB Recommendation R–01–17, *available at http://www.ntsb.gov/doclib/recletters/2001/R01_17.pdf.* Recommendation R–01–17 advised FRA to limit the current blanket exception for PAT testing after highway-rail grade crossing accidents to allow PAT testing when an accident was likely due to human factors or involved a regulated employee fatality.

This NPRM also proposes amendments based on a retrospective review of part 219, which FRA has been implementing for more than 25 years. These amendments, which reflect practical lessons FRA has learned, are necessary to update and simplify the regulation's requirements.

Costs and Benefits of Proposed Rule

The proposed rule would impose costs that are outweighed by the quantified safety benefits. For the 20-year period analyzed, the estimated costs that will be imposed on industry total approximately $24 million (undiscounted), with discounted costs totaling $14.2 million (Present Value (PV), 7 percent) and $18.9 million (PV, 3 percent). The estimated quantified benefits for this 20-year period total approximately $115.8 million (undiscounted), with discounted benefits totaling $57.4 million (PV, 7 percent) and $83.6 million (PV, 3 percent).

The costs would primarily be derived from implementation of the statutory mandate to expand the scope of part 219 to cover MOW employees. The benefits will primarily accrue from the expected injury, fatality, and property damage avoidance resulting from the expansion of part 219 to cover MOW employees, as well as the PAT testing threshold increase. The table below summarizes the quantified costs and benefits expected to accrue over a 20-year period from adoption of the proposed rule and identifies the statutory costs and benefits (those required by the RSIA mandate to expand part 219 to MOW employees) and the discretionary costs and benefits (those that are due to the non-RSIA requirements that FRA is proposing).

[1] The hours of service (HOS) laws are currently found at 49 U.S.C. ch. 211.

[2] In 2004, FRA expanded the scope of part 219 to cover foreign railroad foreign-based employees who perform train or dispatching service in the United States. *See* 69 FR 19270, Apr. 12, 2004. In 2013, FRA added routine tests for certain non-controlled substances to its PAT testing program. *See* 78 FR 14217, Mar. 5, 2013.

[3] Unless otherwise specified, all references to CFR sections and parts in this document refer to Title 49 of the CFR.

20 Year costs	Statutory	Discretionary
PAT Testing Costs—Adding MOW	$52,000	
PAT Testing Costs—Impact Def + Xing		$241,974
Reasonable Suspicion Testing Costs	842,398	
Pre-Emp. Testing Costs—Adding MOW	673,897	
Pre-Emp. Testing Costs—Sm. RR		29,904
Random Testing Costs	20,863,074	
Annual Report Costs	160,911	
Recordkeeping Requirements Costs	1,397,840	
Total Costs	23,990,121	271,878
	24,261,999	
20 Year Benefits	**Statutory**	**Discretionary**
Accident Reduction Benefits	115,369,281	
PAT Testing Threshold Reduction Benefits		388,295
Total Benefits	115,757,576	

II. Statutory Authority and Proceedings to Date

Currently, part 219 applies only to covered employees, defined in § 219.5 as individuals who perform covered service subject to the HOS laws at 49 U.S.C. 21103, 21104, or 21105. In Section 412 of the RSIA (Section 412), Congress directed the Secretary to ''revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities.'' The Secretary has delegated this responsibility to the FRA Administrator. *See* 49 CFR 1.89(b); *see also* 49 U.S.C. 103(g). The RSIA does not define MOW activities.

When the RSIA was enacted in 2008, FRA was already conducting a retrospective analysis of part 219, looking for ways to clarify the regulations and make the requirements less burdensome. This NPRM therefore proposes both amendments that would incorporate MOW employees and amendments suggested by FRA's retrospective analysis of part 219.

As explained above, part 219 incorporates the alcohol and drug testing procedures found in part 40, which is published and administered by ODAPC. For this reason, FRA did not consult with the Railroad Safety Advisory Committee (RSAC) on this proposed rule. Instead, FRA gathered information and suggestions from railroads, labor organizations, and other stakeholders at railroad industry meetings. For example, railroad industry stakeholders provided statistics about the number of employees of railroads and contractors to railroads who perform MOW activities and submitted suggestions on how FRA should define MOW activities.

III. Expansion of Part 219 to Employees Who Perform MOW Activities

In this NPRM, FRA is proposing to expand the scope of part 219 to include employees who perform MOW activities (MOW employees). As discussed above, the term ''employee,'' as used in this NPRM, includes employees, contractors, subcontractors, volunteers, and probationary employees. Accordingly, the term ''MOW employee'' includes any individual performing MOW activities for a railroad, whether employed directly by the railroad, employed by a contractor or subcontractor to the railroad, or a volunteer for the railroad. MOW employees are at a high safety risk because they work along railroad track and roadbed and may suffer injury or death as a result of being struck by trains or other on-track or fouling equipment. Additionally, MOW employees directly affect the safety of railroad operations because they work on or near railroad tracks, operate on-track or fouling equipment, and assist in directing trains through work areas. The purpose of expanding part 219 to include MOW employees is to improve safety by reducing the rate of alcohol and drug use among the MOW employee population.

A. Background

On January 9, 2007, a southbound Massachusetts Bay Transit Administration (MBTA) passenger train, operated by the Massachusetts Bay Commuter Railroad (MBCR), struck a track maintenance vehicle that was on the track near Woburn, Massachusetts. *See* NTSB, Railroad Accident Report: Collision of Massachusetts Bay Transportation Authority Train 322 and Track Maintenance Equipment Near Woburn, Massachusetts, NTSB/RAR–08/01, PB2008–916301, Mar. 18, 2008, at 1, *available at http://www.ntsb.gov/doclib/reports/2008/RAR0801.pdf* (''Woburn Report''). At the time of the collision, six MBCR MOW employees were replacing crossties and were working on or near the track maintenance vehicle. The train rounded a curve at 62 mph and struck the track maintenance vehicle. The MOW workers had only about 15 seconds warning before the collision. *Id.* at 17. Two of the MBCR employees, a track foreman and a track worker/welder, were killed, and two were seriously injured. The NTSB investigated the collision and determined that one of its probable causes was the failure of the MOW crew to apply a shunting device that would have provided redundant signal protection for their track segment.[4] An MBCR rule required the crew to have a shunting device at the end of the work area every time a track was taken out of service for maintenance. The track foreman in charge of the MOW crew, however, had not complied with this rule. *Id.* at vi and 17.

While the MOW employees involved in the MBTA accident were not covered employees, § 219.203(a)(4)(ii) requires PAT testing on the remains of any railroad employee fatally injured in a train accident or incident. The PAT testing results for the fatally injured foreman involved in the MBTA accident showed that that he had likely used marijuana within three hours of his

[4] The NTSB also found that a probable cause of the accident was the failure of the train dispatcher to maintain blocking that provided signal protection for the track segment occupied by the MOW crew. *See id.* at vi.

death. The NTSB concluded that the foreman's performance would likely have been measurably impaired at the time of the accident by his recent use of marijuana. The NTSB also concluded that the foreman's positive drug test result was ''not an isolated incident among MBCR maintenance-of-way employees.'' *Id.* at 19. Between December 2003 and January 2007, the MBCR had four fatalities, one critical injury, and one potentially serious incident involving MOW employees. *Id.* Seven MOW employees were tested for drugs and/or alcohol as a result of these incidents. *Id.* (Four fatally injured employees were tested under FRA authority, and three surviving employees were tested under MBCR's company authority. *Id.*) Of the seven MOW employees tested, four had positive results, and one employee submitted a specimen that was a negative dilute which may have masked a positive. *Id.* The NTSB found that this high rate of positive test results was symptomatic of a substance abuse problem among MBCR MOW employees. *Id.*

As part of its investigation of this accident, the NTSB reviewed industry-wide PAT testing data for accidents involving MOW employee fatalities. Over the 10-year period ending January 9, 2007, FRA PAT testing of 26 MOW fatalities resulted in 5 positive test results, a positive rate of 19.23%. *Id.* at 19. In contrast, the overall PAT testing positive rate for covered employees was only 6.56%. *Id.* The NTSB concluded that these results showed greater alcohol and drug use among MOW employees than among covered employees subject to part 219. *Id.* Thus, the NTSB determined that alcohol and drug use by MOW employees in the railroad industry was a safety concern. *Id.* at vi and 19.

The NTSB noted that FRA data indicate that MOW employees are about three times more likely to have positive test results than covered employees (19.23% positive for MOW employees vs. 6.56% positive for covered employees). *See* Woburn Report at 20. Attributing this difference ''to the deterrent value of the FRA's random testing program to which covered employees are subject but maintenance-of-way employees are not,'' the NTSB recommended that FRA revise its definition of covered employee to include all railroad employees and contractors who perform FRA safety-sensitive functions, as defined by §§ 209.301 and 209.303. *See* NTSB Recommendation R–08–07.

Section 209.303 lists the safety-sensitive functions that an individual may be disqualified from performing if he or she has been found unfit to do so after committing a FRA safety violation. *See* § 209.301. If FRA expanded the scope of part 219 to cover the safety-sensitive functions listed in § 209.303, it would include not only covered employees, as currently defined, but all railroad employees and contractor employees (including managers and supervisors) who: (1) Inspect, install, repair, or maintain track and roadbed; (2) inspect, repair, or maintain locomotives, passenger cars, and freight cars; (3) conduct training and testing of employees when required to do so by the FRA's safety regulations; (4) perform service subject to the Transportation of Hazardous Materials Law (Hazmat Law); [5] (5) supervise and otherwise direct the performance of the safety-sensitive functions; or (6) are in a position to direct the commission of violations of any FRA safety regulation. As discussed below, FRA does not currently believe that it is necessary to expand part 219 beyond railroad employees (including contractors, subcontractors, volunteers and probationary employees) who perform covered service and/or MOW activities for a railroad.

B. FRA's Proposed Definition of ''MOW Activities''

In response to the mandate contained in Section 412 and NTSB Recommendation R–08–07, FRA is proposing to expand part 219 to include employees who perform MOW activities, as defined in proposed § 219.5. FRA's proposed definition of MOW activities includes the following: (1) The inspection, repair, or maintenance of track, roadbed, or electric traction systems; (2) the operation of on-track or fouling equipment utilized for the inspection, repair, or maintenance of track, roadbed, or electric traction systems; (3) the performance of flagman or watchman/lookout duties; (4) the obtaining of on-track authority and/or permission for the performance of activities described by the proposed definition; or (5) the granting of on-track authority and/or permission for operation over a segment of track while workers are performing activities described by the proposed definition.

In drafting its proposed definition of ''MOW activities,'' FRA drew from § 209.303's definition of FRA safety-sensitive functions and identified those activities that most closely fit the common understanding of MOW activities in the railroad industry. Based in part on feedback from stakeholders, FRA determined that these activities include the inspection, installation, repair, or maintenance of track and roadbed. *See* § 209.303(b)(1). Individuals performing such activities work along railroad track and roadbed and may suffer serious injury or death from being struck by trains or other on-track or fouling equipment. These individuals also directly affect the safety of railroad operations because they work on or near railroad tracks, operate on-track or fouling equipment, and authorize or direct trains through working limits.

In contrast, individuals performing the other FRA safety-sensitive functions listed in § 209.303 do not typically experience the same type of safety risks because they generally do not work on or around a railroad's track or roadbed. Individuals who inspect, repair, or maintain locomotives, passenger cars, and freight cars, as described by § 209.303(b)(2), generally perform these functions in locomotive or car repair facilities subject to blue flag protection. *See* 49 CFR part 218, subpart B. Individuals who conduct training and testing of employees required by FRA safety regulations, as described in § 209.303(b)(3), may conduct such training without ever approaching a railroad track or roadbed. Individuals who perform service subject to the Hazmat Law may sometimes do so on or near a track or roadbed, but this is not necessarily the case. Nevertheless, any individuals performing the above activities would fall within the proposed expanded scope of part 219 if they otherwise perform covered service or MOW activities as defined in this NPRM.

Once FRA decided to begin its MOW activities definition with the language from § 209.303(b)(1), it decided to remove ''install'' from the definition because part 219 applies only to railroads that operate on track that is part of the general railroad system of

[5] The Transportation of Hazardous Materials Laws are located at 49 U.S.C. ch. 51. Under 49 U.S.C. 5103, the Secretary is directed to prescribe regulations for the ''safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' These regulations apply to a person who performs a broad range of activities, including testing a ''packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce'' and ''certif[ying] compliance with any requirements under this chapter.'' Such activities generally are not related to what would be considered railroad MOW activities.

The Secretary delegated the authority to issue these regulations to the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the resulting regulations are found at 49 CFR subtitle B, ch. 1. The broad extent of these regulations go far beyond what would be an appropriate scope for FRA's alcohol and drug regulation.

transportation. *See* § 219.3(a). By not including the word ''install'' in its proposed MOW activities definition, FRA would exclude the installation of track that has not yet been incorporated into the general railroad system of transportation. Rebuilding a track that is already part of the general system of transportation, however, would be covered by the definition because it would be considered repair or maintenance. Essentially, work on a track would be covered under the proposed MOW activities definition once the track became part of the general system of transportation and subject to FRA's track safety standards in 49 CFR part 213. FRA is specifically requesting public comment, however, on whether the installation of new track should be considered a MOW activity, and whether its proposed definition would improperly exclude other installation work that should be considered a MOW activity.

FRA also decided, however, that its proposed definition of MOW activities should specifically include employees who work on electric traction systems. Electric traction is a wayside electric distribution system (such as an overhead catenary or third rail) that a railroad can utilize for locomotion in lieu of locomotive diesel engines. Electric traction systems also include various pieces of equipment that can be found along the railroad's right-of-way, such as power stations, power sub-stations, breaker sites, power feed lines, catenary towers, and power dispatching offices. Currently, Amtrak and other commuter railroads use electric traction systems.

FRA also concluded that the definition of MOW activities should specifically include employees who perform duties as flagmen or watchmen/lookouts. While flagmen or watchmen/lookouts may not be directly engaged in the inspection, repair, or maintenance of track, roadbed, or electric traction systems, they are generally working in the foul of track and are providing on-track safety for employees who are engaged in such activities. For example, a flagman may be responsible for keeping all trains and on-track equipment clear of the working limits within which MOW activities are being performed. *See* § 214.7. Watchmen/lookouts are also responsible under § 214.329 for providing train approach warnings to MOW employees who foul any track outside of working limits.[6] Since flagmen and watchmen/lookouts must stay alert at all times to properly perform these safety-critical job duties, it would run counter to safety purposes to exclude their duties from FRA's proposed definition of MOW activities. FRA is proposing to define ''flagman'' and ''watchman/lookout'' in § 219.5 as those terms are currently defined in FRA's roadway worker regulations. *See* § 214.7. Because these definitions have already been established by part 214, the railroad industry is already familiar with their meaning and application.[7]

For illustration purposes, part 219's proposed MOW activities definition would include (but not be limited to) the following activities: (1) The clearing of snow and ice from track and switches (but not from passenger station platforms, as discussed below); (2) the operation of on-track or fouling equipment used for repair/maintenance purposes such as tampers, tie-throwers, ballast machines, weed sprayers, etc. or working with such equipment; (3) the operation of on-track rail inspection vehicles; (4) the requesting or granting of authority to occupy a segment of track for the purpose of performing MOW activities; and (5) the requesting or granting of permission for a train to proceed through MOW working limits. The above list is not exhaustive, and FRA is specifically requesting public comment on whether there are other functions that should be considered MOW activities that may not be included in its proposed definition. FRA is specifically interested in whether it should consider duties already covered by the alcohol and drug testing requirements of the Federal Motor Carrier Safety Administration (FMSCA) as MOW activities, when those duties also impact the safe performance of MOW activities (e.g., the operation of tractor-trailers or other equipment for the purpose of loading or unloading MOW equipment or supplies onto or within the foul of the track).

FRA proposes, however, to exclude the following types of activities from the definition of MOW activities: (1) The clearing of snow and ice from passenger station platforms; (2) other passenger station maintenance, such as painting, cleaning, sweeping platforms, etc.; (3) activities performed by individuals who are not engaged by or under contract to a railroad, such as workers who are installing cable for a public utility company or constructing a bridge for a government highway agency; (4) railroad bridge[8] work that is not on the track or within four feet of the nearest rail (on a horizontal plane), such as painting the base of a bridge or diving to inspect a bridge structure; (5) engagement as a tractor-trailer operator solely for the purpose of hauling MOW equipment to and from a work site (although such persons would be included in the definition if they were engaged in loading or unloading MOW equipment or supplies onto or within the foul of the track); and (6) emergency work that is wholly the result of a natural disaster, such as a flood, tornado, or mudslide. As with the list of included activities above, this list of excluded activities is not exhaustive, and FRA is requesting public comment on what, if any, other activities should be specifically excluded from the definition of MOW activities.

FRA is also specifically requesting public comment on whether the proposed MOW activities definition should include any of the following activities: (1) Boring a pipe under a track; (2) paving a highway-rail grade crossing; (3) placing detour or other signs in conjunction with grade crossing work; (4) operating cranes for the loading and unloading of MOW equipment, regardless of whether or not that equipment is being loaded onto or within the foul of a track; (5) clearing and repairing a railroad track following an accident or incident; and (6) operating a bridge if the employee is not covered under the HOS laws.

FRA notes that the proposed definition of MOW activities in part 219 is narrower than the definition of roadway worker duties in § 214.7 of

[6] While § 214.329 is phrased in terms of watchmen/lookouts providing train approach warning to *roadway workers,* FRA notes that the definition of ''roadway worker'' in § 214.7 (discussed further below) is not craft-specific and would likely include any MOW employee (as defined in this NPRM) fouling a track outside of working limits. Any MOW employee fouling a track outside of working limits would therefore require a train approach warning by one or more watchmen/lookouts under § 214.329.

[7] FRA notes that the term flagman is also used by the railroad industry to describe an employee (e.g., a ''conductor flagman'') who obtains on-track authority for contractors that are not contractors to a railroad and therefore not roadway workers. The general public also understands flagman to mean a person who flags highway traffic during highway construction or grade crossing projects. In this NPRM, FRA is proposing to define ''flagman'' solely as defined in § 214.7, rather than in the sense of ''conductor-flagman'' or ''highway-traffic-flagman.''

[8] Under § 214.7, a ''railroad bridge'' is a structure supporting one or more railroad tracks above land or water with a span length of 12 feet or more measured along the track centerline. This includes the entire structure between the faces of the backwalls of abutments or equivalent components, regardless of number of spans, and includes all such structures, whether constructed of timber, stone, concrete, metal, or any combination of these materials. Under § 237.5, a ''railroad bridge'' is any structure with a deck, regardless of length, which supports one or more railroad tracks, or any other undergrade structure with an individual span length of 10 feet or more located at such a depth that it is affected by live loads. *See* 49 CFR part 237, appendix A—Supplemental Statement of Agency Policy on the Safety of Railroad Bridges.

FRA's railroad workplace safety rule (part 214). Consequently, a roadway worker as defined in part 214 may perform duties that would not be considered MOW activities as defined in part 219. For example, an employee who performs passenger station maintenance is performing roadway worker duties under part 214 (since a passenger station is considered a ''roadway facility'' under § 214.7) but would not be performing MOW activities under part 219, so that performance of these duties would make the employee subject to part 214 but not to part 219. If FRA incorporates its proposed definition of MOW activities into part 219, railroads would be required to distinguish between roadway workers as defined in part 214 and MOW employees as defined in part 219, and to realize that individuals may require roadway worker protection even if they are not performing MOW activities. The proposed MOW activities definition differs from the definition of roadway worker duties because it focuses exclusively on the nature of the activities being performed, and does not consider an employee's proximity to the track. Unlike under the roadway worker duties definition, MOW activities do not need to be performed either ''on or near track or with the potential of fouling a track.'' FRA is requesting public comment on how to make clear the differences between its proposed MOW employee and MOW activity definitions in part 219 and the roadway worker definition in § 214.7. FRA is also asking for input on the scope of its proposed definitions, and the safety concerns that involve individuals performing MOW activities.

C. ''Regulated Employees'' and ''Regulated Service''

To implement the expansion of part 219 to cover MOW employees, FRA is proposing to add two new definitions to § 219.5: ''Regulated employee,'' which would refer to an any employee who is subject to part 219 (whether a covered or MOW employee) and a corresponding term, ''regulated service,'' which would refer to all activities subject to part 219 (again, both covered service and MOW activities). Together, these two proposed terms-of-art would encompass all individuals and duties subject to part 219, and would substitute for the awkward terms ''covered employees and maintenance-of-way employees'' or ''covered service and MOW activities.'' FRA believes these proposed definitions would make its RSIA-mandated addition of MOW employees easier to understand and implement, but is requesting public comment on whether its proposed definitions would be clearly understood to refer to both covered service and MOW employees and duties.

D. Alternatives Considered for Part 219 Expansion

Before proposing to expand the scope of this rule to cover MOW activities as defined above, FRA considered two alternative approaches for meeting the statutory mandate of Section 412. Although FRA is not proposing to adopt either alternative, FRA is requesting input on each approach's feasibility in comparison to the approach proposed in this NPRM. FRA is also requesting public comment on whether there are other approaches it should consider.

1. Alternative No. 1: Adopt the ''roadway worker'' definition in § 214.7.

FRA initially considered adopting § 214.7's definition of ''roadway worker,'' since it is an established definition with which the railroad industry is familiar. As defined by § 214.7, ''roadway worker'' includes any employee of a railroad (or a contactor to a railroad) who inspects, constructs, maintains, or repairs railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery ''on or near track or with the potential of fouling a track.'' This definition of roadway worker also includes flagmen and watchmen/lookouts.

Although FRA initially assumed that the roadway worker population is generally the same as that of employees who perform MOW activities, FRA ultimately concluded that this is not so since § 214.7 defines railroad employees (including employees of contractors to a railroad) as roadway workers if they perform any of the section's listed duties ''on or near the track or with the potential to foul the track.'' This particular language applies to individuals performing duties that would not be considered MOW activities, such as maintenance of roadway facilities that could involve fouling the track. Individuals performing such duties may qualify as roadway workers, but they are not generally considered to be MOW employees if their activities do not involve work on track or roadbed.

Furthermore, as used in part 214, a roadway worker is defined as any employee who performs one or more of the duties listed that has the potential of fouling a track, and this definition determines which employees must be provided roadway worker training and on-track protection in certain situations. In part 214, this broad language is not problematic because it is relatively easy for a railroad to provide employees with roadway worker training and on-track protection on short notice. However, FRA believes that adopting part 214's roadway worker definition would make it difficult for railroads and contractors to comply with the expanded scope of part 219, since part 219 elements often require advance planning before implementation For example, to establish an effective random testing program that meets FRA's minimum random testing rates, a railroad would first have to identify all employees and contractors who may ever perform duties qualifying them as roadway workers.

Therefore, while FRA considered adopting the § 214.7 roadway worker definition, FRA concluded that this definition was too broad for part 219 purposes. Nonetheless, FRA is requesting public comment on this alternative.

2. Alternative No. 2: Include all employees who perform FRA safety-sensitive functions under §§ 219.301 and 209.303.

As a second alternative approach, FRA considered implementing NTSB recommendation R–08–07 in its entirety by expanding part 219 to cover all employees who perform FRA safety-sensitive functions under §§ 209.301 and 209.303. For the reasons discussed below, FRA has determined that it is currently unnecessary to expand the scope of part 219 to such an extent.

As discussed above, FRA believes that in addition to the covered employees already subject to part 219, MOW employees occupy the most at-risk safety-sensitive positions in the railroad industry. Their duties regularly require them to work on or alongside track and roadbed, putting them at risk for being struck by a train or other on-track or fouling equipment. MOW employees also greatly impact safety because their activities can directly interfere with the movement of trains or other on-track equipment. Furthermore, as discussed above, the NTSB based recommendation R–08–07 upon its findings that illegal drug use by MOW employees may have played a role in a 2007 fatal MBTA accident, and that test data from FRA's PAT testing program showed an alcohol and drug use problem in the MOW employee population. *See* Woburn Report at 19–20.

In contrast, as discussed earlier, individuals who perform the other FRA safety-sensitive functions listed in § 209.303 (e.g., individuals who inspect, repair, or maintain locomotives,

passenger cars, and freight cars) do not pose or have similar safety risks because these functions, unlike MOW activities, are typically performed in designated shop areas or on track designated as repair track and, as such, individuals performing these functions are not subject to the same risks as individuals working on or around railroad track over which normal railroad operations are taking place. Furthermore, employees who perform § 209.303 safety-sensitive functions but are neither covered employees nor MOW employees have a lower PAT testing positive rate than those who perform MOW activities. From January 1997 to August 2010, FRA conducted PAT tests on 14 fatally injured employees who were neither covered employees nor MOW workers. Only one of these fatalities tested positive, resulting in a PAT testing positive rate of 7.14% for fatalities who were neither covered employees nor MOW workers, which is comparable to the 6.56% PAT testing positive rate for covered employees cited by the NTSB in its report on the MBTA accident. *See* Woburn Report at 20. In comparison, the NTSB's examination of the PAT testing results from MOW fatalities found a positive rate of 19.23%, about three times as high as that for covered employees. *Id.*

FRA is therefore not proposing at this time to apply part 219 to those § 209.303 safety-sensitive employees who are neither covered employees nor MOW employees. Accordingly, as proposed, the expanded scope of part 219 would not cover all § 209.303 safety-sensitive employees, as recommended by the NTSB. FRA believes this more limited scope is not only data-driven but appropriate given the need to minimize the burden and costs of implementing the mandate of Section 412. However, as with the first alternative approach discussed above, FRA is requesting public comment on this alternative.

E. MOW Employees and the Small Railroad Exception

Since the inception of its alcohol and drug program in 1985, FRA has used the number of covered employees a railroad has (including covered service contractors and volunteers) as one factor in determining the railroad's risk of alcohol and drug-related accidents. *See* 50 FR 31529, Aug. 2, 1985. For example, FRA believes that generally small railroads, defined as those railroads that have 15 or fewer covered employees and no joint operations with other railroads, pose a lower risk of alcohol and drug-related accidents than larger railroads. Existing part 219 therefore requires larger railroads (defined as those railroads that either have 16 or more covered employees or are engaged in joint operations) to implement all of part 219, while small railroads have to implement only certain subparts of part 219. Currently under § 219.3, small railroads do not have to comply with subpart D (reasonable suspicion and reasonable cause testing), subpart E (identification of troubled employees), subpart F (pre-employment testing) and subpart G (random alcohol and drug testing).[9] The purpose of this small railroad exception is to limit part 219's regulatory burden on small railroads without adversely affecting safety.

FRA's use of a railroad's number of covered employees and participation in joint operations as measures of the railroad's risk of alcohol and drug-related accidents is a well-established approach with which the railroad industry is familiar. FRA is therefore proposing to continue counting only a railroad's covered employees for purposes of determining whether the railroad qualifies for the small railroad exception, particularly since FRA has found no safety rationale for doing otherwise. This would minimize implementation burdens by continuing to except a small railroad from full part 219 coverage provided that the railroad continues to meet § 219.3 criteria.

With respect to a contractor who performs MOW activities for a railroad, FRA proposes to amend § 219.3 to apply part 219 to a MOW contractor to the same extent as it applies to the railroad for which the MOW contractor performs regulated service. As proposed, a contractor's level of part 219 compliance would be determined by the size of the railroad for which it is performing regulated service, regardless of the size of the contractor itself. To achieve this, FRA is proposing to add new language to the small railroad exception. Pursuant to this new language, if a contractor performs MOW activities exclusively for small railroads that are excepted from full compliance with part 219, the contractor would also be excepted from full compliance. For example, a MOW contractor with five employees who perform regulated service for a large railroad would have to implement a full part 219 program if the railroad for which it performs regulated service is required to do so, while a MOW contractor with 20 employees would not have to implement a full part 219 program if it performs regulated service for a small railroad that is excepted from full compliance with part 219.

FRA recognizes that a MOW contractor may perform regulated service for multiple railroads, not all of which may be required to comply fully with part 219. To simplify application, FRA is proposing to add new language to the small railroad exception requiring a MOW contractor who performs regulated service for multiple railroads to implement a full part 219 program if the contractor performs regulated service for at least one large railroad fully subject to part 219. Under this proposal, if a MOW contractor performs regulated service for at least one large railroad, it would have to incorporate all of its regulated employees into a full part 219 program, even if only some of these employees perform regulated service for a large railroad, and regardless of whether or not a particular employee was currently performing regulated service for a large or a small railroad. This approach would allow a MOW contractor the flexibility to allocate its employees effectively and efficiently by allowing it to use any of its employees to perform regulated service for a large railroad on any given day.

Although FRA considered amending the small railroad exception to allow a railroad to qualify for the small railroad exception if it did not have joint operations and the combined number of its covered employees and MOW workers was 15 or fewer, FRA ultimately decided that this approach would create several difficulties. For example, a railroad with 15 covered employees and five MOW employees that currently qualifies as a small railroad would become fully subject to part 219 if FRA counted the five MOW employees towards the 15 or fewer cutoff. FRA believes it would be unfair for a railroad's status to change simply because MOW employees were added to the count, without any actual change to the railroad's operations or the risks they would pose.

Counting MOW contractors for purposes of the small railroad exception would present even more difficult issues. While § 219.3 currently counts contractor employees who perform covered service for a railroad for purposes of the small railroad exception, this approach has not been problematic because railroads generally hire covered service contractors, such as locomotive engineers, conductors, or train dispatchers, on a long-term basis. Similarly, the demand for signal service contractors is also stable, so it is fairly easy for a railroad to count its number

[9] As discussed later in this preamble, FRA is proposing to modify the small railroad exception of § 219.3 so that small railroads would no longer be exempt from the reasonable suspicion and pre-employment testing requirements of part 219.

of covered service employees and contractors at any given time.

In contrast, MOW work is variable, and MOW contractors frequently move from railroad to railroad. It is not unusual for a MOW contractor to perform work for a railroad only on a one-time basis. Including MOW contractors for purposes of the small railroad exception count could therefore create a situation where a railroad's status would vary from week to week. For instance, a railroad that loses its small railroad status after hiring MOW contractors to perform non-routine track maintenance could revert to small railroad status once its short-term contract with the MOW contractors expired. If a railroad no longer qualifies for small railroad status, it is no longer excepted from the requirement to implement a random testing program. Adoption of criteria that could result in short-term fluctuations in a railroad's status and requirements would be impracticable because implementation of a random testing program is generally a long-term commitment that involves contracting with collectors and other service providers.

FRA also does not want to encourage the hiring of MOW contractors in lieu of MOW employees. Accordingly, for purposes of determining whether a railroad qualifies for the small railroad exception, since FRA is proposing to exclude contractor employees who perform MOW activities, FRA similarly proposes to exclude railroad employees who perform MOW activities. Furthermore, counting a railroad's MOW employees but not its MOW contractors would inaccurately reflect the safety risk presented by the railroad's total MOW worker population.

FRA is proposing to maintain its current criteria for the small railroad exception, but is specifically requesting comment on the following questions:

- Should FRA amend the small railroad exception to consider MOW employees? If so, should FRA amend its current threshold of 15 employees to account for the increased population of individuals performing MOW activities and covered service?
- Do railroads that currently meet the small railroad exception of § 219.3 currently perform reasonable cause or random drug and alcohol testing under their own authority? If so, how does this small railroad company testing authority differ from the reasonable cause or random drug and alcohol testing conducted by larger railroads that fully complies with part 219? Should railroads that meet the existing small railroad exception also be required to fully comply with part 219?
- In light of the changes in the railroad operating environment since the inception of the small railroad exception, are there other approaches to the small railroad exception that FRA should consider? For example, given the criticality of ensuring the safety of all rail passenger operations (whether the operations are large or small), should the small railroad exception be modified, more narrowly tailored, or removed altogether for passenger operations? Similarly, given the increase in the volume and frequency of the rail transportation of DOT-regulated hazardous materials in recent years (e.g., flammable liquids), should the small railroad exception be modified, more narrowly tailored, or removed altogether if a railroad transports hazardous materials? For example, should the small railroad exception be limited to railroads that do not transport hazardous materials or that transport only certain low hazard hazardous materials? Should the exception be limited to railroads that do not transport hazardous materials above a certain threshold quantity? FRA is requesting information on the operations of small railroads as defined under § 219.3: How many of these small railroads transport passengers and how many currently transport hazardous materials? For those small railroads that transport hazardous materials, what types of hazardous materials do they transport?

Although in this NPRM, FRA is not proposing to modify its criteria for determining when a railroad meets the small railroad exception, FRA may do so in the final rule after consideration of any comments received in response to the above questions.

F. Railroad and Contractor Responsibility for Compliance

FRA is proposing to hold both the railroad and the contractor responsible for ensuring that contractor employees performing regulated service for a railroad (contractor regulated employees) are in compliance with part 219. Since § 219.9 currently provides that every person—including railroad agents and contractors—who violates or causes a violation of a part 219 requirement may be subject to a civil penalty, both railroads and contractors performing covered service for railroads are already responsible for part 219 compliance. FRA is stressing this provision because the expansion of part 219 to cover MOW employees would also subject a large population of MOW contractors to its requirements.

While the RSIA-mandated expansion of part 219 to cover MOW employees may create complications for a railroad with a large number of MOW contractors, particularly if those contractors perform MOW activities for the railroad only on a periodic or temporary basis, there are several methods that a railroad and a regulated service contractor could use to ensure compliance with part 219. If a regulated service contractor is required to establish a random testing program because it provides regulated service for a railroad that is fully subject to part 219, the contractor could do any of the following:

- Establish its own part 219 program and provide the railroad with documentation of its compliance with part 219. The railroad should maintain this documentation for FRA audit purposes. If the contractor's documentation or program contains a deficiency or violation that the railroad could not have reasonably detected, FRA could use its enforcement discretion to take action solely against the contractor. As discussed earlier in the preamble, the extent of a regulated service contractor's responsibilities would be determined by the size of the railroad(s) with which it contracts.
- Contract with a consortium to administer its part 219 program. The consortium could either place the contractor's regulated employees in a stand-alone random testing pool or in a random testing pool with the regulated employees of other regulated service contractors. The contractor could then submit documentation of its membership in the consortium and its compliance with part 219 to the contracting railroad. As with the method described above, if the contractor's documentation or program contains a deficiency or violation that the railroad could not have reasonably detected, FRA could use its enforcement discretion to take action only against the contractor. Upon request, FRA would assist a railroad in reviewing the part 219 documentation of its regulated service contractors.
- Have a railroad incorporate contractor employees who perform regulated service for it into the railroad's own part 219 program.

To minimize the burden of these proposed requirements and to promote compliance with part 219, FRA has developed model ''fill-in-the-blank'' alcohol and drug policies (including testing plans) that can serve as templates for both railroads and contractors. These plans are currently available at FRA's Web site: *http://www.fra.dot.gov/Page/P0345*. FRA

developed one set of plans for entities that are subject to all of part 219 and another for entities that qualify for the small railroad exception.

FRA expects it to be common practice for a railroad to incorporate into its own part 219 program all of the contractor employees who perform regulated service for it, even if one or more of the contractors has its own part 219 program. A railroad that does so would ensure that all of its contractor regulated employees are in compliance with part 219 requirements, particularly the random testing requirements of subpart G. A railroad that chooses this approach would incorporate all contractor regulated employees into the railroad's own random testing program.

One additional option would be for a railroad to accept a contractor's plan for random testing, regardless of whether that plan was managed by the contractor or by a consortium/third party administrator (C/TPA). Although not specifically proposed in the rule text, FRA is soliciting feedback on the following approach that could create a framework for a railroad wishing to accept a contractor's random testing plan. Under this approach, if a railroad accepted a contractor's random testing plan, the contractor could be required to comply with the following requirements:

- To certify in writing to the railroad that all of the contractor's regulated employees are subject to alcohol and drug testing as required by part 219 (including, as applicable, the requirements that all regulated employees be subject to selection for random testing as required by subpart G, have a DOT pre-employment drug test resulting in a negative result under subpart F, and be subject to a previous employer background check as required by § 40.25); and
- To report, in an FRA model format, summary part 219 testing data to the railroad at least every six months.

FRA is soliciting public comment on whether the last alternative described above would make it easier for a railroad to ensure that its regulated contractor employees were complying with the requirements of part 219, without having to incorporate the contractor's regulated employees into its own part 219 program. If not, how could this approach be improved? What costs, if any, would it impose? Would contractors performing regulated service for railroads be willing to comply with the proposed requirements for written certification and reporting of summary testing data? Are there other approaches that both railroads and contractors could use to ensure that all contractor employees performing regulated service for a railroad are in compliance with part 219?

G. MOW Employee Random Testing Rate and Minimum Random Testing Pool Size

As mentioned above, FRA is proposing to require random alcohol and drug testing for MOW employees (unless they perform regulated service solely for a railroad qualifying for the small railroad exception of § 219.3). As with covered employees, FRA would set the minimum random rates for MOW employees according to the overall reported random testing violation rate for MOW employees in the railroad industry. *See* §§ 219.602 and 219.608. Because MOW employees have never been subject to FRA random testing before, FRA only has data from its PAT testing of MOW fatalities (described above) on the prevalence of prohibited alcohol and drug use in the MOW employee population. FRA is therefore proposing to set the initial minimum annual percentage rates for MOW employees at 50% for drug testing and 25% for alcohol testing Although the initial minimum random rates for MOW employees would be higher than those currently set for covered employees,[10] FRA set the same initial minimum random rates for covered employees. (FRA required random drug and alcohol testing for covered employees in 1988 and 1995, respectively. *See* 53 FR 47123, Nov. 21, 1988 and 59 FR 7448, Feb. 15, 1994).

Railroads would initially be required to establish and maintain separate random testing selection pools for MOW employees. Maintaining distinct random testing pools for covered and MOW employees would make it easier for railroads to comply with the different minimum testing rates set for each employee population. Requiring separate random testing pools would also make it easier for railroads that are required to file an annual Management Information System (MIS) report under § 219.800 to report separate random testing results for covered and MOW employees. FRA would in turn use the data from these separate pools to set the future minimum random rates for covered and MOW employees.

Under existing § 219.3, a railroad with 15 or fewer covered employees must conduct random testing if it has joint operations with another railroad, even though the railroad's small size may diminish the deterrence effect of the testing. The purpose of random testing is to make every regulated employee expect that he or she could be subject to a random alcohol or drug test any time he or she is on-duty and subject to performing covered service. FRA is concerned that the random testing conducted by very small railroads and contractors may have an insufficient deterrence effect. For example, a railroad with two covered employees and joint operations need only conduct one random alcohol test to meet the 10% minimum alcohol testing rate; afterwards, the railroad's random alcohol testing program would cease to have any deterrent effect because its covered employees would know that the alcohol testing required for the year had already been completed. A contractor who is required to conduct random testing because it performs regulated service for large railroads would have a similar problem if it has only a very small number of regulated employees.

As will be further discussed below in the section-by-section analysis for §§ 219.611(c) and 219.613(d), FRA is proposing the following regulatory change in response to this concern. Any individual random testing pool required under subpart G (whether maintained by a railroad, contractor to a railroad, or a consortium) must contain at least four entries and at least one entry per quarter must be selected and tested, even if doing so would require testing above FRA's minimum annual random testing rates. This new requirement would not excuse a railroad from complying with the minimum random testing percentage rates. (For example, a pool comprised of 16 MOW employees—who would be subject to random drug testing at a rate of 50%—would still be required to conduct at least eight random tests per year.) This requirement would apply both to railroads and contractors required to perform random testing.

H. MOW Employee Pre-employment Drug Testing

FRA is proposing to grandfather all current MOW employees from the pre-employment drug testing requirements of subpart F.[11] Under FRA's proposal, only MOW employees hired by a railroad or contractor after the effective date of the final rule would be required to have a negative DOT pre-employment drug test result before performing

[10] In 2014 the random testing rates for covered employees are 25% for drug testing and 10% for alcohol testing. (*See* 78 FR 78275, Dec. 26, 2013).

[11] While railroads are currently authorized to conduct pre-employment alcohol testing for covered employees (so long as they treat all covered employees the same), such testing is not required under subpart F. *See* § 219.502. FRA is not proposing to change this approach and require pre-employment alcohol testing for regulated employees.

regulated service for the first time. As with the minimum random testing rates discussed above, FRA's approach to implementing pre-employment drug testing for MOW employees would be similar to its implementation of pre-employment drug testing for covered employees in 1986, when FRA grandfathered employees who had performed covered service for a railroad prior to the effective date of the final rule. *See* 50 FR 31508, Aug. 2, 1985. Although current MOW employees would not be subject to a pre-employment drug test, FRA believes its proposal to initiate random drug testing of MOW employees at a base rate of 50% would provide sufficient deterrence for this group.

FRA understands that railroads may have already given some MOW employees a Federal pre-employment drug test (resulting in a negative) under the alcohol and drug testing regulations of another DOT agency. The most common area of interagency overlap is among MOW employees who are required by their employers to hold Commercial Driver's Licenses (CDL), since these employees are subject to the regulations of both FRA and the FMCSA. To hold a CDL, an individual must have a negative FMCSA pre-employment drug test. *See* § 382.301. To ease the compliance burden for these employees and their employers, FRA would allow a negative pre-employment test conducted by an employing railroad under the rules and regulations of another DOT agency to satisfy the requirements of subpart F for employees transferring into regulated service for the first time. FRA has historically interpreted its pre-employment drug testing requirements this way, and this proposed amendment would incorporate this interpretation into the regulatory text. *See* Federal Railroad Administration, Alcohol and Drug Testing Regulations (Parts 219 and 40) Interpretive Guidance Manual (''Interpretive Guidance Manual'') 32 (September 2006), *available at http://www.fra.dot.gov/eLib/Details/L02799.*

IV. Signal Contractors

Railroads and contractors should note that the RSIA made signal contractors subject to part 219. Effective July 16, 2009, section 108(a) of the RSIA amended the HOS laws by eliminating the words ''employed by a railroad carrier'' from the definition of ''signal employee''. *See* 49 U.S.C. 21101(4). As a result, contractor employees who install, repair, or maintain signal systems for a railroad are now considered covered employees under part 219, and signal contractors are responsible for compliance with part 219 to the same extent as any other covered service contractors. This statutory change does not necessitate any amendments to part 219. Nevertheless, FRA is mentioning this change to ensure that it is understood by the railroad industry.

V. Other Proposed Substantive Amendments

This section contains a brief overview of the proposed amendments in this NPRM other than those discussed above. These proposed amendments will be discussed in greater detail in the section-by-section analysis below.

A. Small Railroads Would No Longer Be Excepted From the Requirements for Reasonable Suspicion Testing and Pre-Employment Drug Testing

Currently, the small railroad exception in § 219.3(b)(2) provides, in part, that a railroad with 15 or fewer covered employees that does not engage in joint operations with another railroad is not subject to the requirements for reasonable suspicion or reasonable cause testing (subpart D), identification of troubled employees (subpart E), pre-employment drug testing (subpart F), or random testing (subpart G).

FRA is proposing to modify the small railroad exception so that small railroads are no longer excepted from the reasonable suspicion testing requirements of subpart D. Subpart D requires railroads to conduct Federal reasonable suspicion testing on a covered employee when one or more supervisors reasonably suspects that the employee has violated an FRA prohibition against the use of alcohol or drugs. *See* § 219.300(a). Small railroads would continue to be excepted, however, from the requirements for reasonable cause testing.[12]

FRA is also proposing to amend the small railroad exception so that small railroads are no longer excepted from subpart F, which requires a railroad to conduct a pre-employment drug test (resulting in a negative) on an individual before permitting him or her to perform regulated service for the first time. *See* § 219.501(a). This proposed amendment would apply only to regulated employees hired by a small railroad after the effective date of a final rule (i.e., a negative pre-employment drug test would not be required for regulated employees hired by a small railroad before the effective date of any final rule issued in this proceeding).

B. For Purposes of the Small Railroad Exception, a new Definition of ''Joint Operations'' Would Be Incorporated

The small railroad exception is currently available to railroads that have 15 or fewer covered employees and do not operate on another railroad's tracks in the United States or otherwise engage in joint operations with another railroad in the United States, except as necessary for purposes of interchange. *See* § 219.3(b)(2)(ii). While the small railroad exception uses the phrase ''joint operations,'' this term has never been defined in part 219. As a result, the meaning of ''joint operations'' has been open to different interpretations. In order to support uniform application of the small railroad exception, FRA is proposing to add a definition of ''joint operations'' to part 219.

C. The Post-Accident Toxicological (PAT) Testing Damage Threshold for Major Train Accidents Would Be Increased

Part 219 currently requires railroads to conduct PAT testing for major train accidents,[13] defined in part as train accidents that involve damage to railroad property of $1,000,000 or more. *See* § 219.201(a)(1)(iii). (A train accident also qualifies as a major train accident if it meets the current reporting threshold and involves either a fatality or a hazardous materials release accompanied by an evacuation or a reportable injury resulting from the hazardous material release. *See* § 219.201(a)(1)(i)–(ii).) FRA is proposing to increase the railroad property damage threshold for major train accidents to $1,500,000 to account for inflation. Since major train accidents require all involved crew members to be PAT tested, this proposed change would reduce the burden on railroads (e.g., employee opportunity and wage costs) by reducing the number of employees subject to PAT testing.

D. Derailment and Raking Collisions Would No Longer Be Excluded From the Definition of Impact Accidents

Part 219 also requires railroads to conduct PAT testing for impact accidents. Section 219.5 currently excludes from the definition of ''impact accident'' derailment accidents, where a derailment of equipment causes an impact with other rail equipment, and

[12] As discussed in Section VI below, FRA is proposing to separate the requirements for reasonable suspicion and reasonable cause testing by leaving the reasonable suspicion requirements in their current location in subpart D and moving the reasonable cause testing requirements to a new subpart E.

[13] PAT testing is also required for events that meet FRA's criteria for impact accidents, fatal train incidents, or passenger train accidents. *See* § 219.201(a)(2)–(4).

raking collisions (i.e., collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations). FRA is proposing to remove these existing exclusions, and require PAT testing after both derailment and raking collisions.

E. PAT Testing Would Be Required for Railroad Highway-Rail Grade Crossing Accidents/Incidents Involving Human-Factor Errors

Currently, § 219.201(b) excepts from PAT testing any event involving a ''collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing.'' FRA is proposing to narrow this exception to require PAT testing after any highway-rail grade crossing accident/incident in which human-factor errors may have played a role.

F. The Provisions Governing When Regulated Employees Could Be Recalled for PAT Testing Would Be Amended

Currently, a railroad may recall a covered employee for PAT testing only if three conditions are met: (1) the employee was released from duty under the normal procedures of the railroad; (2) the railroad's preliminary investigation indicates a clear probability that the employee played a major role in the cause or severity of the accident/incident; and (3) the accident/incident occurred while the employee was on duty. *See* § 219.203(b)(4). To improve its investigation of human-factor related accidents, FRA is proposing, not only to lower its threshold for employee recall by removing the requirement for the accident/incident to have occurred while a regulated employee was on duty, but also to require employee recall in certain circumstances.

G. Federal Reasonable Cause Testing Would Be Authorized Only for Reportable ''Train Accidents'' and ''Train Incidents''

FRA believes the use of ''accident/incident'' in the introductory text of existing § 219.301(b)(2) has led to confusion regarding whether reasonable cause testing is permitted following all part 225 reportable accidents/incidents, which would include reportable events such as occupational illnesses and railroad casualties unconnected to the operation of on-track equipment. Because FRA never intended to authorize reasonable cause testing following occupational illness cases (e.g., carpal tunnel syndrome) and casualties unconnected to the movement of on-track equipment (e.g., slips-trips-and-falls resulting from safety concerns under the jurisdiction of the Occupational Safety and Health Administration (OSHA)), FRA is proposing to revise this existing language to specify that FRA reasonable cause testing is only authorized after ''train accidents'' (defined to include rail equipment accidents meeting the part 225 reporting threshold) and ''train incidents'' (defined to include events involving the operation of railroad on-track or fouling equipment resulting in a casualty, but in which the part 225 reporting threshold is not met). For the reasons discussed in VI.A below, FRA is proposing to include this revised language at § 219.403(b).

H. Federal Reasonable Cause Testing Would Be Authorized for Additional Operating Rule Violations or Other Errors

As mentioned above, FRA reasonable cause testing is also authorized after certain railroad operating rule violations and other errors specified in § 219.301(b)(3). Currently, these rule violations and errors listed are primarily directed at covered employees. FRA is proposing to add rule violations and errors that would specifically address employees performing MOW activities, and to add others directed at signal workers performing covered service or reflect recent amendments to 49 CFR part 218, Railroad Operating Practices.

I. Part 219 Would Be Amended To Conform Certain Provisions to the Final Conductor Certification Rule

On November 9, 2011, FRA published a final rule requiring the certification of conductors (49 CFR part 242), which was also mandated by the RSIA. (76 FR 69802, Nov. 9, 2011). This final rule became effective January 1, 2012. *Id.* FRA is therefore proposing to amend part 219 so that those sections that apply to the certification of locomotive engineers would also clearly apply to the certification of conductors. The proposed definition for a Drug and Alcohol Counselor (DAC) is one of these conforming amendments.

VI. Primary Clarifying Amendments

FRA is proposing several amendments that would both improve the organization of part 219 and make it easier to find pertinent requirements and information. Although these proposed amendments are discussed in the section-by-section analysis below, for the reader's convenience, a brief description of the major organizational amendments is included here.

A. Reasonable Suspicion and Reasonable Cause Testing Would Be Separated Into Different Subparts, Resulting in the Re-Designation of Other Subparts

Currently, the requirements for reasonable suspicion testing and reasonable cause testing are both found in subpart D. Because of their similar names and the placement of both types of tests in subpart D, railroads often confuse one type of testing with the other, even though reasonable suspicion and reasonable cause testing have very different requirements. To clarify the substantive differences between the two, FRA is proposing to retain the requirements for reasonable suspicion testing in subpart D but move the requirements for reasonable cause testing to subpart E, which currently covers voluntary referral and co-worker report policies. The proposed separation of reasonable suspicion and reasonable cause testing into different subparts is intended to help railroads distinguish between these two types of testing. This differentiation should be particularly helpful for small railroads, since FRA is proposing to require that those railroads implement reasonable suspicion, but not reasonable cause testing. To accommodate the movement of reasonable cause testing into subpart E, FRA is proposing to move (and amend as discussed below) the sections addressing the ''Identification of Troubled Employees'' currently found in that subpart to new subpart K, ''Peer Prevention Programs.''

B. Random Alcohol and Drug Testing Requirements Would Be Reorganized and Clarified

FRA is proposing to revise and expand subpart G, which contains FRA's requirements for random alcohol and drug testing, to clarify these requirements and to incorporate published FRA guidance. *See generally* FRA, Part 219 Alcohol/Drug Program Compliance Manual, 2nd edition (2002) *available at http://www.fra.dot.gov/eLib/details/L01186* (Compliance Manual). In addition, FRA is proposing several substantive amendments which will be discussed below in the section-by-section analysis.

C. Substituting ''Drug and Alcohol'' for ''Alcohol and Drug''

FRA has previously used both ''Drug and Alcohol'' and ''Alcohol and Drug'' as terms to describe its part 219 program and many of its components. For consistency, FRA is proposing to use only the term ''Drug and Alcohol'' throughout part 219 and to substitute

''Drug and Alcohol'' wherever the term ''Alcohol and Drug'' is currently used.

VII. Section-by-Section Analysis

As discussed earlier, FRA is proposing to add definitions for ''regulated employee'' and ''regulated service'' which would serve as terms-of-art encompassing all individuals and duties subject to part 219, including both covered service and MOW activities. Throughout most of part 219, FRA would replace the terms ''covered employee'' and ''covered service'' with ''regulated employee'' and ''regulated service.'' The terms ''covered employee'' and ''covered service,'' however, would still be used where necessary, such as in proposed § 219.12, which addresses issues of overlap between part 219 and the HOS laws that apply only to covered employees.

Throughout this NPRM, FRA is also proposing small changes to conform the regulatory language, where necessary, to the proposed substantive and reorganization amendments. To streamline this NPRM, FRA is not discussing most of these minimal clarifying amendments, none of which are intended to affect the regulation's substantive requirements.

Authority Citation

The authority citation for part 219 would be amended to add a reference to Section 412, which mandated the expansion of part 219 to cover all employees of railroads and contractors or subcontractors to railroads who perform MOW activities.

Subpart A—General

Section 219.1—Purpose and Scope

Currently, this section states that the purpose of part 219 is to ''prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.'' FRA is proposing to amend this section to include a reference to the proposed definition of ''employee'' in § 219.5, which, as used in part 219, would include any individual (including a volunteer or a probationary employee) who performs regulated activities for a railroad or a contractor to a railroad. FRA is not proposing to include a similar reference every time ''employee'' is used, but believes it is appropriate to do so the first time it appears in part 219.

Section 219.3—Application

FRA is proposing the following structural and substantive amendments to this section.

Paragraph (a)

FRA proposes to amend paragraph (a) to apply part 219 to all railroads, except as provided in proposed paragraphs (a)(1)–(3) and paragraphs (b), (c), and (d) of the section.

The first exception, contained in proposed paragraph (a)(1), addresses operations that occur within the confines of industrial installations commonly referred to as ''plant railroads.'' Plant railroads are typified by operations such as those in steel mills that do not go beyond the plant's boundaries and that do not involve the switching of rail cars for entities other than themselves. This exception for plant railroads is currently found in paragraph (b)(1) of this section, but FRA believes it belongs more appropriately with the general applicability provisions of paragraph (a) (this will also permit proposed paragraph (b) to be dedicated solely to reporting requirements, as discussed below). FRA is also amending this language to specify that there is a definition of ''plant railroads'' in § 219.5.

Proposed paragraph (a)(2) addresses operations commonly described as tourist, scenic, or excursion service to the extent that they occur on tracks that are not part of the general railroad system. FRA has decided to except tourist, scenic, historic, or excursion rail operations that are not part of the general system, regardless of whether they are insular or non-insular rail operations. FRA has elected to exclude these typically small operations from the requirements of part 219 because of the limited safety risk that these operations pose to members of the public due to the fact that their operations do not take place on the general system. This is new language for this section, but reflects FRA's tradition of exercising its jurisdiction in a way that excludes tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation from certain portions of its regulations. *See Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, The Extent and Exercise of FRA's Safety Jurisdiction,* 49 CFR part 209, Appendix A (FRA's Policy Statement or the Policy Statement).

Proposed paragraph (a)(3) would except from part 219 rapid transit operations in an urban area that are not connected to the general system (although rapid transit type operations with links to the general system would continue to be covered by part 219). This exception is currently found in paragraph (a)(2), which excepts railroads that ''provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102) in the United States.'' The new language in proposed paragraph (a)(3) would conform part 219's language to that used in the applicability sections of other FRA regulations without changing the scope of the exception.

Paragraph (b)

Paragraph (b) currently contains three different exceptions that are unique to part 219 and are available to both foreign and domestic railroads. To clarify these exceptions, and make them easier to find FRA is proposing to separate them into individual paragraphs as follows:

- As discussed above, the ''plant railroad'' exception would remain the same but would be moved from its current location in paragraph (b)(1) to proposed paragraph (a)(1). This exception is a general statement about FRA's jurisdiction and more properly belongs with the general applicability provisions.
- The exception in current paragraph (b)(2) for railroads with 15 or fewer covered employees that do not engage in joint operations with other railroads (the ''small railroad exception'') would be moved to paragraph (c) and amended to remove the exceptions related to reasonable suspicion testing and pre-employment testing.
- The exception in current paragraph (b)(3) would remain in paragraph (b), but the paragraph would be renamed ''Annual report requirements.''

Paragraph (c)

As noted above, FRA is proposing to move the small railroad exception in existing paragraph (b)(2) to proposed paragraph (c) and to move the language currently in paragraph (c) relating to exceptions that apply only to foreign railroads to a new paragraph (d). In addition, because FRA is proposing to require that small railroads perform both reasonable suspicion and pre-employment drug testing (discussed below), paragraph (c)(1) would be amended to state that small railroads are excepted only from subparts E (reasonable cause testing), G (random testing), and K (peer support programs).

- Small Railroads Would No Longer Be Excepted From Reasonable Suspicion Testing

Section 219.11(g) currently requires all railroads to ensure that supervisors who are responsible for covered employees are trained in the signs and symptoms of alcohol and drug abuse.

(This provision also requires railroads to train covered employee supervisors on FRA PAT testing criteria.) This requirement applies to small railroads as well, even though they are currently excepted from having to conduct reasonable suspicion testing in accordance with current § 219.3(b)(2). Because small railroads must already meet the mandatory supervisory training requirements in § 219.11(g), FRA believes that removing the current exception and requiring small railroads to conduct reasonable suspicion testing would promote safety with fairly low additional costs.

The proposed expansion of part 219 to include MOW activities would require supervisors of employees who perform MOW activities to also comply with the training requirements in § 219.11(g). As with supervisors of covered employees, all railroads, regardless of size, must ensure that supervisors of employees who perform MOW activities have been trained on reasonable suspicion and post-accident testing criteria.

• Small Railroads Would No Longer Be Excepted From Pre-employment Drug Testing

Current paragraph (b)(2) excepts small railroads from the requirement to conduct pre-employment drug testing. FRA is proposing to remove this exception, because many small railroads already pre-employment drug test all applicants (not just those applying for covered service) under their own company authority. This has resulted in many small railroads mistakenly using DOT forms to conduct company authority pre-employment drug tests. Requiring small railroads to use only FRA authority for pre-employment drug tests of regulated employees would address this problem, and would also eliminate the ability of individuals to dodge FRA pre-employment drug tests by applying to small railroads instead of larger ones. The removal of the current small railroad exception to pre-employment drug testing would also make FRA's pre-employment testing policy consistent with that of other DOT modes, since no other DOT agency excepts small employers from conducting pre-employment drug tests. This proposed amendment would only apply to regulated employees who are hired by small railroads after the effective date of any final rule.

Furthermore, FRA believes the reasons behind its initial decision to except small railroads from pre-employment drug testing no longer apply. In 1986, when FRA's pre-employment drug testing requirements went into effect, small railroads could not benefit from economies of scale because drug testing was new and collection and other test costs were high. *See* 49 FR 24293, June 12, 1984. This is no longer true today, as the workplace drug testing industry is well-established, and collectors, laboratories, and other service agents are widely available. Furthermore, drug use is now a significant issue in many small communities where small railroads operate.

• Other Proposed Amendments to the Small Railroad Exception

FRA is proposing to amend the introductory text of paragraph (c)(1) to clarify that small railroads are not authorized to perform Federal alcohol and drug testing under the subparts from which they are excepted. In other words, in addition to not requiring small railroads to conduct Federal reasonable cause or random testing, FRA is also not authorizing small railroads to conduct such testing. The proposed amendment would therefore clarify that small railroads are prohibited from conducting reasonable cause or random testing under Federal authority, and may only do so under their own authority. (FRA is also proposing to amend this paragraph to incorporate the small railroad criteria currently found in § 219.3(b)(2), no substantive change is intended.)

FRA proposes to amend the small railroad exception for proposed subpart K (Peer Support Programs) differently. Because FRA wants to limit the regulatory burden on small entities, FRA is not proposing to require small railroads to implement peer support programs. However, FRA does not want to prohibit small railroads from voluntarily implementing peer support programs such as those contemplated by new proposed subpart K. Accordingly, FRA proposes to authorize small railroads to implement peer referral and support programs because these programs encourage and facilitate the referral and rehabilitative support of regulated employees who abuse alcohol or drugs. This proposed exception from proposed subpart K would be the only exception which would neither require, nor prohibit, small railroads from implementing the requirements of part 219 under FRA authority.

As discussed in section III.F of this preamble, paragraph (c)(2) would state that a regulated employee who performs only MOW activities would not be counted when determining whether the railroad had 15 or fewer covered employees as required to meet the small railroad exception.

Also as discussed in section III.F of this preamble, paragraph (c)(3) would state that a contractor must perform MOW activities exclusively for small railroads in order to qualify for the small railroad exception.

As previously discussed in section III.G of this preamble, under proposed paragraph (c)(4), if a contractor is subject to all of part 219 (including subparts E, G, and K) because it performs regulated service for at least one railroad that is not a small railroad, only those railroads which must also comply with all of part 219 (in other words, railroads that do not qualify for the small railroad exception) would share responsibility for ensuring the contractor's full compliance with part 219. If the contractor also performs regulated service for small railroads, these small railroads would not share responsibility for the contractor's full compliance.

Public Comment Invited

Currently, a railroad's HOS contractors are counted when determining whether a railroad qualifies for the small railroad exception. Part 219 makes no distinctions, however, for those HOS contractors who work for a railroad only on a temporary basis. FRA is asking for comment on whether such a distinction should be made. For example, should a small railroad still qualify for the exception if it temporarily engages enough HOS contractors (e.g., signal contractors) to bring its number of covered employees above the 16 employee threshold? If so, how long can an HOS contractor work for the railroad and still be considered a ''temporary'' employee?

Paragraph (d)

FRA is proposing to move the applicability exceptions that apply only to foreign railroads to a new paragraph (d), which would be entitled ''Foreign railroads.'' The following structural and clarification amendments are also being proposed:

• New language in paragraph (d)(1) would clarify that part 219 does not apply to the operations of a foreign railroad that occur outside the United States. For example, a major train accident on a foreign railroad that occurred outside the United States would not be subject to FRA's PAT testing requirements under subpart C. This would not be a new exception, but rather a clarification of current requirements.

• FRA would combine the exceptions currently in paragraphs (c)(1) and (c)(2) into new paragraph (d)(2), since both exceptions exclude certain foreign

railroad operations from subparts E through G. The intent of this proposed consolidation is to improve clarity and reduce redundancy, and no substantive changes are intended. FRA would also amend these exceptions to incorporate the proposed move of peer programs from subpart E to new subpart K (see discussion above).

Section 219.4—Recognition of a Foreign Railroad's Workplace Testing Program

This section contains provisions regarding the recognition of a foreign railroad's workplace testing program as a ''compatible alternative'' to certain requirements of part 219. FRA is proposing minimal clarifying amendments to this section, none of which are intended to affect its substantive requirements. Paragraphs (a)(1) and (b)(1) would be amended to reflect that FRA is proposing to move existing subpart E (Identification of Troubled Employees) to a new subpart K (Peer Support Programs). The final sentence of paragraph (b)(1) would be further amended to correct a mistaken reference to subpart E that should be a reference to the pre-employment testing requirements of subpart F.

Paragraph (b)(2) would be amended to clarify what type of requirements are contained in the various referenced subparts. For example, FRA is proposing to clarify that subpart C contains the requirements for PAT testing.

Section 219.5—Definitions

FRA is proposing to amend the definitions section of part 219 to add several new definitions, to revise and clarify certain current definitions, and to delete unnecessary definitions.

New Definitions

Administrator

A new definition of ''Administrator'' would clarify that the term means the Administrator of the FRA or the Administrator's delegate.

Associate Administrator

A new definition of ''Associate Administrator'' would clarify that the term means the FRA's Associate Administrator for Railroad Safety/Chief Safety Officer or the Associate Administrator's delegate.

Category of Regulated Employee

A new definition, ''category of regulated employee,'' would mean a broad class of either covered employees or MOW employees. For the purpose of determining random testing rates under proposed § 219.625, if an individual performs both covered service and MOW activities, he or she would be placed in the category which comprises the majority of his or her regulated service. For example, an individual who performs covered service 45 percent of the time and MOW activities 55 percent of the time should be placed in the random testing pool for MOW employees.

Contractor

A new definition of ''contractor'' would clarify that this term includes both a contractor and a subcontractor performing functions for a railroad.

Counselor

FRA is proposing to add this term to encompass a Drug and Alcohol Counselor (as discussed below), Employee Assistance Program Counselor, or Substance Abuse Professional, since most, but not all, of the education, counseling, and treatment requirements in new subpart K could be conducted by a person who meets the credentialing and qualification requirements for any of these professions.

DOT-Regulated Employee

A new definition of ''DOT-regulated employee'' would clarify that this term means any person who is subject to drug testing and/or alcohol testing under any DOT agency regulation. This term would include both individuals currently performing DOT safety-sensitive functions (as designated in other DOT agency regulations) and applicants for employment subject to DOT pre-employment drug testing.

DOT Safety-Sensitive Duty or DOT Safety-Sensitive Function

A new definition of ''DOT safety-sensitive duty'' or ''DOT safety-sensitive function'' would clarify that these terms mean a function designated by a DOT agency, the performance of which makes an individual subject to the drug testing and/or alcohol testing requirements of that DOT agency. For part 219 purposes, the performance of regulated service would be a DOT safety-sensitive duty or function.

Drug and Alcohol Counselor or DAC

FRA is proposing to adopt a definition for ''Drug and Alcohol Counselor'' or ''DAC'' from 49 CFR 242.7. As specified in § 242.111, an individual whose records show a conviction or other State action for abuse of drugs or alcohol, must be evaluated and successfully treated by a DAC as a condition of conductor certification. Although a DAC must meet the same credentialing requirements as a Substance Abuse Professional (SAP), this evaluation and treatment may not be called a SAP evaluation because § 40.3 specifies that a SAP may provide such services only after a violation of a DOT alcohol and drug regulation, and a conviction or other State action (e.g., driving while impaired) is not a violation of part 219.

Employee

FRA is proposing to adopt a new definition of ''employee'' to clarify that this term includes any individual (including volunteers and probationary employees) performing activities for a railroad or a contractor to a railroad. The proposed amendment would incorporate previous FRA guidance that volunteers who perform covered service are to be considered covered employees. *See* Compliance Manual 2.2.

Employee Assistance Program Counselor or EAP Counselor

FRA is proposing to restore to part 219 the term ''Employee assistance program counselor or EAP counselor.'' A previous definition of ''EAP counselor'' was removed when FRA amended part 219 to conform to subpart P of part 40, which requires an evaluation by a SAP when an employee has violated a DOT drug or alcohol regulation (i.e., by refusing to take or having a positive result on a DOT alcohol or drug test). *See* 59 FR 7457, Feb. 15, 1994. A part 219 definition of ''Employee assistance program counselor or EAP counselor'' is still required, however, because a SAP's role is to evaluate an employee *after* he or she has committed an DOT alcohol or drug testing violation, but § 219.403, which governs voluntary referrals, specifies that an employee may only self-refer *before* he or she has committed a violation of §§ 219.101 or 219.102. The proposed definition of ''Employee assistance program counselor or EAP counselor'' is adapted from the ''EAP counselor'' definition in § 240.7 of FRA's locomotive engineer certification regulations.

Evacuation

For clarification purposes, FRA is proposing to define the term ''evacuation,'' which, when accompanying a release of hazardous material lading from railroad equipment, is listed in § 219.201(a)(1)(ii)(A) as one of the criteria which determines whether a train accident qualifies as a ''major train accident'' requiring the PAT testing of all crew members involved. This has been one of the criteria for PAT testing since the inception of the program. *See* 50 FR 31508, Aug. 2, 1985.

To qualify as an evacuation for purposes of PAT testing, an event must involve the relocation of at least one person who is not a railroad employee to a safe area in order to avoid exposure to a hazardous material release. This relocation would normally be ordered by local authorities and could be either mandatory or voluntary. The definition would not include the closure of public roadways for hazardous material spill containment purposes, unless that closure was accompanied by an evacuation order. FRA is specifically requesting public comment on whether the proposed definition would help railroads make PAT testing determinations and whether it properly encompasses the various events that should qualify as an evacuation.

Flagman, Fouling a Track

To clarify FRA's proposed requirements for employees who perform MOW activities, FRA would add definitions of ''flagman'' and ''fouling a track,'' both of which are modeled on the definitions in § 214.7 of FRA's roadway worker regulations.

Highway-Rail Grade Crossing

FRA also proposes to incorporate the definition of ''highway-rail grade crossing'' found in § 225.5 of its accident and incident reporting regulations. The proposed incorporation of a part 225 definition into part 219 would lessen the burden on entities who have to comply with both regulations by maintaining consistency between the regulations and by making it unnecessary to refer to part 225 to determine what a ''highway-rail grade crossing'' means in part 219. By incorporating part 225's definition of a ''highway-rail grade crossing'' into part 219, FRA proposes to incorporate part 225's guidance on this term as well. *See* FRA, FRA Guide for Preparing Accident/Incident Reports (Guide), 23–24 (2011), *available at http://safetydata.fra.dot.gov/officeofsafety/ProcessFile.aspx?doc=FRAGuidefor PreparingAccIncReportspub May2011.pdf*, which states that all crossing locations within industry and rail yards, ports, and dock areas are considered to be highway-rail grade crossings.

Highway-Rail Grade Crossing Accident/Incident

A new definition of ''highway-rail grade crossing accident/incident'' would clarify the meaning of the phrase as used in part 219. The proposed definition is essentially identical to language describing highway-rail grade crossing impacts found in the definition for ''accident/incident'' in FRA's accident and incident reporting regulations. *See* 49 CFR 225.5. As with the proposed definition for ''highway-rail grade crossing,'' FRA believes maintaining consistency between part 219 and part 225 will minimize confusion for regulated entities.

Joint Operations

As discussed earlier, FRA is proposing to add a definition of ''joint operations'' to clarify the meaning of that term as used in the small railroad exception of § 219.3. This proposed definition, which is not intended to make any substantive changes or to create any additional burdens on small railroads, would define joint operations as ''rail operations conducted by more than one railroad on the same track (except for certain minimal joint operations necessary for the purpose of interchange), regardless of whether such operations are the result of contractual arrangements between the railroads, order of a governmental agency or a court of law, or any other legally binding directive.'' FRA interprets the phrase ''rail operations'' in this definition broadly, so that it would encompass dispatching and other types of operations. For example, a railroad that has fewer than sixteen covered employees but dispatches trains for another railroad would be considered to have joint operations with that railroad.

A railroad entering another railroad's yard to perform switching operations would also constitute joint operations. For purposes of this definition, railroads that operate on the same track would not be conducting joint operations if their respective operations are absolutely separated by physical means, such as a split rail derail or the removal of a section of rail, and there is no physical possibility that the railroads' respective operations could overlap on the same track. However, this exclusion from joint operations would not apply when one railroad merely agrees, whether informally or by contract, not to engage in operations on the same track as another railroad, or when railroad operations are only temporally separated because they operate over the same track at different times of the day.

The proposed definition would also exclude certain minimal joint operations necessary for the purpose of interchange, so long as: (1) The maximum authorized speed for operations on the shared track does not exceed 20 mph; (2) operations are conducted under restricted speed (operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer); (3) the maximum distance for operations on the shared track does not exceed three miles; and (4) any operations extending into one of the railroad's yards are for the sole purpose of setting out or picking up cars on a designated interchange track. By excluding the above operations from its proposed ''joint operations'' definition, FRA would focus scarce agency resources on the operations with the greatest safety risk.

Maintenance-of-Way Activities or MOW Activities, Maintenance-of-Way Employee or MOW Employee

As discussed earlier, FRA would add definitions of ''maintenance-of-way activities or MOW activities'' and ''maintenance-of-way employee or MOW employee'' as part of its proposed expansion of part 219 to cover employees who perform MOW activities.

FRA's proposed definition of MOW employee would cover any employee (as defined in proposed § 219.5, this would include volunteers and probationary employees) who performs MOW activities for a railroad or a contractor to a railroad. As discussed above, MOW activities would be defined to include (in part) activities such as the inspection, repair, or maintenance of track, roadbed, or electric traction systems and the operation of on-track or fouling equipment utilized for the inspection, repair, or maintenance of track, roadbed, or electric traction systems.

On-Track or Fouling Equipment

FRA would add a new definition of ''on-track or fouling equipment'' that would include any railroad equipment positioned on or over the rails or fouling a track. In this proposed definition, FRA provides examples of what would be considered on-track or fouling equipment, including trains, locomotives, cuts of cars, single cars, motorcars, yard switching trains, work trains, inspection trains, track motorcars, highway-rail vehicles, push cars, or other roadway maintenance machines (such as ballast tamping machines), if this equipment is positioned on or over rails or is fouling a track.

Other Impact Accident

FRA would add a definition of ''other impact accident'' to clarify the meaning of the phrase as it is used in FRA's proposed amendment to the definition of ''impact accident.'' As defined, an ''other impact accident'' would include any accident/incident involving contact

between on-track or fouling equipment that is not otherwise classified as another type of collision (e.g., a head-on collision, rear-end collision, side collision, raking collision, or derailment collision). This definition would also include impacts in which single cars or cuts of cars are damaged during operations involving switching, train makeup, setting out, etc.

Person

A new definition of ''person'' would clarify that this term means an entity of any type covered under 1 U.S.C. 1, including, but not limited to, the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad, such as a service agent performing functions under part 40 of this title; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor. While similar to the definition currently found in § 219.9, under this proposed definition a ''person'' would specifically include an independent contractor who provides goods or services to a railroad, such as a service agent (e.g., a collection site, laboratory, Substance Abuse Professional (SAP), or other entity) that provides alcohol and drug testing services to a railroad subject to part 219 and part 40. *See* 49 CFR part 40, subpart Q—Roles and Responsibilities of Service Agents. This definition would be added for clarification purposes only, since railroad service agents are already required to comply with both part 219 and part 40.

Plant Railroad

A new definition of plant railroad would clarify the meaning of that term as used in § 219.3. This proposed definition reflects FRA's longstanding approach, consistent with its published policy statement referenced below, of excluding certain plant operations from the exercise of its jurisdiction.

In § 219.3, FRA would continue to except plant railroads, as defined in proposed § 219.5, from the requirements of this part. Although FRA's *Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, The Extent and Exercise of FRA's Safety Jurisdiction,* 49 CFR part 209, appendix A (FRA's Policy Statement or the Policy Statement) already explains in detail when an entity's operations qualify for plant railroad status, FRA proposes to incorporate this language into a new definition of ''plant railroad'' to make these qualifications easier to find. To enable better understanding of this term, the proposed definition would also incorporate language clarifying when an entity's operations do *not* qualify for plant railroad status. The proposed definition of the term ''plant railroad'' is consistent with FRA's Policy Statement that provides that the agency will exercise its safety jurisdiction over a rail operation that moves rail cars for entities other than itself because those movements bring the track over which the entity is operating into the general system. FRA's Policy Statement specifically provides that ''operations by the plant railroad indicating it [i]s moving cars on . . . trackage for other than its own purposes (e.g., moving cars to neighboring industries for hire)'' brings plant track into the general system and thereby subjects it to FRA's safety jurisdiction. This interpretation of the term ''plant railroad'' has been upheld in litigation before the U.S. Court of Appeals for the Fifth Circuit. *See Port of Shreveport-Bossier* v. *Federal Railroad Administration,* No. 10–60324 (5th Cir. 2011) (unpublished per curiam opinion).

Raking Collision

A new definition for ''raking collision'' would clarify that a raking collision occurs when there is a collision between parts, with the lading of a train on an adjacent track, or with a structure such as a bridge. Collisions that occur at a turnout are not considered raking collisions. The proposed definition is identical to the definition of raking collision contained in FRA's guidance regarding accident/incident reporting. *See* FRA Guide for Preparing Accident/Incident Reports at 20 (Accident Reporting Guide).

Regulated Employee and Regulated Service

As discussed in section III.B of this preamble, FRA is proposing a new term ''regulated employee.'' As proposed, ''regulated employee'' would refer to all employees who are subject to part 219, including covered employees and MOW employees, and employees of a railroad or a contractor to a railroad who perform covered service or MOW activities. Another new proposed definition of ''regulated service'' would mean the duties which regulated employees perform that make them subject to part 219.

Responsible Railroad Supervisor

FRA would incorporate the description of ''responsible railroad supervisor'' currently in § 219.302(d) into a new definition of this term.

Side Collision

As with ''raking collision,'' FRA proposes to add a definition of ''side collision'' taken from the Accident Reporting Guide. A side collision occurs when one consist strikes the side of another consist at a turnout, and includes collisions at switches or at railroad crossings at grade. *See* Accident Reporting Guide at 20.

Tourist, Scenic, Historic, or Excursion Operations That Are Not Part of the General Railroad System of Transportation

A new definition of ''tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation'' would clarify the meaning of that term as used in the proposed application provisions of § 219.3. The proposed definition clarifies that the phrase means a tourist, scenic, historic, or excursion rail operation that is conducted only on track used exclusively for that purpose (i.e., there are no freight, intercity passenger, or commuter passenger railroad operations on the track). If there are any freight, intercity passenger, or commuter passenger railroad operations on the track, the track is considered part of the general system, and the rail operation would not meet the definition of term as used in § 219.3. This proposed definition is consistent with FRA's longstanding policy that excludes insular operations entirely from FRA's safety jurisdiction and excludes non-insular operations from all but a limited number of Federal safety laws, regulations and orders. *See* 49 CFR part 209, Appendix A (defining the terms *insular* and *non-insular*).

Watchman/Lookout

FRA would add a definition of ''watchman/lookout'' identical to that in § 214.7 of its roadway worker regulations.

Revised Definitions

Covered Employee

The current definition of ''covered employee'' includes, in part, ''a person who has been assigned to perform service in the United States subject to the hours of service laws (49 U.S.C. ch. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.'' FRA proposes to amend this definition to clarify that ''person'' includes employees, volunteers, and probationary employees, and by

updating its reference to the hours of service laws so that a ''covered employee'' would be defined as one ''who is performing covered service under the hours of service laws at 49 U.S.C. 21101, 21104, or 21105 or who is subject to performing such covered service, regardless of whether the person has performed or is currently performing covered service.'' FRA believes this proposed language is clearer than that in the current definition, and it also makes the reference to the hours of service laws consistent with that contained elsewhere in part 219. No substantive change to this definition is intended.

Covered Service

FRA would amend the definition of ''covered service'' to provide examples of the types of activities generally considered covered service and to refer to Appendix A of 49 CFR part 228, Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation. The proposed amendments are for clarification purposes only; no substantive change is intended.

FRA Representative

The definition of ''FRA representative'' would be amended to clarify that the term includes the oversight contractor for FRA's Drug and Alcohol Program and the staff of FRA's Associate Administrator for Railroad Safety.

Impact Accident

As discussed in section V.D of this preamble, the definition of ''impact accident'' would be amended to remove the exceptions for derailment collisions [14] and raking collisions. FRA originally excepted derailment collisions and raking collisions from the definition of ''impact accident'' because it believed that these types of collisions were not normally caused by human-factors. *See* 50 FR 31539 and 31542, Aug. 2, 1985 and 54 FR 39647, Sep. 27, 1989.

FRA has since found that both derailment collisions and raking collisions can be caused by human-factors, such as alcohol and/or drug impairment. For example, a derailment collision could occur when a dispatcher fails to properly notify trains of a derailment, or when a crew does not operate its train at the proper speed after such a notification. Similarly, a raking collision could occur when a train crew does not comply with the special handling instruction for a high-wide load or when cars are left standing on a track without sufficient clearance.

Additionally, FRA has found evidence that railroads sometimes improperly apply the exception for derailment collisions and raking collisions in situations involving true impact accidents. For example, railroads have sometimes claimed that PAT testing was not required because equipment from a train derailed just prior to what otherwise would be considered a head-on, rear-end, or side collision with other on-track equipment. FRA did not intend the exception for a derailment collision to apply when on-track equipment derailed immediately prior to striking other on-track equipment. FRA believes that these sorts of events should be classified as impact accidents. FRA has also found that the difference between side collisions and raking collisions is not understood by some railroads, who have erroneously claimed that accidents occurring at a turnout (switch) were raking collisions. For example, some railroads have claimed that a raking collision has occurred when a switch crew strikes cars they had previously left fouling a track or when a train operates out of a siding and strikes another train. These types of accidents, however, are actually side collisions or other impacts and should therefore be considered impact accidents.[15] (FRA notes that currently under § 219.201(a)(1), a derailment collision *would* qualify as a Major Train Accident if it resulted in damage to railroad property of $1 million or more.)

FRA does not anticipate that its proposal to remove the exceptions for derailment collisions and raking collisions would significantly increase PAT testing costs. FRA believes that the regulated employees involved in these collisions will often be excluded from PAT testing when a ''railroad representative can immediately determine, on the basis of specific information, that the employee(s) had no role in the cause(s) or severity of the accident/incident.'' *See* § 219.203(a)(3).

In order to improve clarity, FRA also proposes to restructure this definition by listing each type of impact accident separately. FRA would also incorporate its previous guidance that an impact with a derail does not qualify as an ''impact with a deliberately-placed obstruction, such as a bumping post,'' since bumping posts are mostly permanent objects found at the end of a line, while derails are mobile and can easily be moved from place to place. *See* FRA, Alcohol and Drug Testing Regulations (Parts 219 and 40) Interpretive Guidance Manual (''Interpretive Guidance Manual'') 18 (September 2006), *available at http://www.fra.dot.gov/eLib/Details/L02799*.

FRA would also clarify that the definition of ''impact accident'' excludes the impact of rail equipment with ''naturally-occurring obstructions such as fallen trees, rock or snow slides, livestock, etc.''

Medical Facility

FRA would add language to the definition of ''medical facility'' to reflect the main purpose for including this definition in this part; that is, that a medical facility is a hospital, clinic, physician's office, or laboratory which can collect PAT testing specimens and address an individual's post-accident medical needs. In order to improve consistency, FRA would also substitute ''medical facility'' wherever ''treating facility'' currently appears throughout part 219.

Railroad Property Damage or Damage to Railroad Property

The definition of ''railroad property damage or damage to railroad property'' would be clarified to mean damage to railroad property as calculated according to the FRA Guide for Preparing Accident/Incident Reports. Additional language from the Guide would clarify what costs must be included (damage to on-track equipment, signals, track, track structure, or roadbed; and labor costs including hourly wages, transportation costs, and hotel expenses) and excluded (damage to lading and the cost of clearing a wreck, although the cost of contractor services and of renting and operating machinery is included, as is the cost of any additional damage caused while clearing the wreck) when calculating railroad property damage to determine whether PAT testing is required under FRA's regulations. These clarifications would be incorporated to enable easier compliance with this part, and no substantive changes are intended.

Train Accident

The definition of ''train accident'' would be amended to clarify that it refers to rail equipment accidents under § 225.19(c) and to specify that rail

[14] Derailment collisions fall within the definition of ''obstruction accidents'' in FRA's Accident Report Guide. *See* Accident Reporting Guide at 24. But for the purposes of part 219, this type of collision is referred to only as a derailment collision.

[15] As discussed below, FRA is also proposing to clarify the part 219 definition of side collision, to specifically include accidents/incidents that occur at a switch or turnout. This is the same definition for a side collision as used in the Accident Reporting Guide.

equipment accidents include, but are not limited to, collisions, derailments, and other events involving the operation of on-track or fouling equipment.

Train Incident

The definition of ''train incident'' would be amended to clarify that it includes events involving the operation of on-track or fouling equipment that results in a casualty, but in which damage to railroad property does not exceed the applicable reporting threshold.

Deleted Definitions

DOT Agency

The definition of ''DOT agency'' would be removed because it is being replaced by the proposed definition of ''DOT, The Department, or DOT agency.''

General Railroad System of Transportation

The definition of ''general railroad system of transportation'' would be removed because FRA's proposed amendments to the application section of this part (§ 219.3) would make this definition redundant.

Train

The definition of ''train'' would be removed because part 219 already contains definitions for ''train accident'' and ''train incident'' that specifically include on-track equipment (which includes trains).

Section 219.9—Responsibility for Compliance

Currently, this section contains provisions relating to compliance with part 219 and penalties for violations of part 219. FRA is proposing to amend this section by removing the language addressing penalty amounts in paragraph (a) and placing it in a new § 219.10, entitled ''Penalties.'' This organization would be similar to the approach taken in other FRA regulations (*see* 49 CFR parts 232, 238, and 239), and-would make it easier for railroads to find specific provisions relating to either compliance or penalties.

Proposed paragraph (a) would clarify that while part 219 requirements are stated in terms of a railroad's duty, the duty to meet part 219 requirements applies to any person performing a function required by part 219. This language would apply equally to the requirements of part 40, since § 219.701 requires all testing conducted under part 219 testing (except for PAT testing in subpart C) to comply with part 40. Also, existing paragraph (a) contains language defining the term ''person'' as used in part 219. As discussed in the section-by-section analysis for § 219.5, FRA is proposing to move this definition of ''person'' to § 219.5 and amend it to clarify that it includes any entity who acts as a service agent for a railroad under part 40.

FRA is also proposing several minimal changes to the language contained in paragraphs (b)(1), (b)(2), and (c). These amendments are intended to increase the clarity of this section and not to make any substantive changes. For example, paragraph (b)(2) currently states that when an employee engaged in joint operations is required to participate in Federal PAT, reasonable suspicion, or reasonable cause testing and is then subject to adverse action allegedly arising from that testing (or an alleged refusal to participate in such testing), the other railroad (i.e., the railroad by which the employee is not directly employed) must provide to the employee any necessary witnesses and documents on a reasonable basis. FRA is proposing to amend this requirement to clarify that the other railroad must also provide such witnesses and documents to the regulated employee's employing railroad.

Section 219.10—Penalties

As discussed immediately above, FRA is proposing to transfer the penalty provisions currently found in § 219.9 to a new § 219.10, entitled ''Penalties.'' This amendment is not intended to make any substantive changes to the penalty provisions, but is intended to increase the clarity and organization of part 219.

Section 219.11—General Conditions for Chemical Tests

This section contains various general provisions regarding FRA alcohol and drug testing requirements. FRA is proposing amendments to this section as described below.

Paragraph (a)

FRA would re-designate current paragraph (a) as paragraph (a)(1), and add new paragraph (a)(2). Paragraph (a) currently states that ''[a]ny employee who performs covered service for a railroad is deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service.'' Proposed paragraph (a)(1) would amend this language to clarify that ''[a]ny regulated employee who is subject to performing regulated service'' is deemed to have consented to testing. This amendment is necessary because under proposed § 219.615(c)(1), a regulated employee can be required to participate in random testing whenever the employee is on-duty and subject to performing regulated service, even if the employee is not performing regulated service at the time. FRA would also remove the language ''and consent is implied by performance of such service,'' as it believes this language is unnecessary and redundant. FRA would also amend this paragraph to clarify that performance of regulated service means consent to testing mandated by the peer prevention requirements of proposed subpart K.

New paragraph (a)(2) would clarify that regulated employees required to participate in Federal testing under part 219 must be on-duty and subject to performing regulated service at the time of a breath alcohol test or urine specimen collection. This requirement would not apply to the pre-employment drug testing of applicants for regulated service positions.

Paragraph (b)

Paragraph (b)(1) would be amended to clarify that regulated employees must participate in Federal testing as required by part 219 and as implemented by a representative of the railroad or an employing contractor.

Paragraph (b)(2) currently provides that ''[i]n any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimen(s).'' This provision would be amended to replace ''has sustained a personal injury'' with ''is suffering a substantiated medical emergency,'' as certain medical emergencies that do not involve a personal injury (e.g. a stroke) may necessitate prioritizing medical treatment over testing. New language would further clarify that a medical emergency is an acute medical condition requiring immediate medical care, and a railroad may require an employee to substantiate a medical emergency by providing verifiable documentation from a credible outside professional substantiating the emergency situation within a reasonable period of time.

Paragraph (c)

FRA is proposing minor amendments throughout existing paragraph (c) to reflect the updated terminology proposed in this NPRM (e.g., regulated employee, medical facility) and to account for FRA's proposal to separate reasonable cause and reasonable suspicion testing into two separate subparts.

Paragraph (d)

This paragraph, which currently requires an employee who is tested under either subpart C (PAT testing) or subpart H (which applies part 40 procedures to part 219 testing except for PAT tests) to execute a consent form upon request, conflicts directly with the Department's specific prohibition on the use of consent forms in § 40.27. To resolve this conflict, FRA proposes to remove the reference to subpart H in this paragraph, thus making execution of a consent form an available option only for PAT testing under subpart C.

Paragraph (e)

Paragraph (e) currently provides that nothing in part 219 may be construed to ''authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.'' FRA is proposing to amend this paragraph by re-designating this language as paragraph (e)(3), and by adding new paragraphs (e)(1) and (e)(2).

Proposed paragraph (e)(1) would clarify that a regulated employee notified of his or her selection for Federal testing under part 219 must cease to perform his or her assigned duties and proceed to the testing site as soon as possible *without adversely affecting safety.* For example, a train crew selected for random testing would not be required to proceed immediately to the testing site if the crew had received special instructions to remain on the train and protect it until a relief crew arrived. In such a situation, FRA would not expect the train crew to violate their specific instructions, and random testing would occur only after the crew was relieved. This language is currently contained in § 219.701(c), but FRA believes it belongs more appropriately in § 219.11 as it is a general condition regarding Federal tests. Similarly, paragraph (e)(2) would further specify that a railroad must ensure that the absence of a regulated employee from his or her assigned duties for testing does not adversely affect safety.

Paragraph (f)

Under current paragraph (f), any railroad employee (as discussed earlier, the term ''employee'' would include volunteers and probationary employees of a railroad or a contractor to a railroad) who performs service for a railroad who dies within 12 hours of an accident or incident is deemed to have consented to the removal of specimens for the purpose of PAT testing under part 219. FRA is proposing to amend this paragraph by replacing the word ''service'' with the word ''duties.'' This change is intended to make it clear that any individual who performs duties for a railroad, regardless of whether or not those duties are regulated service (covered service or MOW activities), is deemed to have consented to the removal of specimens for PAT testing. FRA is also proposing other clarifying amendments to this paragraph (i.e., that consent is implied by the performance of duties for the railroad since no consent form is required). No substantive changes are intended.

Paragraph (g)

Paragraph (g) currently requires at least three hours of supervisor training regarding the signs and symptoms of alcohol and drug use and the qualifying criteria for PAT testing under subpart C. This training must include (at a minimum) ''information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list.'' FRA is proposing to amend this existing training requirement to incorporate supervisory training on the signs and symptoms of ''other impairing drugs,'' since drugs that are not controlled substances can also have ''acute behavioral and apparent physiological'' effects.

FRA is also proposing to amend this paragraph by removing the three hour duration requirement (a design standard) and replacing it with a requirement that supervisors demonstrate their understanding of the training at its conclusion (a performance standard). Supervisors could do so through either a written or oral examination, which must contain questions related to both the PAT testing regulations of subpart C and the signs and symptoms of alcohol and drug influence, intoxication, and misuse. FRA believes the proposed amendment would improve the required supervisor training by making it based on a performance standard rather than a design standard. *See* Office of Management and Budget, Circular A–4, 8 (Sep. 17, 2003) (discussing performance standards as opposed to design standards). Currently, the three hour duration requirement does not actually ensure that a supervisor has understood the contents of the training. Under the proposed amendment, railroads would have the flexibility to make the training as long—or short—as necessary to produce supervisors who could demonstrate their understanding of the requirements. Overall, FRA believes that the effectiveness of the training is better measured by the outcomes it produces, as opposed to the amount of time it lasts.

Paragraph (h)

FRA is proposing only a minor editorial revision to paragraph (h) to delete an unnecessary paragraph reference.

Section 219.12—Hours of Service Laws Implications

FRA is proposing a new section § 219.12 to clarify the relationship between the alcohol and drug testing requirements of part 219 and the HOS requirements of 49 U.S.C. ch. 211.

Paragraph (a)

Proposed paragraph (a) clarifies that HOS limitations do not excuse a railroad from conducting PAT or reasonable suspicion testing. These types of tests must be performed regardless of HOS requirements because they are triggered by specific unpredictable events that indicate the possible existence of a safety issue related to alcohol or drug use. When an event occurs that mandates PAT or reasonable suspicion testing, determining the cause of the event is of greater safety concern than compliance with the HOS requirements. Thus, this proposed paragraph provides that if a railroad establishes that excess service under the HOS laws is caused solely by the railroad's need to complete required PAT or reasonable suspicion testing, that the railroad used reasonable due diligence in completing the required PAT or reasonable suspicion testing, and that the railroad completed the collection within the time limits of § 219.203(d) (for PAT testing) or § 219.305 (for reasonable suspicion testing), FRA will not take enforcement action for the excess service. The railroad would, however, still be required to file an excess service report

While technically a new part 219 requirement, this language would incorporate past FRA guidance on the impact of PAT testing and reasonable suspicion testing on HOS limitations. *See* Compliance Manual 2.3.

Paragraph (b)

As with PAT and reasonable suspicion testing, reasonable cause testing is triggered by the occurrence of a specific unpredictable event (a train accident, train incident, or rule violation), the cause or severity of which may be linked to a safety issue involving alcohol or drug use by a regulated employee. FRA would therefore not pursue an HOS violation if the excess service was caused solely by a railroad's decision to conduct

reasonable cause testing, so long as the railroad used reasonable due diligence to complete the test and did so within the time limitations of proposed § 219.407 (i.e., within eight hours of the observation, event or supervisory notification that was the basis for the test). The crucial difference between incurring excess service to conduct PAT or reasonable suspicion testing as compared to reasonable cause testing, is that reasonable cause testing, unlike both PAT and reasonable suspicion testing, is authorized, but not required by part 219. For this reason, proposed paragraph (b) clarifies that a railroad would be allowed to, but is not required to, exceed HOS limitations to perform reasonable cause testing. The railroad would, however, still be required to file an excess service report.

Paragraph (c)

Proposed paragraph (c) clarifies that random tests must be handled differently from the other types of tests discussed above, since random tests are timed and planned in advance. When conducting random alcohol and drug tests, compliance with HOS requirements must take precedence since the timing of a random test is predictable and is not triggered by a potential safety concern. With one exception, railroads must schedule random tests with sufficient time for completion within an employee's HOS limitations. The only exception to this general rule is if an employee's random drug test requires additional time to complete because of the need to conduct a directly observed collection (see § 40.67). In such direct observation situations, FRA would allow completion of the test to exceed the employee's HOS limitations not because the random test was unplanned, but because the occurrence of the direct observation was unpredictable and indicative of the fact that the employee may be trying to cheat the test. As with the other types of tests described above, to not have an HOS penalty assessed, a railroad must show that any excess service was caused solely by the need to respond to a direct observation, must complete the random test as soon as practicable, and must report any excess service to FRA. FRA would also amend this paragraph to prohibit a railroad from placing a regulated employee on duty solely for the purpose of conducting a Federal random test.

Paragraph (d)

Similar to proposed paragraph (c)'s requirements related to random tests, proposed paragraph (d) would clarify that railroads must schedule follow-up tests, which are also planned events, with sufficient time to allow testing to be completed within a covered employee's HOS limitations. A railroad may place an employee on-duty solely for the purpose of a follow-up test if the employee is subject to being called for duty, with the caveat that an employee may be placed on duty for a follow-up alcohol test *only* if the employee's return-to-duty agreement requires total abstention from alcohol use. This exception is necessary because absent such an agreement, an employee may legitimately use alcohol when not prohibited by § 219.101 (that is, when not on-duty, not within four hours of reporting for duty, and not after receiving notice to report). In such a case, a follow-up test for alcohol could result in an employee being penalized for legitimate alcohol use. FRA anticipates few instances where an employee will be placed on-duty solely for the purpose of follow-up testing, but a railroad that chooses to do so must document why the action was necessary and provide the documentation to FRA upon request.

Section 219.23—Railroad Policies

This section establishes the requirements for a railroad's Federal alcohol and drug testing policy. FRA is proposing to clarify the language in this section governing the following requirements: (1) the providing of written notice to a regulated employee whenever a Federal alcohol or drug test is required under part 219; (2) the use of DOT forms for FRA-mandated alcohol and drug tests; and (3) the educational materials employers must provide to employees. FRA would also conform the section's structure to reflect amendments proposed in this section and elsewhere in part 219.

Paragraph (a)

Paragraph (a) currently requires a railroad to provide ''clear and unequivocal written notice'' to an employee when an alcohol or drug test is being required under FRA regulations. While the use of DOT testing forms satisfies this notice requirement, FRA is proposing several clarifications. First, FRA is proposing to amend this paragraph to clarify that the written notice must be provided by either a railroad employee or a designated service agent (e.g., by a collector providing a DOT form to an employee for an FRA random test) and must include the basis for the test (this requirement is currently contained in paragraph (b) of this section). Second, FRA would replace the phrase ''violation of a specified operating/safety rule enumerated in subpart D of this part'' with the simpler phrase ''reasonable cause.'' Finally, FRA would clarify that the notice requirements for PAT tests must be handled differently since notice of PAT tests may be provided only through use of a FRA-specific PAT testing form.

Paragraph (b)

The last sentence of current paragraph (b) provides that use of a DOT form is prohibited for a non-Federal test. This provision, amended to clarify that use of the DOT form is also prohibited for PAT testing, remains in revised paragraph (b). FRA also proposes to amend this paragraph to specify that the FRA PAT testing form may not be used for any other type of test. This is not a new requirement, but is currently found in the final sentence of paragraph (c) of this section.

Paragraph (c)

Proposed paragraph (c) discusses various requirements related to part 219 educational materials that must be provided to regulated employees. These requirements are found in existing paragraph (d) of this section. FRA is proposing minor amendments to clarify the language in this section and to provide railroads greater flexibility in making the required educational materials available to employees. As proposed, a railroad could post these materials continuously in an easily visible location at a designated reporting place for regulated employees, provided the railroad also supplies copies to any labor organizations representing a class or craft of regulated employees (if applicable). Alternatively, a railroad could provide these materials in some other manner that ensures that regulated employees can find and access them, such as posting them on a Web site accessible to all regulated employees. Through longstanding informal guidance, FRA has allowed railroads to post educational materials in easily visible locations. Thus, this proposed amendment would incorporate this guidance into the rule text. Because MOW employees are going to be newly subject to part 219 requirements and may be unfamiliar with the regulation, for three years after the effective date of the final rule, FRA is proposing to require a hard copy of the educational materials to be provided to each MOW employee. FRA is also proposing new language in this paragraph specifying that the requirement to provide educational materials to regulated employees would not apply to applicants for a regulated service position who either refuse to participate

in pre-employment testing or who have a pre-employment test result indicating a part 219 violation. This requirement is currently in § 219.104(a)(ii), but FRA believes it belongs more appropriately in this section, as it discusses the applicability of § 219.23.

Paragraph (d)

Currently, paragraph (e) of this section contains requirements governing the content of the educational materials that a railroad must provide to its covered employees. FRA is proposing to move these requirements to proposed paragraph (d). New language in the introductory text of paragraph (d) would clarify that the educational materials that must be made available to employees are the materials that are specified in proposed paragraph (c) of this section.

While paragraph (e)(1) currently requires training materials to include the ''identity'' of the person designated to answer employee questions about the materials, proposed paragraph (d)(1) would include this requirement but replace the word ''identity'' with ''position title, name, and means of contacting'' that individual. Similarly, language currently in paragraph (e)(2) would be moved to proposed paragraph (d)(2) and amended to require educational materials to identify each class or craft subject to part 219 (e.g., engineers, conductors, MOW employees, signal maintainers, train dispatchers) instead of using less specific terms such as ''regulated employees'' or ''covered employees.''

Language currently found in paragraph (e)(3) would be amended in proposed paragraph (d)(3) to replace ''safety-sensitive'' with ''regulated service'' and to require the educational materials provided to regulated employees to distinguish between FRA's prohibitions on alcohol use and on drug use. FRA proposes to distinguish between the two prohibitions by explicitly stating that a railroad must provide sufficient information about regulated service that regulated employees perform so that a regulated employee knows when he or she must be in compliance with part 219's prohibition regarding alcohol use. This amendment is necessary because unlike part 219's prohibition on *alcohol* use, which applies when an employee is on duty and required to perform or is available to perform regulated service, FRA's prohibitions on *drug* use apply at all times, not just when a regulated employee is on duty and performing (or subject to performing) regulated service.

Existing paragraph (e)(5) would be further amended in proposed paragraph (d)(5) to simplify the reference to reasonable cause testing authority provided by subpart E.

FRA would also move the language in paragraph (e)(12) to proposed paragraph (d)(12) and amend it to require railroads to provide educational materials on both alcohol and drug misuse.

Section 219.25—Previous Employer Drug and Alcohol Checks

This new section would direct railroads and contractors to § 40.25, which requires employers to request and review the drug and alcohol testing record of any individual they intend to use to perform DOT safety-sensitive functions. This requirement applies only to a railroad or contractor's direct employees. For example, a railroad would not be required to check the alcohol and drug testing record of the direct employees of a contractor, since this responsibility would belong to the contractor. While § 219.701 requires all testing under part 219 (except for PAT testing under subpart C) to be completed in accordance with the requirements of part 40, FRA's experience has been that railroads sometimes overlook the drug and alcohol background check required by § 40.25. The proposed amendment would address this concern by specifically reminding railroads and contractors of the § 40.25 requirement.

This section would also remind railroads that they must comply with the prior alcohol and drug conduct requirements of § 240.119(c) for certified locomotive engineers and § 242.115(e) for certified conductors. Under these sections, a railroad determining whether a person may be or may remain certified as a locomotive engineer or conductor must consider certain part 219 violations and refusals that occurred within a period of sixty consecutive months (five years) prior to the review of the individual's records. As with the reference to § 40.25, these references to parts 240 and 242 are intended only to remind railroads of their existing responsibilities, not to make any substantive changes.

Subpart B—Prohibitions

Section 219.101—Alcohol and Drug Use Prohibited

Paragraph (a)(1)

Section 219.101 contains FRA's general prohibitions on the use and possession of alcohol and drugs by railroad employees. Currently, paragraph (a)(1) prohibits the use and possession of both alcohol and controlled substances while a covered employee is assigned to perform covered service. Existing § 219.103 provides an exception to the prohibition on the use and possession of controlled substances, so long as certain conditions are met regarding the controlled substance's prescription or authorization by a medical practitioner.

While not specifically proposed in this NPRM, FRA is soliciting public feedback on whether it should consider removing part 219's longstanding prohibitions against the on-duty possession of alcohol and controlled substances. These prohibitions were originally intended to make FRA's alcohol and drug requirements similar to those in Rule G, a longstanding railroad operating rule which prohibited the on-duty use and possession of alcohol, and was later amended to address the use and possession of controlled substances. *See* 49 FR 24266, June 12, 1984. As currently written, however, the FRA's prohibition against the possession of controlled substances applies not only to the possession of illicit drugs (e.g., PCP, cocaine), but also to many prescription drugs which have legitimate medical uses (e.g., muscle relaxants, pain relievers), but have been classified by the Drug Enforcement Administration (DEA) as controlled substances because of their potential for abuse. Therefore, strictly read, FRA's prohibition against the on-duty possession of all controlled substances would prohibit the on-duty possession of many common prescription drugs, unless that possession was incident to proper use of the prescribed drug as provided for by § 219.103.

Similarly, because of its roots in Rule G, part 219 currently prohibits the on-duty possession of alcohol. Strictly read, this prohibition would ban the on-duty possession of many commonly sold over-the-counter cough and cold remedies that contain alcohol. FRA solicits comment on whether part 219 should continue to prohibit the on-duty possession of all controlled substances and alcohol, noting that no other DOT agency prohibits the on-duty possession of both controlled substances and alcohol.

While FRA does not want to prohibit the use of legal prescription drugs or over-the-counter drugs by regulated employees, provided that such use complies with the requirements of § 219.103 (discussed below), FRA is specifically seeking public comment on whether removing the prohibitions on possession of controlled substances and/or alcohol would have an adverse effect on railroad safety. Removing the prohibition on possessing controlled substances or alcohol would not affect a railroad's ability to take action under its own authority if a railroad employee

was found in possession of alcohol or a controlled substance in violation of a railroad operating rule, such as Rule G. *See id.*

FRA would also amend paragraph (a)(1) to prohibit the use or possession of alcohol or any controlled substance by regulated employees while they are ''on-duty and subject to performing regulated service for a railroad.'' This proposed language is intended to clarify that this prohibition applies whenever a regulated employee is subject to performing regulated service for a railroad, not only when the employee is actually performing regulated service.

Paragraph (a)(4)

Paragraph (a)(4) applies to regulated employees who have a breath or blood alcohol concentration of 0.02 or greater but less than 0.04 on a Federal test. Specifically, current paragraph (a)(4) prohibits an employee whose Federal test indicates an alcohol concentration of 0.02 or greater, but less than 0.04, from performing covered service until the start of his or her next regularly scheduled duty period, but not less than eight hours from the administration of the test. Since an alcohol concentration of 0.02 or greater but less than 0.04 is not a violation of § 219.101, an alcohol test result in this range may not be used for locomotive engineer or conductor certification purposes under part 240 or part 242. FRA is proposing to redesignate the current text of paragraph (a)(4) as paragraph (a)(4)(i), and add a new paragraph (a)(4)(ii) to clarify that a railroad is not prohibited from taking further action under its own authority against an employee whose Federal test result indicates an alcohol concentration of 0.02 or greater but less than 0.04, since a result in this range indicates the presence of alcohol in the employee's system. This new language is taken from FRA guidance and is intended for clarification purposes only, not to make any substantive change to the regulatory requirement. *See* Compliance Manual 3.5.2.

Paragraph (a)(5)

Currently, paragraph (a)(5) states that a test result with an alcohol concentration below 0.02 must be considered negative and is not evidence of alcohol misuse. It also provides that a railroad may not use a Federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority, and that a railroad may compel cooperation in additional breath or body fluid testing only if it has an independent basis for doing so.

FRA is proposing to add new language to this paragraph clarifying that an independent basis for subsequent *company* authority alcohol testing would exist only when, after a negative FRA reasonable suspicion alcohol test result, an employee exhibits additional or continuing signs and symptoms of alcohol use. (A railroad may *not,* however, conduct an additional *FRA* test in such situations.) If an independent basis for testing exists and a subsequent company authority alcohol test indicates a violation of a railroad alcohol operating rule, the company test result is independent of the Federal test result and must stand on its own merits. FRA is proposing this amendment, which is taken from FRA guidance, to allow railroads to perform company authority alcohol tests in the infrequent and limited circumstances where an employee continues to exhibit signs and symptoms of alcohol use even after the employee's FRA test result indicates an alcohol concentration below 0.02.

Section 219.102—Prohibition on Abuse of Controlled Substances

Currently, this section prohibits employees performing covered service from using a controlled substance at any time, except as permitted by § 219.103. FRA's only proposed amendment to this section would substitute the term ''regulated employee'' for ''employee'' to reflect the expansion of this part to cover employees who perform MOW activities.

Section 219.103—Use of Prescription and Over-the-Counter Drugs

Despite its title, ''Prescribed and over-the-counter drugs,'' § 219.103 currently covers only a small portion of prescription drugs and no over-the-counter (OTC) drugs, since most prescription and OTC drugs are not Schedule II–V controlled substances. FRA is not proposing any changes to this section, which has not been changed since its implementation in 1985. Instead, FRA is asking for information in response to several questions. How do railroads administer § 219.103's requirements? Does this section effectively address the safety concerns raised by the use of prescription and OTC drugs by individuals subject to part 219? What, if any, amendments should FRA make to address the increase in prescription and OTC drug use over the last 25 years? Are any amendments necessary to address FRA's proposed addition of employees who perform MOW activities?

Section 219.104—Responsive Action

FRA is proposing both clarifying and structural changes to this section, which addresses what responsive action a railroad must take when it determines that an employee subject to part 219 has either violated certain provisions part 219 (or the alcohol or drug misuse rule of another DOT agency) or refused to provide breath or body fluid specimens under a mandatory provision of the regulation. Specifically, FRA proposes to clarify that: (1) The responsive action requirements of this section (except for the right to a hearing under proposed paragraph (c) *do* apply to a regulated service applicant who has refused to take a pre-employment test, as determined by the provisions of part 40; (2) the notice a railroad must provide to a regulated employee before removing him or her from regulated service must be in writing; and (3) that regulated employees have the right to request a hearing under this section following an alleged violation of § 219.101 or § 219.102.

Paragraph (a)

FRA proposes to add a new sentence to paragraph (a)(2) specifying that the procedures and rights in this section apply to reasonable cause tests conducted under FRA authority, but not to reasonable cause tests conducted under a company's own authority. This would not be a substantive change, only a reminder to railroads of one important distinction between a reasonable cause test conducted under FRA authority and one conducted under company authority. FRA also proposes to remove the word ''mandatory'' as used in paragraph (a)(2) to describe the provisions under which a railroad may require an employee to participate in alcohol or drug testing, since neither reasonable cause or pre-employment alcohol testing are mandatory under part 219. If, however, a regulated employee (or applicant for regulated service) refuses a reasonable cause or pre-employment alcohol test that has been *conducted under FRA authority,* the employee would be subject to the consequences for unlawful refusals found in this section.

Currently, paragraph (a)(3) explains that the procedures and rights in § 219.104 and the informational requirements in § 219.23 do not apply: (1) When a test is conducted under other than part 219 authority (e.g., a test under a company medical policy); and (2) when an applicant refuses to participate in a pre-employment test or otherwise has a positive pre-employment test indicating the misuse

of alcohol or controlled substances. FRA is proposing to move the language addressing § 219.23 into § 219.23 itself, and to move the remainder of this paragraph to a new paragraph (e), which would contain provisions specifically discussing the applicability of this section.

Paragraph (b)

Currently, paragraph (b) requires a railroad, prior to ''withdrawing'' an employee from covered service, to provide notice to the employee of the reason for his or her withdrawal. FRA would clarify that this notice must be in writing. A railroad may initially give an employee verbal notice, provided the railroad follows up as soon as practicable with an official written notice. For consistency of language throughout this section, FRA is also proposing to replace ''withdrawing'' in this paragraph with the term ''removing.'' FRA would also require the notice to inform the employee that he or she is prohibited from performing any DOT safety-sensitive functions until he or she successfully completes the evaluation, referral, and treatment processes required for return-to-duty under part 40. FRA believes this information would discourage employees from job hopping to try to avoid their return-to-duty requirements. A railroad may also use this notice to comply with § 40.287, which requires an employer to provide to each employee who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to the employer, with names, addresses, and telephone numbers.

Paragraph (c)

Paragraph (c)(1) currently specifies that employees can request a hearing if they ''[deny] that the test result is valid evidence of alcohol or drug use prohibited by this subpart.'' FRA is proposing to remove this phrase in to make clear that the removal from duty and hearing procedures in this section also apply to violations of §§ 219.101 or 219.102 that have *not* been detected through testing (e.g., a refusal or a violation of the prohibition against possessing alcohol). This proposed amendment would clarify that an employee may demand a hearing for any violation of §§ 219.101 or 219.102, regardless of whether the alleged violation was based on a test result.

Similarly, FRA would amend paragraph (c)(4) to clarify that the statement that part 219 does not limit the procedural rights or remedies available (e.g., at common law or through an applicable bargaining agreement) to an employee, applies to all violations of part 219, not just those based on test results.

Paragraph (d)

Currently, paragraph (d) provides that a railroad must comply with ''the return-to-service and follow-up testing requirements, and the Substance Abuse Professional [SAP] conflict-of-interest prohibitions, contained in §§ 40.305, 40.207, and 40.209 of this title.'' FRA would simplify this language by deleting these section citations and referring generally to the requirements in part 40 for SAP evaluations, the return-to-duty process, and follow-up testing.

Paragraph (e)

FRA is proposing to add a new paragraph (e), which would clarify when the requirements of this section do not apply.

Paragraph (e)(1) would contain the language currently in paragraph (a)(3)(i) stating that the requirements of this section do not apply to actions based on alcohol or drug testing that is not conducted under part 219.

Paragraph (e)(2) would clarify that the requirements in this section do *not* apply to Federal alcohol tests with a result less than 0.04. As discussed above in the analysis of § 219.101(a)(4), because a Federal alcohol test with a result below 0.04 is not a violation of § 219.101, a railroad is not required to take responsive action under this section. Under § 219.101(a)(4), the only consequence for a Federal test result between 0.02–0.039 is removal of the employee from regulated service for a minimum of eight hours. (This is because a test result in this range is evidence of alcohol use but not of impairment.) A railroad must therefore use its own authority for any other actions (e.g., any return-to-duty or follow-up tests for an alcohol test result below .04 must be administered under company authority).

Paragraph (e)(3) would contain new language clarifying that this section also does not apply to a locomotive engineer or conductor who has had an off-duty conviction for, or a completed state action to cancel, revoke, suspend, or deny a motor vehicle-driver's license for operating while under the influence of or impaired by alcohol or a controlled substance. While parts 240 and 242 require an individual with such an off-duty conviction to undergo a substance abuse evaluation, an off-duty conviction is not a violation of § 219.101 or § 219.102.

Paragraph (e)(4) would contain new language clarifying that this section does not apply to applicants who decline to participate in pre-employment testing and withdraw the application for employment prior to the commencement of the test (the determination of when a test commences is made according to the provisions of part 40).

Paragraph (e)(5) would clarify that the hearing procedures in paragraph (c) of this section do not apply to an applicant who tests positive or refuses a DOT pre-employment test.

Paragraph (e)(6) would clarify that an applicant who tests positive or refuses any DOT pre-employment test must complete the return-to-duty requirements in paragraph (d) before performing DOT safety-sensitive functions subject to the alcohol and drug regulations of any DOT agency. Under § 40.25(j), an employee who tested positive or refused to test cannot perform any DOT safety-sensitive functions until and unless the employee documents successful completion of the part 40 return-to-duty process.

Section 219.105—Railroad's Duty To Prevent Violations

Paragraph (a)

Currently, paragraph (a) of this section provides that a railroad may not with ''actual knowledge'' permit an employee to remain or go on duty in covered service in violation of either § 219.101 or § 219.102. FRA is proposing to clarify when a railroad is deemed to have ''actual knowledge'' of such a violation. As proposed, actual knowledge would be limited to the knowledge of a railroad manager or supervisor in the employee's chain of command. A manager or supervisor would be considered to have actual knowledge of a violation when he or she: (1) Personally observes an employee violating part 219 by either using or possessing alcohol, or by using drugs (observing potential signs and symptoms of alcohol/drug use would not by itself constitute actual knowledge); (2) receives information regarding a violation from a previous employer as part of a § 40.25 background check; or (3) receives an employee's admission of prohibited alcohol possession or use or drug use.

Paragraph (b)

Although FRA is not proposing to amend paragraph (b) of this section, FRA is taking this opportunity to clarify what ''due diligence'' means in this paragraph's requirement for a railroad to ''exercise due diligence to assure compliance with §§ 219.101 and 219.102.'' When FRA proposed to add

new paragraph (b), FRA stated its purpose as follows:

> to describe the limitations on railroad liability with respect to the prevention of the violations of the Subpart B prohibitions. . . . In summary, the provisions require the railroad to exercise a high degree of care to prevent violations, but do not impose liability where, despite such efforts, an individual employee uses alcohol or drugs in a manner that is prohibited (and the railroad is not aware of the conduct).

54 FR 39649, Sep. 27, 1989. Paragraph (b) therefore places an affirmative duty on a railroad to use due diligence to prevent violations of § 219.101 or § 219.102, and a railroad that can show it has done so will have only limited liability under part 219 for the violations of its individual employees. Conversely, a railroad could be found to have violated § 219.105(b) if it did nothing after becoming aware that a regulated employee had an active substance abuse disorder that could manifest itself in actual violations of § 219.101 or § 219.102. The due diligence a railroad most exercise to prevent violations will vary on a case-by-case basis and railroads uncertain how this provision may apply in certain situations are encouraged to contact FRA for guidance.

Paragraph (c)

FRA is proposing to add new a paragraph (c) to this section, which would clarify that a railroad's alcohol and/or drug use education, prevention, identification, intervention, or rehabilitation programs or policies must be designed and implemented in such a way that they do not circumvent or otherwise undermine the requirements of part 219. It would also clarify that a railroad must make all documents, data, or other records related to such programs or policies available to FRA upon request. This paragraph would not establish a new power for FRA, but would merely clarify and explain FRA's authority to conduct inspections and investigations under 5 U.S.C. 20107.

Rule G Observations and Public Comment Requested

Currently, FRA guidance directs a railroad to require its supervisors to make and record a specified number of observations of covered employees for compliance with its operating rule on alcohol and/or drug prohibitions (e.g., Rule G), as part of its part 217 operational tests and inspections program. *See generally* § 217.9. These observations are often referred to as ''Rule G observations.'' At a minimum, FRA guidance states that each quarter a railroad should conduct a number of part 217 observations that equals the number of its covered employees. For example, if a railroad has 100 covered employees, it should conduct at least 100 observations per quarter. *See* Compliance Manual 11.3.3.2.

FRA requests public comment on whether § 219.105 should be amended to incorporate this guidance regarding Rule G observations. FRA is particularly interested in comment regarding both the safety benefits of requiring a specific number of Rule G observations and the costs and burdens of such a requirement. Also, to what extent are these observations already being performed throughout the railroad industry? FRA may ultimately decide to include a Rule G observation requirement in a final rule.

Section 219.107—Consequences of Unlawful Refusal

Currently, this section provides that an employee who refuses to provide breath or body fluid specimens when required by a mandatory provision of part 219 must be disqualified from performing covered service for nine months. FRA is proposing several clarifying amendments to this section.

Paragraph (a)

In paragraph (a), FRA would replace the term ''disqualified'' with ''withdrawn'' to distinguish between the withdrawal requirement of this section and the disqualification requirements for certified engineers in part 240 and certified conductors in part 242. (Similar amendments would also be made to paragraphs (c)–(e) of this section.) FRA would also clarify that provision of an adulterated or substituted specimen, as defined in part 40, is a refusal under part 219 and subject to the withdrawal requirements of this section. FRA would also remove the word ''mandatory'' which may be misleading because neither reasonable cause nor pre-employment alcohol testing are mandatory for railroads in part 219. However, a regulated employee (or applicant for regulated service) who refuses a reasonable cause test or a pre-employment alcohol test conducted under FRA authority has always been subject to the consequences for unlawful refusals found in this section.

Paragraph (b)

Currently, paragraph (b) requires a railroad, prior to withdrawing an employee from covered service, to provide notice to that employee both of the reason for his or her withdrawal and of the procedures available to the employee under § 219.104(c) to request a hearing. FRA proposes to amend this paragraph to clarify that this notice must be in writing. A railroad may provide an employee with an initial verbal notice, but must follow this up as soon as practicable with an official written notice.

Paragraph (c)

Currently, paragraph (c) generally provides that a railroad with notice of an employee's withdrawal from covered service may not authorize or permit the employee to perform such service on its behalf. FRA would revise this paragraph to clarify that this withdrawal provision applies ''only'' to an employee's performance of regulated service, and not to the employee's performance of non-regulated service. FRA would also add an additional sentence clarifying that during the period of withdrawal, a railroad with notice of the withdrawal may not authorize or permit the employee to perform any regulated service on its behalf.

Paragraph (e)

Currently, paragraph (e) states that upon expiration of a mandatory nine month withdrawal period, an employee may return to covered service only under the conditions specified in § 219.104(d) and must be subject to follow-up testing as provided by that section. Because § 219.104(d) also requires return-to-duty testing, FRA proposes to amend paragraph (e) to clarify that the employee must also be subject return-to-duty testing. This proposed amendment is not intended to substantively change the existing requirement, only to clarify that § 219.104(d) requires both return-to-duty and follow-up testing.

Subpart C—Post-Accident Toxicological Testing

Section 219.201—Events for Which Testing is Required.

Paragraph (a)

Currently, this section defines the types of accidents or incidents for which PAT testing is required and states that a railroad must make a good faith determination as to whether an event meets the criteria for PAT testing. Specifically, existing paragraph (a) requires a railroad to conduct PAT testing after the following qualifying events: (1) major train accidents; (2) impact accidents; (3) fatal train incidents; and (4) passenger train accidents. FRA is proposing both to amend the criteria defining some of these qualifying events and to create a new qualifying event requiring PAT

testing, ''Human-Factor Highway-rail Grade Crossing Accident/Incident.''

• Major Train Accidents

Paragraph (a)(1) defines a ''major train accident'' as any train accident meeting the part 225 reporting threshold that involves either: (1) a fatality; (2) a hazardous material release accompanied by either an evacuation or a reportable injury caused by the release; or (3) damage to railroad property of $1,000,000 or more. (As discussed in the section-by-section analysis for § 219.5, FRA is proposing a new part 219 definition for ''evacuation,'' to clarify the meaning of that term as used in the definition of ''major train accident.'') FRA is proposing two substantive amendments to the criteria for a major train accident.

First, FRA would clarify that the fatality in a major train accident can be ''to any person,'' regardless of whether the person is an employee of the railroad. For example, a train accident meeting the reporting threshold would qualify as a major train accident requiring PAT testing if it resulted in a fatality to an uninvolved bystander near the track.

Second, and as discussed in Section V.D of this preamble, FRA would increase the property damage threshold for major train accidents from $1,000,000 to $1,500,000. On November 19, 2008, the Association of American Railroads (AAR) petitioned FRA to increase the damage threshold for major train accidents to $1,500,000 and the damage threshold for impact accidents to $250,000.[16] FRA last increased the property damage thresholds for major train accidents and impact accidents in January 1, 1995, when FRA increased the threshold for major train accidents from $500,000 to $1,000,000, and the threshold for impact accidents from $50,000 to $150,000. *See* 59 FR 7452, Feb. 15, 1994). In its petition, the AAR asserted that these thresholds needed to be raised again to account for inflation since 1994. In calculating its proposed thresholds, the AAR measured inflation both by the rail cost recovery index and the Gross Domestic Product, assuming an annual 4 percent increase.

FRA agrees with AAR that the property damage threshold for major train accidents should be increased to $1,500,000 to account for inflation, and is proposing to increase that threshold accordingly. FRA utilized publically available price indices from the Bureau of Labor Statistics for comparison and consistency: the Producer Price Index—All Commodities [17] and the Consumer Price Index—All Urban Consumers Inflation Calculator,[18] and also extrapolated an index for comparison from part 225, Appendix B—Procedure for Determining Reporting Threshold. FRA found that all three indices supported raising the major accident threshold from $1,000,000 to $1,500,000.

• Impact accidents

As discussed above, AAR also asked FRA to increase its railroad property damage threshold for impact accidents from $150,000 to $250,000. After consideration, FRA has decided to maintain its current impact accident threshold of $150,000. Doing so will allow inflation to increase the number of events that qualify for PAT testing as impact accidents, which involve human error more than other types of PAT testing events. (For instance, impact accidents such as collisions between trains are usually due to human error. In contrast, major train accidents such as derailments are often due to track defects.) Conducting PAT testing for more impact accidents will allow FRA to identify a greater number of events involving human factor errors caused or contributed to by the misuse of alcohol or drugs.

While FRA is proposing to amend the § 219.5 definition of ''impact accident'' to remove the exceptions for raking collisions and derailment collisions, as discussed above, FRA is not proposing any amendments to the ''impact accident'' testing criteria found in this section.

• Fatal Train Incident

Currently, paragraph (a)(3) defines a ''fatal train incident'' as any train incident that results in a fatality to an on-duty railroad employee and that involves the operation of on-track equipment. FRA proposes to clarify that to qualify as a fatal train incident, the fatality must have occurred within 12 hours of the train incident, although the deceased employee need not have been performing regulated service at the time of the train incident. For example, the criteria for a fatal train incident would be met if the operation of on-track equipment involved a fatality to a mechanical employee, regardless of whether the employee was performing regulated service at the time of the train incident, so long as the fatality occurred within 12 hours of the train incident's occurrence.

• Passenger Train Accident

FRA is proposing to amend the definition of ''passenger train accident'' in this paragraph to be more consistent with the rest of this section. No substantive effects are intended.

• Human-Factor Highway-Rail Grade Crossing Accident/Incident

Currently, § 219.201(b) prohibits PAT testing after a ''collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing,'' even if the collision would otherwise qualify as a PAT testing event. As mentioned in section V.E of this preamble, FRA would narrow this exception by creating a new qualifying event, ''Human-factor highway-rail grade crossing accident/incident'' in paragraph (a)(5), which would specify *when* PAT testing would be required after a qualifying human-factor highway-rail grade crossing accident/incident. (In § 219.203 below, FRA discusses *who* would be subject to PAT testing after a qualifying human-factor highway-rail grade crossing accident/incident.)

This proposal is based in part on NTSB Recommendation R–01–17, in which the NTSB recommended that FRA narrow its exception for highway-rail grade crossing accidents to require PAT testing of any railroad signal, maintenance, or other employee whose actions at or near a grade crossing may have contributed to the cause or severity of a highway-rail grade crossing accident. The NTSB based this recommendation on its investigation of a 1999 highway-rail grade crossing accident at McLean, Illinois, in which an Amtrak train collided with an automobile, killing both the automobile driver and a passenger. The NTSB found that the automobile driver had no warning that a train was approaching, since the flashing lights and gates at the crossing had failed to activate. The NTSB concluded that the probable cause of this activation failure was a signal maintainer who, after taking the crossing equipment out of service for maintenance, had made repairs and then left without restoring the equipment back to operating status. Although the maintainer was directly responsible for the signal and gate failure, he was not subject to PAT testing because of the grade crossing control exception. *See* NTSB, Railroad Accident Report: Collision of Amtrak Train 304–26 with a Highway Vehicle at a Highway-Rail Grade Crossing McLean, Illinois September 26, 1999, NTSB/

[16] A copy of AAR's petition is available for review in the public docket of this rulemaking (docket no. FRA–2009–0039).

[17] Bureau of Labor Statistics, Producer Price Index-Commodities, *available at http://data.bls.gov/cgi-bin/surveymost.*

[18] Bureau of Labor Statistics, Consumer Price Index, *available at http://www.bls.gov/CPI/.*

RAR–01/03, PB2001–916303, Sep. 18, 2001, at v, *available at http://www.ntsb.gov/doclib/reports/2001/RAR0103.pdf*. Since the 1999 McLean collision, FRA has investigated other highway-rail grade crossing accidents in which the actions of railroad employees and contractors may have played a role. *See* FRA, Accident Investigation Report, HQ–2005–106, at 4 (*available at http://www.fra.dot.gov/eLib/Find#p1_z5_lAC_kHQ-2005-106*) and Accident Investigation Report, HQ–2006–12, at 4 (*available at http://www.fra.dot.gov/eLib/Find#p1_z5_lAC_kHQ-2006-12*).

FRA's proposed new qualifying event termed ''human-factor highway-rail grade crossing accident/incident'' would be in new paragraph (a)(5). Under proposed paragraph (a)(5)(i), PAT testing would be required after a highway-rail grade crossing accident/incident whenever a regulated employee interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for the safety of highway traffic that depends on the normal functioning of such a system. Because this language is adapted from the prohibition against such interference contained in FRA's grade crossing regulation (*see* 49 CFR 234.209), a grade crossing accident/incident involving a § 234.209 violation would qualify as a human-factor highway-rail grade crossing accident/incident for PAT testing.[19] *See* FRA's Signal & Train Control Compliance Manual for additional guidance on the meaning of interference.[20]

Under proposed paragraphs (a)(5)(ii) and (a)(5)(iii), PAT testing after a highway-rail grade crossing accident/incident would be required if the event involved violations of the flagging duties found in FRA's grade crossing regulations. *See* 49 CFR 234.105(c)(3)–(c)(2), 234.106, and 234.107(c)(1)(i). The sections referenced in these paragraphs permit trains to operate through malfunctioning grade crossings if an appropriately equipped flagger, law enforcement officer, or crewmember provides warning for each direction of highway traffic. For example, when a false activation occurs, § 234.107(c)(1)(i) requires flagging by an appropriately equipped flagger if one is available. Under proposed paragraphs (a)(5)(ii) and (a)(5)(iii), an employee who failed to comply with this flagging requirement would be subject to PAT testing if a highway-rail grade crossing accident/incident then occurred. Under paragraph (a)(5)(iv), FRA would further narrow its exclusion for highway-rail grade crossing accident/incidents by requiring PAT testing if a fatality of a regulated employee performing duties for the railroad was involved. As with fatal train incidents, a deceased regulated employee would be subject to PAT regardless of whether the employee was at fault. For example, a regulated employee would be subject to PAT testing if the employee died while operating an on-rail truck that collided with a motor vehicle at a highway-rail grade crossing, regardless of who was at fault for the collision.

Similarly, paragraph (a)(5)(v) would require PAT testing if a highway-rail grade crossing accident/incident involved a regulated employee whose violation of an FRA regulation or railroad operating rule may have played a role in the cause or severity of the accident/incident. While proposed paragraphs (a)(5)(i)–(iv) of this section would specify the circumstances under which PAT testing would be required for highway-rail grade crossing accidents/incidents involving human-factor errors, paragraph (a)(5)(v) would serve as a catch-all provision to require PAT testing for highway-rail grade crossing accidents/incidents that involve human-factor errors other than those specified in paragraphs (a)(5)(i)–(iv).

Paragraph (b)

Currently, paragraph (b) provides that no PAT testing ''may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing.'' FRA would make conforming changes to this paragraph to allow PAT testing for human-factor highway-rail grade crossing accident/incidents.

Section 219.203—Responsibilities of Railroads and Employees

Currently, this section sets forth general requirements for both railroads and employees regarding PAT testing, by specifying which employees must be tested, when employees must be excluded from PAT testing, and the time and place of specimen collections. As discussed further below, FRA is proposing substantive amendments to this section to specify which employees must be tested in human-factor highway-rail grade crossing accidents/incidents. Structural revisions are also being proposed to increase the clarity and organization of this section.

Paragraph (a)—Employees Tested

Currently, paragraph (a) contains requirements regarding which employees must be tested after the various qualifying events. FRA is proposing to: (1) Reorganize and clarify this paragraph; and (2) add new language specifying which employees must be tested after a human-factor highway-rail grade crossing accident/incident.

Paragraph (a), Introductory Text

FRA would add introductory text in paragraph (a) stating that regulated employees must cooperate with the collection of PAT testing specimens. This existing requirement is currently found in the final sentence of paragraph (a)(1)(i).

Paragraph (a)(1)

Proposed paragraph (a)(1) would state that a regulated employee whose actions may have played a role in the cause or severity of a PAT testing qualifying event (e.g., an operator, dispatcher, or signal maintainer) must provide blood and urine samples for PAT testing, regardless of whether the employee was present or on-duty at the time or location of the qualifying event. This language is generally consistent with the existing language of this section except that as proposed, regulated employees who may not have been on-duty or present at the time of a qualifying event are subject to PAT testing. This difference reflects the proposed change to FRA's PAT testing recall provisions, discussed in the section-by-section analysis below for paragraph (e) of this section.

Paragraph (a)(2)

Proposed paragraph (a)(2) would specify that testing of the remains of an on-duty employee fatally injured in a qualifying event is required if the employee dies within 12 hours of the qualifying event as a result of such

[19] Section 234.209(b) states that ''interference'' includes (but is not limited to): (1) trains, locomotives or other railroad equipment standing within the system's approach circuit, other than normal train movements or switching operations, where the warning system is not designed to accommodate those activities; and (2) not providing alternative methods of maintaining safety for the highway user while testing or performing work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system.

[20] According to the Signal & Train Control Compliance Manual, ''Interference is any condition that circumvents, hinders, impedes, or diminishes whatsoever the intended warning of a system, and may be accomplished by installing, repairing, replacing, operating, or manipulating a warning system component used in detecting the presence of or of displaying warning of a train, or indicating the operation of the warning system. There is no difference between accidental or intentional interference with respect to the enforcement of this [rule].'' FRA, Signal & Train Control Compliance Manual: Part 234—Grade Crossing Signal System Safety, at 234–24, *available at http://www.fra.dot.gov/eLib/Find#p1_z10_lCM_kSignal%20and%20Train%20Control.*

qualifying event, regardless of whether the employee was performing regulated service, was at fault, or was a direct employee of a railroad, or a volunteer or contractor to a railroad. Part 219 already requires such fatality testing. *See* §§ 219.11(f) and 219.203(a)(4)(ii).

Paragraph (a)(3)

Proposed paragraph (a)(3) would contain requirements specifying which regulated employees must be tested for major train accidents. Paragraph (a)(3)(i) would clarify that all crew members of on-track equipment involved in a major train accident must be PAT tested, regardless of fault. This requirement already applies to all crew members of trains involved in a major train accident. *See* § 219.203(a)(3). Paragraph (a)(3)(ii) would require a regulated employee who is not an assigned crew member of an involved train or other on-track equipment to be PAT tested, if it can be immediately determined that the regulated employee may have played a role in the cause or severity of the major train accident.

Paragraph (a)(4)

Proposed paragraph (a)(4), which applies specifically to fatal train incidents, would state that the remains of an on-duty employee performing duties for a railroad who is fatally injured during the event must be tested, regardless of whether he or she was performing regulated service, was at fault, or was an employee or volunteer for a railroad or contractor to a railroad.

Paragraph (a)(5)

Proposed new paragraph (a)(5) would contain new language specifying which regulated employees must be PAT tested following human-factor highway-rail grade crossing accidents/incidents. Proposed paragraph (a)(5)(i) would clarify that under proposed § 219.201(a)(5)(i), only regulated employees who interfered with the normal functioning of a grade crossing signal system and whose actions may have contributed to the cause or severity of the event must be PAT tested. Proposed paragraphs (a)(5)(ii) and (a)(5)(iii) would clarify the testing requirements for human-factor highway-rail grade crossing accidents/incidents under proposed § 219.201(a)(5)(ii) and (iii). These paragraphs specify that in the event of a grade crossing activation failure, PAT testing would be required if a regulated employee responsible for flagging (either flagging highway traffic or acting as an appropriately equipped flagger as defined in § 234.5), or an on-site regulated employee directly responsible for ensuring flagging, either fails to do so, or contributes to the cause or severity of the accident/incident.

Proposed paragraph (a)(5)(iv) would clarify that, for human-factor highway-rail grade crossing accidents/incidents under § 219.201(a)(5)(iv), the remains of the fatally-injured regulated employee(s) (as defined in § 219.5) must be tested.

Proposed paragraph (a)(5)(v) would clarify that, for human-factor highway-rail grade crossing accidents/incidents under § 219.201(a)(5)(v), only a regulated employee who violated an FRA regulation or railroad operating rule and whose actions may have contributed to the cause or severity of the event must be tested.

Paragraph (a)(6)

Proposed paragraph (a)(6) would reword the requirement currently in § 219.203(a)(3), which states that a railroad must exclude from PAT testing an employee involved in an impact accident or passenger train accident with injury, or a surviving employee involved in a fatal train incident, if the railroad immediately determines that the employee had no role in the cause or severity of the event. In making this determination, a railroad must consider the same immediately available information it considers in determining whether an event qualifies for PAT testing under § 219.201. Proposed paragraph (a)(6) would similarly exclude an employee who survives a human-factor highway-rail grade crossing accident/incident. In contrast, proposed paragraphs (a)(6)(i) and (a)(6)(ii) would clarify that a regulated employee who has been involved in a major train accident or any employee who has been fatally injured in a qualifying event while on-duty must be subject to PAT testing.

Paragraph (b)—Railroad Responsibility

Proposed paragraph (b)(1) would incorporate an amended version of language currently contained in paragraph (a)(1)(i), under which a railroad must take all practicable steps to ensure that each regulated employee who is subject to PAT testing provides specimens as required, including a regulated employee who may not have been present or on-duty at the time of the PAT testing event, but who may have played a role in its cause or severity. Including such regulated employees who may not have been present or on-duty at the time of the qualifying event reflects a proposed change to FRA's PAT testing recall provisions, as discussed below in paragraph (e) of this section.

Paragraph (b)(3) would state that FRA PAT testing takes precedence over any toxicological testing conducted by state or local law enforcement officials. This would not be a new requirement, since it incorporates FRA guidance that testing performed by local law enforcement must not interfere with FRA PAT testing. *See* Interpretive Guidance Manual at 20.

Paragraph (c)—Alcohol Testing

Paragraph (c) would contain language currently found in paragraph (a)(1)(ii), which allows a railroad to require a regulated employee who is subject to PAT testing to also be subject to additional PAT breath alcohol testing. A railroad may not, however, conduct breath alcohol testing on an employee who has been recalled for PAT testing unless the employee is still on and has never left railroad property. If an employee has been recalled after having left railroad property, the employee's breath test result would have no probative value, since a ''positive'' breath alcohol test result could be due to legitimate alcohol use that occurred after the employee went off-duty and left railroad property. Paragraph (e)(4) below also addresses employee recall.

Paragraph (d)—Timely Specimen Collection

A new paragraph (d)(1) would combine two requirements currently found elsewhere in this subpart: (1) The requirement in existing paragraph (b)(1) of this section that railroads make ''every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident,'' and (2) the requirement in current § 219.209(c) stating that if specimens are not collected within 4 hours of the qualifying event, the railroad must prepare and maintain a record stating the reasons the test was not promptly administered. (Specimens not collected within 4 hours should still be collected as soon thereafter as possible, in accordance with § 219.203(b)(1).)

FRA is also proposing to require a railroad to notify FRA's Drug and Alcohol Program Manager immediately by phone whenever a specimen collection takes longer than four hours. In addition, § 219.209(c) currently requires a railroad to prepare a written explanation of any delay in specimen collection beyond four hours, but does not require the railroad to submit that report unless requested to do so by FRA. FRA is proposing to amend this provision to require railroads to submit these written reports within 30 days after expiration of the month during which the qualifying event occurred. FRA is also proposing to move the language currently in paragraphs (b)(2),

(b)(3), and (b)(4) (pertaining to written delay reports) to proposed paragraphs (d)(2), (d)(3), and (d)(4), respectively. Proposed paragraph (d)(4), however, would no longer contain any requirements concerning the recall of employees for testing because FRA is proposing to move these employee recall requirements to proposed paragraph (e), as discussed immediately below.

Paragraph (e)—Employee Recall

Currently, paragraph (b)(4) of this section addresses employee recall for the purpose of PAT testing. Generally, that paragraph provides that a railroad must retain in duty status any covered employees who may be subject to PAT testing until a railroad representative determines whether an event qualifies for PAT testing and, if it does qualify, who must be PAT tested (see § 219.201). Furthermore, that paragraph also currently provides that an employee may not be recalled for PAT testing if the employee has been released from duty under normal procedures, except for in very narrow circumstances (i.e., a railroad *may* recall an employee for testing after he or she has been released from duty only if: (1) The employee went off duty under the normal procedures of the railroad prior to being instructed by a railroad supervisor to remain on duty pending completion of the required determinations; (2) the railroad's preliminary investigation indicates a clear probability that the employee played a major role in the cause and/or severity of the qualifying event; and (3) the qualifying event actually occurred during the employee's tour of duty. Currently, however, a railroad is not required to recall a covered employee for PAT testing, even if these conditions have been met. Existing paragraph (b)(4) also provides that an employee who has been transported to receive medical care is not off-duty for purposes of PAT testing.

In addition to moving these recall provisions into new paragraph (e), as discussed earlier, FRA is proposing to require employees to be recalled for PAT testing in certain situations. Employee recall would be required in these situations even if the qualifying event did not occur during the employee's duty tour. To further consolidate these provisions, FRA would move to paragraph (e)(1) language currently in paragraph (b)(4)(iii), which states that an employee who has been transported to receive medical care has not been released from duty for purposes of PAT testing and that a railroad is not prohibited from testing an employee who has failed to remain available for PAT testing as required. Proposed paragraph (e)(1) would also generally prohibit a railroad from recalling an employee for PAT testing if the employee has already been released from duty under the normal procedures of the railroad, unless the conditions in proposed paragraph (e)(2) have been met.

Proposed paragraph (e)(2) would mandate employee recall for PAT testing if two of the three requirements in existing paragraph (b)(4) are met. As proposed, an employee would have to be immediately recalled and placed on duty for PAT testing if: (1) The railroad could not retain the employee in duty status because he or she went off duty under normal carrier procedures before being instructed to remain on duty pending the testing determination; *and* (2) the railroad's preliminary investigation indicated a clear probability that the employee played a role in the cause or severity of the accident/incident. As proposed, the current requirement for the qualifying event to have occurred during the employee's duty tour would be removed.

Proposed paragraph (e)(3) would require an employee to be recalled regardless of whether the qualifying event occurred while the employee was on duty, except that an employee could not be recalled if more than 24 hours has passed since the event. This paragraph would also clarify that an employee who has been recalled for PAT testing must be placed on duty before he or she is PAT tested.

Proposed paragraph (e)(4) would specify that both urine and blood specimens must be collected from an employee who is recalled for PAT testing. For the reasons discussed earlier in paragraph (c) of this section, if an employee left railroad property before being recalled, the employee's specimens could be tested for drugs only. A recalled employee may be tested for alcohol, however, if he or she stayed on railroad property and the railroad's company policy completely prohibits the use of alcohol on railroad property.

Proposed paragraph (e)(5) would require a railroad to document its attempts to contact an employee who must be recalled for PAT testing. As proposed, the railroad must also notify FRA and provide documentation in accordance with the requirements of paragraph (d)(1) if it is unable to contact and obtain a specimen from an employee subject to the mandatory recall requirement within 24 hours of a qualifying event. In the narrative report that the railroad submits to FRA, the railroad must show that it made a good faith effort to contact the employee, recall the employee, place the employee on duty, and obtain specimens from the employee.

For illustrative purposes, under these proposed recall provisions, a railroad would be required to recall a dispatcher whose actions had played a role in the cause of a qualifying event, even if the dispatcher went off duty before the event occurred. While the dispatcher would have to be recalled as soon as the determination to test is made (and no later than within 24 hours of the qualifying event), the dispatcher could not be alcohol tested unless he or she had remained on railroad property and the railroad's company policy completely prohibits the use of alcohol on railroad property. As another example, if a switch crew had left a switch improperly lined or a yard crew had failed to apply sufficient hand brakes to a cut of cars that rolled away, the crew would have to be recalled for PAT testing even if they had gone off-duty, so long as the additional requirements of proposed paragraph (e)(2) had been met.

Paragraph (f)—Place of Specimen Collection

As part of the proposed reorganization of this section, FRA is proposing to move the provisions contained in current paragraph (c) regarding the place of specimen collection to new paragraph (f). Currently, paragraph (c) requires an employee who is subject to PAT testing to be transported to a pre-designated independent medical facility for collection of PAT testing specimen(s). In proposed paragraph (f), FRA would clarify that this requirement applies only to the collection of urine and blood specimens, since optional PAT breath alcohol tests do not have to be conducted at an independent medical facility. (Proposed § 219.203(c) authorizes a railroad to conduct Federal breath alcohol testing in accordance with part 40 following a qualifying event, so long as the testing does not interfere with the timely collection of required specimens in compliance with part 219.)

Although FRA believes that as a best practice railroads should pre-designate medical facilities for PAT testing as much as practicable, FRA is proposing to remove this requirement because of several impractical burdens it poses. For example, an emergency responder may take an injured employee to a non-designated medical facility, and the prompt treatment of injured employees must take precedence over any railroad pre-designation. Furthermore, even if a railroad pre-designates a medical

facility, the medical facility and its employees may not be aware of or honor this designation.

FRA is also proposing to clarify in paragraph (f)(1) that a phlebotomist (a certified technician trained and qualified to draw blood in accordance with state requirements) is a ''qualified medical professional'' who may draw blood specimens for PAT testing. (For PAT testing purposes, a qualified medical professional does not need to be qualified under the requirements of part 40, since part 40 does not apply to FRA PAT testing.) FRA would also clarify that a qualified railroad or hospital contracted collector may collect or assist in the collection of specimens, so long as the medical facility has no objections.

Proposed paragraph (f)(2) would clarify that employees who are subject to performing regulated service are deemed to have consented to PAT testing under § 219.11(a), as employees who perform covered service already are. FRA would also allow urine to be collected from an injured regulated employee who has already been catheterized for medical purposes, regardless of whether the employee is conscious, although a regulated employee could not be catheterized solely for the purpose of collecting a PAT urine specimen. Although this language was previously contained in part 219, it was removed when part 40 addressed the issue (under part 40, urine may be collected from a person catheterized for medical purposes only if that person is conscious). This proposal would allow urine to be collected from an unconscious catheterized employee *only* for PAT testing, since FRA PAT testing is not subject to part 40's prohibition against collecting urine from an unconscious person. This proposed change would not, however, apply to other FRA tests that are subject to the requirements of part 40, such as reasonable cause or random testing.

Paragraph (g)—Obtaining Cooperation of Facility

FRA proposes to move the provisions regarding the obtaining of a medical facility's cooperation for PAT testing, currently contained in paragraph (d), to a new paragraph (g). Proposed paragraph (g)(1) would require railroads to refer to the instructions and information in FRA's PAT testing shipping kit and the requirements of subpart C when seeking the cooperation of a medical facility. FRA is also proposing to amend this paragraph by removing one of the two phone numbers given for the National Response Center (NRC), 1–800–424–8801, as this phone number no longer belongs to the NRC.

Paragraph (h)—Discretion of Physician

As part of its reorganization of this section, FRA would move the statement that nothing in this subpart limits a medical professional's discretion to determine whether drawing a blood specimen is consistent with the health of an employee subject to PAT testing from its current location in paragraph (e) to new paragraph (h). FRA is proposing no substantive amendments to this language.

Section 219.205—Specimen Collection and Handling

This section contains requirements regarding the collection and handling of specimens collected for PAT testing. Generally, specimens must be collected using an FRA PAT testing shipping kit and Form FRA 6180.73 and must be shipped to FRA's designated laboratory within certain time limitations.

Paragraph (a)

Currently, paragraph (a) provides that PAT testing specimens must be ''obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to this part.'' FRA is proposing to amend this language to add that specimens must also be collected according to the instructions in the PAT shipping kit.

Paragraph (b)

FRA would remove language in paragraph (b) stating that Forms 6180.73 and 6180.74 may be ''ordered from the laboratory specified in Appendix B [to part 219].'' This language is no longer necessary because FRA now includes Forms 6180.73 and 6180.74 in its standard PAT shipping kits, and Form 6180.75 in its fatality kits.

Paragraph (c)

In paragraph (c)(1), FRA proposes to delete the phrase ''whenever possible'' to emphasize that railroads are always required to follow the instructions in the shipping kit and Appendix C when placing PAT testing specimens in the shipping kit and preparing them for shipment.

Currently, paragraph (c)(2) states that shipping kits may be ordered directly from the FRA-designated laboratory. FRA is proposing to amend this language to require that a railroad request an order form from FRA's Drug and Alcohol Program Manager before ordering a PAT shipping kit from its designated PAT laboratory. In addition, FRA would clarify that fatality shipping kits are being made available only to Class I, Class II, and commuter railroads to conserve resources. In the rare instance where a small railroad has a PAT testing event involving a fatality to an on-duty employee, the small railroad should contact the National Railroad Response Center. FRA will then provide a fatality kit to a medical examiner or assist the small railroad in obtaining one from a larger railroad.

FRA is also proposing to remove paragraph (c)(3), which states that a limited number of shipping kits are available at FRA's field offices, since FRA field offices no longer have these kits.

Paragraph (d)

Currently, paragraph (d) requires specimens to be shipped as soon as possible by pre-paid ''air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment).'' FRA proposes to remove the language regarding ''air freight'' shipments so that specimens must be shipped by air express or other adequate means. FRA also proposes to allow railroads greater flexibility by allowing them to hold specimens in a secure refrigerator if delivery cannot be ensured within 24 hours due to a suspension in delivery services. As proposed, a secure refrigerator could be used to hold specimens for a maximum of 72 hours, since FRA believes this is ample time for a railroad to ensure shipment of specimens through alternative means.

Paragraph (e)

To ensure greater specimen security, FRA proposes to add new paragraph (e) to this section, which would prohibit a specimen kit or a transportation box from being opened after it has been sealed, even if a railroad or medical facility discovers that an error had been made either with the specimens or the chain of custody form. If such an error is discovered, the railroad or medical facility must make a contemporaneous written record of it and send that record to the laboratory, preferably with the transportation box.

Section 219.207—Fatality

FRA is proposing several minor clarifying amendments to this section, which contains requirements specifically addressing fatality PAT testing. None of these amendments are intended to have a substantive effect on the requirements of this section.

For fatalities, existing paragraph (a) requires railroads to obtain ''body fluid and/or tissue specimens.'' FRA is

proposing to amend this language to replace ''and/or'' with ''and,'' as FRA has always expected railroads to collect both body fluid and tissue specimens. (FRA is proposing a similar clarification to paragraph (c)). In addition, FRA would clarify that the shipping kit referenced in this paragraph is the ''post-mortem shipping kit.''

In paragraph (b), FRA is proposing to remove one of the two phone numbers given for the National Response Center (NRC), 1–800–424–8801, since this phone number is no longer correct.

Paragraph (d) currently states that ''Appendix C to this part specifies body fluid and tissue specimens for toxicological analysis in the case of a fatality.'' FRA is proposing to clarify that this information can also be found in the ''instructions included inside the shipping kits.''

Section 219.209—Reports of Tests and Refusals

Currently, paragraph (a)(2)(v) of this section requires railroads reporting tests and refusals to include the number, names, and occupations of tested employees. To protect privacy interests and reduce reporting burdens, FRA is proposing to require railroads to report only the number of employees tested.

Existing paragraph (b) requires a railroad to provide FRA a ''concise narrative report'' if, as a result of non-cooperation of an employee or any other reason, it is unable to obtain PAT testing specimens from an employee subject to PAT testing. As proposed, FRA would require the railroad to immediately notify FRA's Drug and Alcohol Program Manager by phone of the failure, in addition to the current requirement for a written, narrative report. If a railroad representative is not able to speak directly to the FRA Drug and Alcohol Program Manager, the railroad must leave a detailed voicemail explaining the circumstances and reasons for the failure. This telephonic report would assist both railroads and FRA in determining whether an employee has refused to be tested.

Currently, paragraph (c) requires railroads to maintain records explaining why PAT testing was not performed within four hours of a qualifying event. FRA is proposing to delete this requirement from § 219.209 because it is already addressed in proposed § 219.203(d)(1), as discussed above in the section-by-section analysis for that section.

Section 219.211—Analysis and Follow-Up

Since part 40 does not apply to FRA PAT testing, FRA is proposing to amend paragraph (b) of this section to incorporate part 40's prohibition on standing down (temporarily removing from service) an employee solely based upon a laboratory report indicating a non-negative test result, before the MRO has completed verification of this test result. *See* § 40.21(a). As proposed, an employee could be removed from regulated service only after an MRO has verified that the employee has had a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test.

Paragraph (c) would be amended to provide the address of the FRA Associate Administrator for Railroad Safety.

Paragraph (e) would be amended to replace ''Alcohol/Drug Program Manager'' with ''Drug and Alcohol Program Manager'' for consistency throughout part 219. FRA would also amend this paragraph to permit employees to respond to test results more easily through email.

Currently, paragraph (g)(3) provides that FRA's PAT testing program does not authorize railroads to hold an employee out of service pending the receipt of the test results, ''nor does it restrict a railroad from taking such action in an appropriate case.'' FRA would clarify that a railroad must have additional information regarding an employee's actions or inaction, independent of the mere fact that he or she was involved in a qualifying event, to justify holding him or her out of service under its own authority. As with the proposed stand-down provision in paragraph (b) regarding laboratory reports, FRA seeks to clarify that an employee's involvement in a PAT testing event is not in itself a basis for holding the employee out of regulated service.

Section 219.213—Unlawful Refusals; Consequences

Currently, paragraph (b) requires a railroad to provide notice to an employee who is being withdrawn from service under part 219 for refusing to provide a specimen for PAT testing. FRA is proposing to amend this paragraph to clarify that this notice must be in writing.

Subpart D—Reasonable Suspicion Testing

Currently, the requirements for both reasonable suspicion testing and reasonable cause testing are contained in Subpart D—Testing for Cause. Because these types of tests are similarly named, reasonable suspicion testing is frequently confused with reasonable cause testing even though their criteria are completely different, and reasonable suspicion testing is mandatory while reasonable cause testing is discretionary. To highlight the distinctions between these two types of tests, FRA is proposing to separate its reasonable suspicion and reasonable cause testing requirements into two subparts. While subpart D would continue to contain FRA's requirements for reasonable suspicion testing, FRA's reasonable cause testing requirements would be moved to proposed subpart E. (The Identification of Troubled Employees requirements currently in subpart E would be moved to new subpart K, which would address Peer Prevention Programs.)

Section 219.301—Mandatory Reasonable Suspicion Testing

This section would contain general provisions requiring railroads to conduct reasonable suspicion testing. The language in paragraph (a), which addresses reasonable suspicion alcohol tests, and paragraph (b), which addresses reasonable suspicion drug tests, would be generally consistent with the existing requirements in § 219.300, but FRA is proposing new language in paragraph (a) to clarify that a reasonable suspicion alcohol test is not required to confirm an on-duty employee's possession of alcohol.

Paragraph (c) would require all reasonable suspicion tests to comply with the requirements of proposed § 219.303 (which is generally consistent with existing requirements found in § 219.300(b) and is discussed in more detail below).

Paragraph (d) would reference the provision in proposed § 219.11(b)(2) stating that in a case where an employee is suffering a substantiated medical emergency and is subject to alcohol or drug testing under part 219, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimens. This replaces similar language currently found in § 219.300(c), which states that reasonable suspicion testing is not required when a regulated employee is in need of immediate medical attention. However, FRA proposes to add new language in proposed § 219.305 clarifying that reasonable suspicion testing is still required if the employee's condition stabilizes within eight hours.

Section 219.303—Reasonable Suspicion Observations

This section would contain the requirements for reasonable suspicion observations currently in § 219.300(b).

Paragraph (a)

The language in paragraph (a), which addresses the observations required for alcohol tests, and paragraph (b), which addresses the observations required for drug tests, would be generally consistent with the existing reasonable suspicion observation requirements in § 219.300(b), although additional language would be added to both paragraphs to clarify that these observations must be made by a ''responsible railroad supervisor.''

Paragraph (b)

Additional language in paragraph (b) would clarify that although two supervisors are required to make the required observations for reasonable suspicion drug testing, only one of these supervisors must to be on-site and trained in accordance with § 219.11(g). This incorporates long-standing FRA guidance, since two on-site trained supervisors are rarely available. *See* Compliance Manual 11.3.3.3. The supervisor who is trained and on-site is required to describe the signs and symptoms that he or she observed to the off-site supervisor so that the off-site supervisor can confirm that reasonable suspicion of drug abuse exists. Because of privacy concerns, this communication between supervisors may be made by telephone, but not by radio or email.

Paragraph (c)

FRA is proposing new language in paragraph (c). Under this new language, a regulated employee who has had an FRA reasonable suspicion test may not be held out of service pending receipt of the employee's test result, although a railroad may hold the employee out of service under its own authority if the railroad has an independent basis for doing so. For example, a railroad may remove a regulated employee from service if the employee is exhibiting signs of drunken behavior, regardless of whether Federal reasonable suspicion testing was performed.

Paragraph (d)

Paragraph (d) would contain new language requiring railroads to document and maintain the basis for each determination to conduct a reasonable suspicion test (e.g., the determining supervisor(s)'s observations of the employee's signs and symptoms). The trained supervisor who made the determination should complete this documentation as soon as practicable. This proposal would incorporate FRA's long-standing guidance and interpretation regarding this requirement. *See id.*

Section 219.305—Prompt Specimen Collection; Time Limits

This section would contain provisions regarding the prompt collection of specimens for reasonable suspicion testing. These requirements are currently found in § 219.300(d)(1) and § 219.302(a), (c), and (e).

Paragraph (a)

Proposed paragraph (a) would contain language currently in § 219.302(a), which specifies that, consistent with the need to protect life and property, testing must be promptly conducted following the observations upon which the reasonable suspicion testing determination is based.

Paragraph (b)

Paragraph (b) would state that whenever a railroad cannot collect reasonable suspicion testing specimens within two hours of the determination to test, the railroad must prepare and maintain a record explaining the reasons for the delay. If, however, a railroad has not collected reasonable suspicion testing specimens within eight hours of its determination to test, the railroad must discontinue its collection attempts and record why the test could not be conducted. Currently, this requirement is found only in § 219.300(d)(1) and applies only to reasonable suspicion alcohol tests, but FRA is proposing to specifically apply this requirement to reasonable suspicion drug tests as well. The proposed requirement for a railroad to cease its attempts to conduct a reasonable suspicion drug test if it has not done so within eight hours of the railroad's determination to test would supersede the current language in § 219.302(b)(1) (which currently addresses both reasonable suspicion and reasonable cause testing). Consistent with existing language in § 219.302(e), paragraph (b) would specify that the eight-hour deadline has been met if the railroad has delivered the employee to the collection site (where the collector is present) and made a request to commence specimen collection.

Proposed paragraph (b) would also contain language similar to that currently in § 219.300(d)(1), under which reasonable suspicion testing records required by that section must be submitted upon request of the FRA Administrator. The amended requirement in paragraph (b) would instead require these records to be submitted upon request of the FRA Drug and Alcohol Program Manager.

Paragraph (c)

Paragraph (c) would incorporate, without change, language currently found in § 219.302(c), which addresses the reasonable suspicion testing of employees who have been released from duty, who have been transported to receive medical care, or who have failed to remain available for testing.

Subpart E—Reasonable Cause Testing

As discussed above, FRA is proposing to move its reasonable cause testing requirements from subpart D to subpart E to separate reasonable suspicion and reasonable cause testing into distinct subparts. As discussed further below, FRA is proposing the following substantive amendments to its reasonable cause testing requirements: (1) Requiring a railroad to select and perform all reasonable cause testing under either FRA or company authority; (2) specifying that reasonable cause testing is only authorized after ''train accidents'' and ''train incidents,'' as defined in § 219.5; and (3) adding new rule violations or other errors related to railroad operating practices as a basis for Federal reasonable cause testing.

Section 219.401—Authorization for Reasonable Cause Testing

This section would contain an amended version of the conditions for FRA reasonable cause testing currently in § 219.301. Under § 219.301, a railroad currently has three options if the conditions for a reasonable cause test outlined in the section have been met: (1) Conducting a reasonable cause test under FRA authority; (2) conducting a reasonable cause test under its own authority; or (3) choosing not to conduct a reasonable cause test. A railroad does not have to announce in advance or be consistent as to which option it chooses; thus, a railroad may decide to conduct an FRA reasonable cause test for one event, and a company reasonable cause test for the next, without any explanation. This flexibility has, unfortunately, had the unintended effect of creating confusion within the railroad industry. In some instances, FRA believes it has led to arbitrary decision making by railroads. For example, Federal reasonable cause testing is sometimes performed in situations that don't meet one of the conditions specified in current § 219.301, but which would nevertheless qualify for company reasonable cause testing.

In new paragraph (a), FRA is proposing to address these issues by requiring each railroad to decide and announce (in the educational materials the railroad would be required to

provide to its regulated employees under § 219.23(e)(5)) whether it will be exclusively using FRA or its own authority for reasonable cause testing after § 219.403 testing events. For example, under this proposal, a railroad that announces it will be using FRA authority for reasonable cause tests would then be prohibited from conducting reasonable cause tests under its own authority. However, this restriction would apply only to reasonable cause tests conducted after an event listed in § 219.403. A railroad may always use its own authority to test for events that are outside of FRA's criteria for reasonable cause testing.

Consistent with existing § 219.301(a), proposed paragraph (b) of this section would authorize railroads to conduct reasonable cause testing under certain conditions. FRA is not proposing any substantive changes to this general authorizing language, except to clarify that it would apply *only* when a railroad conducts reasonable cause testing under FRA authority.

Section 219.403—Requirements for Reasonable Cause Testing

This section would describe when FRA reasonable cause testing is authorized. As briefly discussed earlier in Section V.H of this preamble, FRA is proposing to specify that reasonable cause testing is authorized only after ''train accidents'' and ''train incidents,'' as defined in § 219.5, and not after all part 225 reportable ''accidents/incidents.'' In addition, as briefly discussed earlier in Section V.I of this preamble, FRA is proposing to authorize Federal reasonable cause testing for additional rule violations or other errors that reflect the expansion of part 219 to MOW workers, relate to signal systems and highway-rail grade crossing warning systems, and reflect recent amendments to 49 CFR part 218, Railroad Operating Practices.

Introductory Text

If a potential reasonable cause testing event occurs, FRA would require a railroad to determine whether it has the authority to conduct an FRA reasonable cause test before it can begin reasonable cause testing process. As proposed, a railroad would have to make a threshold determination about its authority before it can conduct a reasonable cause test.

Paragraph (a)

Existing § 219.301(b)(2) is currently titled ''Accident/incident'' and authorizes reasonable cause testing following ''an accident or incident reportable under part 225'' when ''a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident.'' FRA is proposing to make this language paragraph (a) of this section and amend it to clarify that reasonable cause testing is only authorized following train accidents and train incidents, as defined in § 219.5.

FRA believes the phrases ''accident/incident'' and ''accident or incident reportable under part 225'' in existing § 219.301(b)(2) could imply that FRA reasonable cause testing is authorized after all part 225 reportable accidents/incidents. This implication is problematic because the term accident/incident, as defined in § 225.5, includes many events that should not justify FRA reasonable cause testing. Specifically, the term ''accident/incident'' includes many employee injuries and illnesses that are designed to conform with OSHA's recordkeeping/reporting requirements, but that do not necessarily fall otherwise within FRA's railroad safety jurisdiction.[21] *See* Accident Reporting Guide at 1–2 (stating that ''FRA's accident/incident reporting regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations'').

FRA audits have found some instances in which this confusing language has led a railroad to conduct FRA reasonable cause testing after all reportable injuries, regardless of whether or not a reportable injury was connected with the movement of on-track equipment. For example, FRA has encountered situations where railroads were conducting FRA reasonable cause testing after slips, trips, and falls resulting in a reportable injury, even if the railroad had insufficient reason to believe that the employee's act or omission contributed to the injury (which is also a violation of existing § 219.301(b)(2)).

Furthermore, confusion about whether FRA reasonable cause testing is authorized following all part 225 reportable accidents/incidents could potentially create a situation where a railroad utilizes FRA reasonable cause testing in a clearly inappropriate situation. For example, the § 225.5 definition of ''accident/incident'' includes occupational illnesses, such as carpal tunnel syndrome, carbon monoxide poisoning, noise-induced hearing loss, and various dust diseases of the lungs. *See* Accident Reporting Guide at Appendix E–2 through E–5. FRA also requires railroads to record and report certain suicide data, including a suicide attempt made by an employee on duty. *See id.* at 33. These are just a few examples of the events that could qualify as part 225 reportable accident/incidents that FRA believes should clearly not serve as a basis for FRA reasonable cause testing.[22]

FRA is proposing to correct this confusion by specifying in proposed § 219.403(a) that FRA reasonable cause testing is authorized following ''train accidents'' and ''train incidents,'' as defined by § 219.5, when a responsible railroad supervisor has a reasonable belief, based on specific, articulable facts, that the individual employee's acts or omissions contributed to the occurrence or severity of the train accident or train incident. By using the terms train accident and train incident, FRA is attempting to remove any implication that reasonable cause testing could be authorized following any part 225 reportable accident/incident. (A railroad would still remain free, however, to perform company authority reasonable cause testing for an accident/incident that otherwise did not qualify as a train accident or train incident.) FRA specifically requests public comment on the clarity of the proposed language.

As an editorial change, FRA is also proposing to replace the term ''supervisory employee'' with ''responsible railroad supervisor'' for consistency with the remainder of the subpart.

Paragraph (b)

Paragraph (b) would contain a list of rule violations and other errors that would be grounds for FRA reasonable cause testing when a regulated employee is directly involved. The rule violations and other errors currently in § 219.301(b)(3) would be moved to proposed paragraphs (b)(1)–(b)(4), (b)(6)–(b)(8), and (b)(10) of this section, without any substantive amendments. Proposed paragraphs (b)(5), (b)(9), (b)(11)–(b)(12), and (b)(13)–(b)(18) would contain additional rule violations and other errors that would be new

[21] Because FRA's employee injury and illness recordkeeping/reporting requirements employ equivalent standards to those promulgated by OSHA, OSHA permits railroads to record and report employee injuries and illnesses only to FRA. *Id.* FRA then shares this employee injury and illness data with OSHA. *Id.* at 2.

[22] Although § 219.5 does currently define ''accident or incident reportable under part 225'' to exclude ''covered data'' cases under part 225, ''covered data'' cases are only a small subset of part 225 reportable accidents/incidents that should not authorize FRA reasonable cause testing.

grounds for FRA reasonable cause testing, as discussed below.[23]

• Additional Rule Violations or Other Errors Related to Railroad Operating Practices

In proposed paragraphs (b)(5) and (b)(9), FRA would add two new categories to the rule violations or other errors that are grounds for reasonable cause testing. These additional categories reflect recent amendments to 49 CFR part 218—Railroad Operating Practices.

In 2008, FRA amended part 218 to require railroads to adopt and comply with operating rules regarding shoving and pushing movements and the operation of switches. *See* 73 FR 8475–8482, Feb. 13, 2008. Specifically, §§ 218.103–218.107 require railroads to adopt and comply with operating rules regarding switches. FRA believes that many of these operating rule requirements for switches are already reflected by the current reasonable cause testing provisions, which authorize testing for ''[a]lignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch'' and ''[e]ntering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover movement is completed.'' § 219.301(b)(3)(iv) and (vii). Nevertheless, paragraph (b)(5) would authorize FRA reasonable cause testing if a regulated employee fails to restore and secure a main track switch when required.

Similarly, § 218.99 establishes certain requirements for railroad operating rules regarding shoving and pushing movements. FRA is proposing to authorize reasonable cause testing only for certain § 218.99 operating rule violations. For instance, FRA would not authorize such testing when the violation of an operating rule does not pose a sufficient safety concern (e.g., a failure to conduct a required job briefing). FRA would, however, authorize reasonable cause testing if a regulated employee violates a valid § 218.99(b)(3) railroad operating rule addressing point protection.

• Additional Rule Violations or Other Errors Related to MOW Employees

To reflect the proposed expansion of part 219 to cover MOW employees, paragraphs (b)(13)–(b)(17) would authorize FRA reasonable cause testing for certain rules violations and errors related to the performance of MOW activities. Under paragraph (b)(13), testing would be authorized for the failure of a machine operator that results in a collision between a roadway maintenance machine and/or other on-track equipment or a regulated employee. Under paragraph (b)(14), testing would be authorized for the failure of a roadway worker-in-charge to notify all affected employees when releasing working limits. Under paragraph (b)(15), testing would be authorized for the failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment. Under paragraph (b)(16), testing would be authorized for the failure to ascertain on-track safety before fouling a track. Under paragraph (b)(17), testing would be authorized for the improper use of individual train detection (ITD) in a manual interlocking or control point.

FRA is requesting public comment on whether these proposed paragraphs sufficiently address those MOW operating rule violations and errors that justify reasonable testing by posing a safety concern. Are there other operating rule violations and errors that should be included?

• Additional Rule Violations or Other Errors Related to Covered Service

FRA is also proposing new rule violations and other errors that would be grounds for FRA reasonable cause testing primarily for covered employees. The first two additional rule violations or other errors related to signal systems and highway-rail grade crossing warning systems. Interference with the normal functioning of a signal system or a grade-crossing signal device is a serious safety concern, as is the failure to properly perform any required stop-and-flag duties. Such failures could result in a collision between trains or a highway-rail grade crossing accident.

First, under paragraph (b)(11), FRA would authorize reasonable cause testing if a regulated employee has interfered with the normal functioning of any grade crossing signal system or any signal or train control device without first taking measures to provide for the safety of highway traffic or train operations which depend on the normal functioning of such a device. Such interference includes, but would not be limited to, failure to provide alternative methods of maintaining safety for highway traffic or train operations while testing or performing work on the devices or on track and other railroad systems or structures which may affect the integrity of the system. This proposed provision adopts language from the unlawful interference provisions of § 234.209 (grade crossing systems) and § 236.4 (signals) and is intended to encompass the same types of interference that are covered by those sections. The types of devices referred to by this provision would include (but are not limited to) a wayside or cab signal system, component, or warning device, as well as the flashing lights or gates at a highway-rail grade crossing. For example, FRA reasonable cause testing would be authorized whenever the actions of a regulated employee result in a false proceed signal or a highway-rail grade crossing activation failure.

Second, under paragraph (b)(12), FRA reasonable cause testing would also be authorized if a regulated employee failed to perform required stop-and-flag duties as required after of a malfunction of a grade crossing signal system. FRA is proposing this revision because a regulated employee who fails to perform stop-and-flag duties as required after a malfunction of a grade crossing signal system may not be the same regulated employee who originally interfered with the normal functioning of the system.

Finally, in paragraph (b)(18), FRA reasonable cause testing would be authorized if a failure to apply three point protection (by fully applying the locomotive and train brakes, centering the reverser, and placing the generator field switch in the off position) results in a reportable injury to a regulated employee.

Public Comment Requested

As with its proposed MOW operating rule violations and errors, FRA is requesting public comment on whether additional rule violations or errors should be added. FRA is also interested in feedback recommending changes to the wording ''proposed rule violations or other errors'' as used in this section. Because FRA reasonable cause testing would remain optional, a contracting company that performs regulated service for a railroad would not be required to conduct FRA reasonable cause tests on its regulated employees. However, a railroad could conduct FRA reasonable cause testing of contractors when they are performing regulated service on the railroad's behalf.

[23] Railroads should note that FRA reasonable cause drug testing authority does not apply if a rule violation or error results in an event that qualifies for mandatory PAT testing under § 219.201. *See* § 219.301(e). Reasonable cause alcohol testing authority may, however, currently be exercised in PAT testing situations when ''breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of specimens under subpart C.'' *Id.* Similar provisions (amended as discussed below) are found in § 219.409 of the proposed rule.

Section 219.405—Documentation Requirements

FRA is proposing to require a railroad to create and maintain written documentation describing the basis for each reasonable cause test it conducts under FRA authority. The railroad supervisor who determines that reasonable cause exists for FRA testing would have to document the observations or facts that he or she relied upon in making the determination. To ensure that a supervisor's recollection of the incident is as fresh as possible, FRA would require the supervisor to document the basis for each reasonable cause test promptly, although the supervisor would not be expected to complete this documentation before the test has been performed. The minimum supervisory documentation requirements would vary according to the basis for the reasonable cause test. If the basis for a reasonable cause test is the occurrence of a train accident or train incident, a supervisor must document, at a minimum, the following: (1) The amount of railroad property damage; and (2) the basis for the supervisor's belief that an employee's acts or omissions contributed to the occurrence or severity of the train accident or train incident. If the basis for a reasonable cause test is a rule violation or other error, a supervisor would have to document, at a minimum, the following: (1) The type of violation involved; and (2) the extent of each tested employee's involvement in the violation. FRA believes that this proposed documentation requirement would decrease the number of improperly performed Federal reasonable cause tests.

Section 219.407—Prompt Specimen Collection; Time Limitations

This section would contain language similar to that in proposed § 219.305 (which addresses specimen collection and time limitation requirements for reasonable suspicion testing), but would also clarify that the eight-hour time period for conducting reasonable cause testing runs from the time a railroad supervisor is notified of the occurrence of a train accident, train incident, or rule violation, rather than from the time of the train accident, train incident, or rule violation's occurrence.

Section 219.409—Limitations on Authority

Paragraph (a)

This paragraph would contain language currently in § 219.301(e), with three proposed clarifications. First, FRA would clarify that if an event qualifies for mandatory PAT testing, a railroad is prohibited from conducting FRA reasonable cause tests in lieu of, or in addition to, the required PAT tests. Second, FRA would remove the word ''compulsory,'' which misleadingly implies that FRA reasonable cause testing is required, when it is optional but authorized in certain situations. Third, FRA would remove the second sentence of the current § 219.301(e), which, in part, states that ''breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of an accident and conduct of such tests does not materially impede the collection of specimens under Subpart C of this part.'' FRA believes this sentence is confusing because FRA is proposing, in § 219.203(c), to allow only PAT breath alcohol tests to be performed after a PAT qualifying event, although such testing should be recorded on the Part 40 Alcohol Testing Form (ATF).

Paragraph (b)

For reasons similar to those discussed in proposed § 219.211(b), paragraph (b) of this section would prohibit a railroad from holding a regulated employee out of service pending the results of an FRA reasonable cause test. A railroad would not be prohibited from holding an employee out of service under its own authority, however, so long as the railroad is not doing so simply because it is waiting for the employee's FRA reasonable cause test result.

Paragraph (c)

This paragraph would contain new language requiring a supervisor to make a reasonable cause determination for each crew member, instead of for the crew as a whole. For example, if a train crew operated their train past an absolute block signal, a supervisor would have to consider the engineer's actions apart from those of the conductor, to ensure that only those crew members who may have contributed to the rule violation are tested. In this example, if a supervisor discovers that the conductor was on the ground setting out a freight car when the train passed the signal, the supervisor should require only the engineer to undergo FRA reasonable cause testing.

Subpart F—Pre-Employment Tests

Section 219.501—Pre-Employment Drug Testing

Paragraph (a)

Currently, paragraph (a) of this section prohibits a railroad from allowing an individual to perform covered service unless the individual has had a Federal pre-employment drug test with a negative test result. FRA is proposing to amend this paragraph to require a regulated employee to have a negative Federal pre-employment drug test result for each railroad for which the employee performs regulated service, although this requirement would apply only to a railroad's direct employees, and not to employees of contractors who perform regulated service for the railroad.

Paragraph (b)

Currently, paragraph (b) states that, for purposes of pre-employment drug testing only, the term covered employee includes an applicant. The paragraph also states that no record may be maintained if an applicant declines to be tested and withdraws his or her application for employment. FRA is proposing to move this language to new paragraph (e) and to amend it as discussed below.

As proposed, new paragraph (b) would address the pre-employment drug testing requirements for contractor employees. In contrast to its proposed pre-employment drug testing requirements for regulated employees (see the discussion of paragraph (a) above), FRA would not require a contractor employee who performs regulated service for multiple railroads to have a negative Federal pre-employment drug test result for each railroad. Instead, each railroad would only have to verify and document that the contractor employee has a negative Federal pre-employment drug test result on file with the contractor who is his or her direct employer. However, a contractor employee would be required to have a new Federal pre-employment drug test if the he or she switches direct employers by working for another contractor who provides regulated service to railroads.

Paragraph (c)

FRA is proposing a new paragraph (c) to clarify that a railroad would not have to conduct an FRA pre-employment drug test if an applicant or first-time transfer to regulated service already has a negative drug test result from a pre-employment test conducted by the railroad under the authority of another DOT agency, such as the Federal Motor Carrier Safety Administration (FMCSA). FRA believes this flexibility most benefits employees in positions requiring a commercial driver's license (CDL) (e.g., certain MOW employees and signal maintainers), since a negative FMCSA pre-employment drug test result is one prerequisite to holding a CDL.

See 49 CFR 382.301. Under this proposal, a railroad would not have to wait for a negative FRA pre-employment drug test result before transferring a CDL holder to a regulated service position for the first time, although the railroad would remain free to perform a second pre-employment drug test under its own authority. Since many MOW employees already hold CDLs because they operate railroad commercial motor vehicles, FRA believes this proposal would substantially lessen the number of pre-employment drug tests railroads would have to perform after the effective date of the final rule. (FRA has previously included this pre-employment drug testing interpretation in its guidance. *See* Interpretive Guidance Manual at 32.)

This provision would apply, however, only to negative DOT pre-employment drug tests that had been conducted by the railroad itself. A CDL holder would still need a negative FRA pre-employment drug test for each railroad for which he or she performs regulated service. For example, a CDL holder who had a negative DOT pre-employment drug test for Railroad A would still need a negative FRA pre-employment drug test result for Railroad B before he or she could begin to perform regulated service for Railroad B.

Paragraph (d)

As mentioned above, FRA would move an amended version of the language currently in paragraph (b) to a new paragraph (d). As proposed, to decline a pre-employment drug test and have no record kept of that declination, an applicant must withdraw his or her application before the drug testing process begins. In § 40.63(c), DOT states that the drug testing process begins when either the collector or the employee selects an individually wrapped or sealed collection container.

Paragraph (e)

In new paragraph (e), FRA would exempt two groups of employees from pre-employment drug testing: (1) Employees who are performing *MOW activities* for a railroad prior to the effective date of the final rule; and (2) employees who are performing *regulated service* for a *small* railroad (as defined in § 219.3(c)) prior to the effective date of the final rule. However, a MOW or regulated employee would be exempted only so long as the employee continues to work for the same railroad that he or she was working for prior to the effective date of the final rule. A previously exempted employee would be required to have a negative Federal pre-employment drug test result if he or she applies to perform regulated activities for a new railroad.

Section 219.502—Pre-Employment Alcohol Testing

FRA is proposing only minor amendments to this section, which addresses optional pre-employment alcohol testing.

Paragraphs (a)(1)–(a)(2)

Currently, paragraphs (a)(1) and (a)(2) of this section refer to pre-employment alcohol testing for ''safety-sensitive employees'' who perform ''safety-sensitive functions.'' (In this context, ''safety-sensitive'' is referring to ''DOT safety-sensitive functions'' and ''DOT safety-sensitive employees,'' as defined in this proposed rule, and not FRA ''safety-sensitive functions'' as used in § 209.301 and § 219.303.) For clarification purposes only, FRA would substitute ''regulated employees'' and ''regulated service'' wherever ''safety-sensitive employees'' or ''safety-sensitive functions'' now appear, since FRA would designate regulated employees and regulated service as DOT safety-sensitive employees and DOT safety-sensitive functions for purposes of this part.

Paragraph (a)(5)

As in paragraphs (a)(1) and (a)(2) of this section, FRA would amend paragraph (a)(5) by substituting ''regulated service'' for ''safety-sensitive functions.'' FRA would also amend this paragraph to clarify that a railroad may not permit a regulated employee with an alcohol concentration of 0.04 or greater to perform regulated service until the employee has completed the return-to-duty process in § 219.104(d).

Paragraph (b)

Currently, paragraph (b) of this section (addressing pre-employment alcohol testing) contains language identical to current § 219.501(b) (addressing pre-employment drug testing), which provides that, as used in subpart H of this part, the term covered employee includes an applicant for pre-employment testing only. It also provides that no record may be maintained if an applicant declines to be tested and withdraws his or her application for employment. As discussed above for § 219.501(b), FRA is also proposing to amend the language in § 219.502(b) to clarify that an individual must decline to participate in a pre-employment alcohol test by withdrawing his or her application before the testing process begins. As defined by DOT in § 40.243(a), the testing process begins when an individually wrapped or sealed mouthpiece is selected by the collector or the employee.

Section 219.503—Notification; Records

Currently, the first and second sentences of this section require railroads to provide medical review of pre-employment drug tests and to ''notify'' an applicant of the ''results of the drug and alcohol test'' as provided for by subpart H. FRA would amend both sentences to clarify that subpart H incorporates the requirements found in part 40. In addition, FRA would amend the second sentence to clarify that a railroad must provide written notice not only when an applicant has a positive test result but also when an applicant has another type of non-negative test result (an adulteration, substitution, or refusal). FRA would not, however, require written notification of negative pre-employment alcohol or drug tests.

FRA would also amend the third sentence of this section to clarify that a railroad must maintain a record if an application was denied because the applicant had a non-negative Federal pre-employment test. It is important to maintain records for individuals who have a non-negative test result on a pre-employment test, even if it resulted in their application for employment being denied, because such individuals must comply with the return-to-service and follow-up testing requirements of part 40 prior to performing DOT safety-sensitive functions for any employer regulated by a DOT agency. FRA is therefore proposing to specify that the only time a record does not have to be maintained is when an applicant withdrew an application to perform regulated service prior to the commencement of the testing process. FRA believes that this is the only time that such records are not necessary.

Section 219.505—Non-Negative Tests and Refusals

Currently, this section provides that an individual who ''refuses'' a pre-employment test may not perform covered service based upon the application and examination with respect to which such refusal is made. FRA believes this language is too narrow for two reasons. First, it should also clarify that an individual may not begin performing regulated service if he or she has a non-negative test result (e.g., a positive, adulterated, or substituted test result) on a DOT pre-employment test. Second, the prohibition on performing covered service should be extended to the performance of any DOT safety-sensitive functions. FRA therefore proposes to

amend this section to specifically prohibit individuals who refused or who had a non-negative pre-employment test result from performing DOT safety-sensitive functions for any DOT-regulated employer until they have completed the Federal return-to-duty process of § 219.104(d). This amendment would also standardize the requirements of this section with § 40.25(e), which provides that an employer who obtains information that an employee has violated a DOT agency drug or alcohol regulation must not use that individual to perform DOT safety-sensitive functions unless the employer receives information that the individual has complied with the return-to-duty requirements of part 40 or any other DOT agency.

Subpart G—Random Drug and Alcohol Testing Programs

A properly constructed and managed random testing program is a valuable tool for deterring the misuse of drugs and abuse of alcohol by regulated employees. As such, it is an essential cornerstone to a successful part 219 drug and alcohol safety program. The goal of random drug and alcohol testing is for all regulated employees to believe that they may be called for a random test without advance warning any time they are on-duty and subject to performing regulated service.

Subpart G currently contains few definite requirements for FRA random testing. Given this lack of specificity, finding and understanding FRA's random testing requirements can sometimes be a difficult task. FRA is proposing to revise and expand subpart G, although very few of the proposed amendments would result in substantive changes to the regulatory requirements. Rather, the primary purpose of the proposed amendments is to clarify the applicable requirements and provide railroads additional information on how to properly implement and manage an FRA random testing program. Much of this additional information is currently contained in the second edition of FRA's Part 219 Alcohol/Drug Program Compliance Manual (''Compliance Manual''). Available to the public on FRA's Web site (*http://www.fra.dot.gov/eLib/details/L01186*), the Compliance Manual promotes part 219 compliance by clarifying both the regulation's requirements and FRA's expectations. *See* Compliance Manual 1.2. The program standards contained in the Compliance Manual have formed the basis of FRA's part 219 railroad audits for over nine years and have been particularly useful in helping railroads establish effective FRA random testing programs. Incorporating this important guidance into the regulations will help railroads understand and implement the complex random testing requirements of subpart G, thereby improving the deterrence value of FRA random testing and promoting railroad safety.[24]

In order to effectively incorporate this operational guidance, FRA is proposing to reorganize subpart G. The principal proposed changes can be summarized as follows:

- Individual sections on random drug testing requirements (§§ 219.601–219.605) and random alcohol testing requirements (§§ 219.607–219.611) would be combined into single sections addressing both drug and alcohol random testing. Because the differences between the requirements for random drug and alcohol testing are minimal, this consolidation would eliminate a significant amount of redundancy.
- Requirements for random testing plans, pools, selections, and collections would be separated and placed into individual sections dedicated to those subjects. These sections would also incorporate guidance from the Compliance Manual.
- Subpart G would be amended to explain how a regulated service contractor could either participate in a railroad's FRA random testing program or operate its own FRA-accepted random testing program (either independently or through a C/TPA).
- Railroads would be required to demonstrate that all employees (defined in § 219.5 to include employees, volunteers, or probationary employees of a railroad or a contractor to a railroad), performing regulated service are in compliance with the random testing requirements of subpart G. FRA is also proposing a mechanism that would provide a clear path for the future incorporation of any additional categories of employees into the random testing requirements of subpart G. This mechanism would eliminate the need to extensively amend subpart G if the scope of part 219 was expanded again in the future.

Section 219.601—Purpose and Scope of Random Testing Programs

This section would contain general language explaining the purpose of Federal random testing programs and would clarify how subpart G applies to regulated employees, including contractors and volunteers, who work for more than one railroad or are subject to the random testing requirements of more than one DOT agency.

Paragraph (a) would explain that the purpose of random testing programs is to promote safety by deterring regulated employees from misusing drugs or abusing alcohol.

Paragraph (b) would require a railroad to ensure that all of its regulated employees are subject to the random testing requirements of subpart G, including its regulated employees who are contractors or volunteers performing regulated service for the railroad. Specifically, this paragraph is intended to clarify that a railroad is obligated to ensure that all individuals performing regulated service for the railroad either as a contractor or volunteer are subject to FRA's random testing requirements when performing regulated service for that railroad. Of course, a railroad would *not* be required to ensure that contractor employees or volunteers are compliant with subpart G when they are performing regulated service for another railroad. FRA believes this clarification is necessary given the proposed expansion of part 219 to cover a large population of MOW contractors. A contractor who failed or refused to comply with the random testing requirements of this subpart when performing regulated service for any railroad could be subject to the civil penalty sanctions of § 219.9.

Paragraph (c) would state that a regulated service contractor or volunteer could be incorporated into more than one FRA random testing program if: (1) The contractor or volunteer would otherwise not be part of a non-railroad testing program (discussed in proposed § 219.609) that meets the requirements of subpart G and is acceptable to the contracting railroad; or (2) the contracting railroad cannot verify that the contractor or volunteer is part of an FRA random testing program that meets the requirements of subpart G and is acceptable to the railroad. This section would not require a railroad to accept either a railroad or non-railroad random testing program. A railroad would always be free to incorporate regulated service contractor employees and volunteers into its own random testing program, regardless of whether or not they are already part of a program run by another railroad or a contracting company.

Paragraph (d) would explain how railroads must handle regulated employees who are subject to the random testing regulations of more than one DOT agency. (For example, a regulated employee may be subject to the random testing requirements of both FRA and FMCSA if he or she holds a

[24] After publication of the final rule, FRA will revise and update the Compliance Manual as necessary to reflect any new requirements.

CDL.) The proposed language of paragraph (d) is generally consistent with paragraph (h) of existing § 219.602, but would be revised to clarify that regulated employees subject to the random testing regulations of more than one DOT agency may not be included in more than one DOT random testing pool and that this provision applies to both random drug *and* alcohol testing, as discussed below.

Currently, paragraph (h) of § 219.602 states that covered employees subject to random drug testing under the drug testing rules of more than one DOT agency for the same railroad must be subject to random drug testing selection at the applicable rate set by the DOT agency regulating more than 50% of the employee's functions. For example, if FMCSA regulates 60 percent of a regulated employee's DOT functions, the railroad must subject him or her to random testing selection at or above the minimum annual random testing rate set by FMCSA. This has been historic DOT guidance regarding Federal random testing. *See* Office of Drug & Alcohol Policy and Compliance, U.S. Dep't. of Transp., Best Practices for DOT Random Drug and Alcohol Testing 3, *available at http://www.dot.gov/odapc/best-practices-dot-random-drug-and-alcohol-testing*. A similar provision is inexplicably missing, however, from the random alcohol testing sections of the existing regulation. As there is no logical reason for this provision to apply only to random drug testing, FRA believes that this is an accidental oversight in the current regulation. Furthermore, FRA guidance has historically applied this requirement to random alcohol testing, as well as drug testing. *See generally* Compliance Manual 9.5.3.1(e) (discussing the requirements for employees from different DOT agencies without distinguishing between random drug and alcohol testing). Accordingly, proposed paragraph (d) would correct this oversight and clarify that this provision applies to both drug and alcohol random testing.

Section 219.603—General Requirements for Random Testing Programs

This section would contain requirements that apply generally to FRA random testing programs. This section would also act as a table of contents for subpart G, directing readers to the specific sections containing the detailed requirements for random testing entries, pools, selections, etc. FRA believes including such information near the beginning of subpart G would help make the regulation more reader-friendly.

Paragraph (a) would generally require a railroad to ensure that its random testing program is designed and implemented in a way that its regulated employees should reasonably believe that they may be called for FRA random testing without advance notice any time they are on duty and subject to performing regulated service. FRA understands that ensuring this perception may be difficult for smaller railroads and contractor companies with a limited number of individuals in a testing pool, but FRA expects all entities to comply with this provision to the extent possible. FRA could find a railroad in violation of this section if it determines the railroad has not made a good faith effort to comply.

Paragraph (b) would prohibit a random testing program from having a bias, having an appearance of bias, or providing an opportunity for a regulated employee to avoid complying with subpart G. For example, this paragraph would prohibit a supervisor from performing the selection for a random testing pool to which he or she belonged, as this would create an appearance of bias.

Paragraph (c) would require a railroad to submit for FRA approval a random testing plan meeting the requirements of §§ 219.603–219.609 and addressing all employees as defined in § 219.5 (including contractors and volunteers) who perform regulated service on the railroad's behalf. Paragraphs (d)–(j) would identify where railroads may find the subpart G requirements for random pools (§ 219.611), random selections (§ 219.613), random collections (§ 219.615), railroad and employee cooperation (§ 219.617), responsive action (§ 219.619), service agents (§ 219.621), and records (§ 219.623), respectively.

Section 219.605—Submission and Approval of Random Testing Plans

This section would contain requirements for the submission, approval, and amendment of random testing plans by railroads subject to the requirements of subpart G.

Paragraph (a)(1) would require a railroad to submit a random testing plan directly to the FRA Drug and Alcohol Program Manager (Program Manager) for approval. This submission must be made no later than 30 days prior to the date a railroad commences operations. If a railroad previously qualified for the small railroad exception under § 219.3, but no longer does, it must submit its random testing plan no later than 30 days after it ceases to qualify as a small railroad. No random testing plan or substantive amendment to such plan may be implemented prior to obtaining FRA approval. While §§ 219.601(a) and 219.607(a) currently direct railroads to submit random testing plans to the Associate Administrator for Safety (for plan approval by the Administrator), the task of approving random testing plans has been delegated as a matter of practice to the Program Manager, who has played this role since the implementation of random testing in 1989. Amending this section to specify that plans must be submitted to the Program Manager would not substantively alter the approval process, but would enhance the efficiency by reflecting actual FRA practice.

Paragraph (a)(2) would provide a railroad three options for addressing different categories of regulated employees in its random testing plan. A railroad could either submit a separate plan for each category, combine all categories into a single plan, or amend a plan currently approved by FRA to incorporate an additional category. This approach is intended to provide maximum flexibility for railroads incorporating additional categories of regulated employees into their random testing plans. (Under the proposed rule, the only categories of regulated employees subject to the requirements of part 219 are covered employees and MOW employees. This proposed requirement would also apply, however, to any additional categories of employees that might be added to the scope of part 219 in the future.) FRA would still independently evaluate each plan or plan amendment submitted by a railroad to ensure that it met the requirements of subpart G. FRA would not approve individual plans or plan amendments that appear to discriminate against a particular group of regulated employees or that fail to meet the requirements of subpart G. A railroad could also not submit separate random testing plans for subcategories of regulated employees, such as engineers, conductors, or signalmen.

Paragraph (b) would specify that FRA will notify a railroad in writing whether its plan is approved, with specific explanation as to necessary revisions if the plan is not approved. Plans that are not approved must be revised and resubmitted by a railroad within 30 days of that notice. Failure to resubmit a disapproved plan with the necessary revisions would be considered a failure to submit a plan. This is slightly different from language currently found in § 219.601(c),[25] which states that a

[25] The requirements of proposed paragraph (b) are currently found in § 219.601(c) for random drug testing, but are inexplicably missing from the

failure to resubmit is a failure to *implement* a plan. FRA believes that the proposed language is a more accurate description of the underlying violation, however, because in such a situation there is no approved random testing plan to implement. This amendment would not substantively change existing requirements.

Paragraph (c) would require a railroad to implement a random testing plan no later than 30 days after FRA approval. Currently, railroads are required to implement random testing plans no later than 60 days following FRA approval. *See* §§ 219.601(d)(2) and 219.607(c)(2). When FRA's random testing requirements first became effective in 1988, allowing railroads 60 days to implement an approved random testing plan was appropriate given the newness of the regulation. Since that time, however, the railroad industry has become quite familiar with FRA's random testing requirements. Even if a railroad underwent an operational change that required it to implement an FRA random testing program for the first time (for example, if a railroad with 15 or fewer covered employees began engaging in joint operations [26]), there are numerous existing resources (such as established service agents, C/TPAs, FRA guidance, etc.) that can help the railroad promptly and efficiently implement a random testing plan. Given the availability of these resources and the knowledge of FRA's random testing program requirements throughout the railroad industry, FRA believes that 30 days is now sufficient for a railroad to implement a random testing plan following FRA approval.

Paragraph (d)(1) would require a railroad to submit a substantive amendment to an already-approved random testing plan at least 30 days prior to its intended effective date. Any such amendment could not be implemented prior to FRA approval. *See* §§ 219.601(a) and 219.607(a). An example of a substantive amendment would be any change to a railroad's construction of its random testing pools or its method of conducting random selections. If a railroad is uncertain whether an amendment is substantive or not, it should contact the Program Manager for guidance.

Paragraph (d)(2) would incorporate FRA guidance by clarifying that FRA pre-approval is not required for non-substantive amendments, but that the railroad must notify FRA of any such amendment prior to its effective date. *See* Compliance Manual 9.4.3.2. Examples of non-substantive amendments would include, but not be limited to, replacing or adding a service provider, such as a C/TPA, laboratory, collector, or MRO. FRA recognizes that current guidance in the Compliance Manual describes a change in service provider (except for a collector) as a substantive change for which pre-approval is necessary. *Id.* FRA's experience, however, has indicated that requiring approval for a change of service provider is not necessary because it imposes a burden on railroads that does not significantly promote safety. Accordingly, paragraph (d)(2) would specifically note that a change in service providers is not a substantive change requiring pre-approval.

Paragraph (e) would address railroad random testing plans that were approved prior to the effective date of the final rule. A railroad would not be required to resubmit such a plan unless it required amendment to comply with the final rule. If a railroad is required to submit either a new or an amended plan as a result of the final rule, this submission must be made at least 30 days before the effective date of the final rule.

Section 219.607—Requirements for Random Testing Plans

Generally, this section would direct a railroad to submit and comply with a random testing plan containing certain items of information. This is not a new requirement, and FRA guidance provides direction on what information such plans must contain.

Paragraph (a) would generally require a railroad to submit a random testing plan meeting the requirements of subpart G and to comply with those requirements when implementing the plan. Similar language can currently be found in § 219.601(b).

New language in paragraph (b) would inform railroads, contractor companies, and service agents that they may request a model random testing plan from the Program Manager. While this proposed language is new, FRA has historically made a model random testing plan available to railroads, and the plan is available for review and download on FRA's Web site at *http://www.fra.dot.gov/Page/P0345*. After modifying the model plan as necessary to fit its needs and the requirements of subpart G, a railroad could then submit it to FRA for approval.[27]

New language in paragraph (c) would specify certain information that a railroad's random testing plan must contain. Each item of information identified by paragraph (c) would have to be contained in a separate, clearly identified section of a random testing plan. For example, each plan would be required to have separate sections dedicated to items of information such as the total number of covered employees; the name, address, and contact information for the railroad's Designated Employer Representative; the method used to make random selections; etc. While section 9.4.3 of the Compliance Manual briefly discusses similar information requirements, proposed paragraph (c) provides additional detail and specificity regarding these mandatory elements of information, which largely mirror and somewhat expand the format of FRA's model random testing plan. By specifying the elements that must be included in every random testing plan, FRA intends to further the standardization of random testing plans. Standardizing random testing plans would promote compliance with subpart G by making it easier for FRA inspectors to evaluate plans, provide guidance and feedback on the development and implementation of such plans to regulated entities, and compare a railroad's actual practice with the required plan elements.

Section 219.609—Inclusion of Contractors and Volunteers in Random Testing Plans

Currently, subpart G does not discuss how a railroad's random testing plan should incorporate contractor employees and volunteers. FRA has nevertheless historically provided railroads informal guidance on how to manage random testing for covered service contractors and volunteers. This section would incorporate this guidance into part 219.

The introductory text of paragraph (a) would clearly state that a railroad's random testing plan must demonstrate that all of its regulated service contractor employees and volunteers are part of an FRA-compliant random testing program. Paragraphs (a)(1) and (a)(2) would explain two ways that a railroad could demonstrate compliance with this requirement:

sections on random alcohol testing. FRA believes this is an accidental oversight, as there is no logical reason for these plan submission requirements to apply only to random drug testing. Proposed paragraph (b) would correct the oversight and ensure that the requirements apply to both random drug and alcohol testing.

[26] Railroads should note that because this NPRM is not proposing any amendments to the small railroad exception of § 219.3(c), no railroad that was previously excepted from the Subpart G random testing requirements would lose that exception as a result of this proposed rule.

[27] After publication of the final rule, FRA will revise and update its model random testing plan as necessary to reflect any new requirements.

• Under paragraph (a)(1), a railroad could incorporate into its own random testing plan any contractor employee and/or volunteer performing regulated service on its behalf. The railroad would be responsible for ensuring that such individuals were selected and tested according to its random testing plan; or

• Under paragraph (a)(2), a railroad could indicate in its random testing plan that all contractor employees and/or volunteers performing regulated service on its behalf are included in a non-railroad random testing program meeting subpart G requirements. As used in subpart G, a non-railroad random testing program is one conducted by either a service agent (such as a C/TPA) or a contractor company. A railroad utilizing this option would be required to append to its random testing plan one or more addenda explaining how it would ensure that its regulated service contractor employees and volunteers are in compliance with subpart G. Such addenda could be either the non-railroad random testing program itself or a detailed description of the program and how it complies with FRA requirements.[28]

FRA believes the above options would facilitate subpart G compliance. For example, a railroad utilizing the paragraph (a)(2) option would be able to directly analyze the random testing programs of its contracting companies. This would help ensure that contracting companies performing regulated service for more than one railroad are in compliance with subpart G.

Railroads should note that paragraph (a) would not require them to accept and incorporate a non-railroad random testing program into their own random testing programs. A railroad would always be able to comply with subpart G by incorporating regulated service contractor employees and volunteers into its own random testing program, regardless of whether or not such individuals were already part of a non-railroad random testing program that complied with the requirements of subpart G.

Paragraph (b) would generally require a random testing plan and any attached addenda to contain sufficient details to fully document that the railroad is meeting the subpart G requirements for all personnel performing regulated service on its behalf.

[28] Railroads would be able to obtain information about the non-railroad random testing program under proposed § 219.623 (discussed below), which would require contractor companies and service agents to provide random testing records upon request to any railroad for which they are performing random testing responsibilities.

Paragraph (c) would specify that a railroad accepting a non-railroad random testing program would remain responsible for ensuring that the non-railroad program is properly subjecting the railroad's regulated service contractor employees and volunteers to the random testing requirements of subpart G. For example, this provision would require a railroad to evaluate for subpart G compliance any non-railroad random testing plan that it accepts.

Paragraph (d) would specify that FRA would not require submission and would not approve random testing plans for contractor companies or service agents under the provisions of § 219.603. FRA believes there may be a vast number of such contractor companies and service agents, and does not believe it would be a beneficial use of its resources to attempt to approve and audit all of them. Rather, as provided in paragraph (c), responsibility for ensuring that such plans and programs comply with the requirements of subpart G would rest with the railroad employing the contractor company or service agent. The only time FRA might address a non-railroad random testing plan would be when the plan itself was appended to a railroad's random testing plan, as described in paragraph (a)(2). In such situations, FRA could look at the non-railroad plan and note instances of non-compliance, which FRA would then communicate to the railroad for it to pursue on its own behalf with the contracting company or service agent.

Section 219.611—Random Alcohol and Drug Testing Pools

Subpart G currently provides railroads little guidance on the creation or management of random testing pools. Random testing pools are only briefly discussed in § 219.601(b)(2)(ii)–(iii), which requires all covered employees to be included in an FRA random testing pool and each random testing pool to contain only covered employees. FRA believes that subpart G can be improved by including this new section dedicated to requirements on how to implement random testing pools. In addition to some new substantive requirements (discussed below), this section would also incorporate FRA guidance on the proper creation and management of random testing pools. *See generally* Compliance Manual 9.5. FRA has been auditing railroads according to the standards of the Compliance Manual since it was published in 2002.

Paragraph (a)—General

Paragraph (a) would require a railroad to ensure that its random testing pools include all personnel performing regulated service on its behalf, except that a railroad would not have to include regulated employees who are part of a non-railroad random testing program that has been accepted by the railroad and is compliant with subpart G.

Paragraph (b)—Pool Entries

Paragraph (b) would contain requirements for pool entries, and the introductory text would state that a railroad must clearly indicate who will be tested when a specific pool entry is selected. FRA would not approve vaguely defined pool entries lacking either clarity or specificity. For example, if a railroad's pool entry is a job function, the railroad must indicate exactly who would be tested when an entry is selected. Would the individual performing that job function on the first shift of the selected day be tested, or the individual performing that job function for the first train into a certain yard after midnight? Would all individuals performing that job function be tested or would a single individual from that group be tested? As an illustration, if a pool entry was the job function ''third shift dispatcher,'' additional information (such as the desk that the dispatcher was working on) would be required if there was more than one individual acting as a third shift dispatcher and only one random test was to be performed.

Paragraph (b)(1) would identify three types of pool entries that are generally permitted: (1) Individual employee names or identification numbers; (2) train symbols; and (3) specific job assignments. These three options have traditionally been accepted by FRA as pool entries if they otherwise meet the requirements of subpart G. *See* Compliance Manual 9.5.3.1(f). If a railroad wishes FRA to consider other types of pool entries, it should include them in the random testing plan submitted to FRA for approval under proposed § 219.605. Although not required, FRA encourages smaller railroads to use individual employees or identification numbers as pool entries, rather than trains or job assignments. Individual pool entries are preferable for a smaller railroad because this maximizes its limited number of pool entries. Larger pool entries (such as train symbols), contain more than one employee, and would make a small railroad reach its required minimal annual testing rate earlier in the year than if it used individual pool entries. This could be problematic if the small railroad's random testing is not spread evenly through the year to achieve

maximum deterrence effect, as required by proposed § 219.615(c)(2) (discussed below). Small railroads also do not face the same logistical and cost difficulties that make train symbols or job functions useful as entries for larger railroads.

Paragraph (b)(1) would also incorporate FRA guidance by stating that pool entries must be of a generally consistent size and type. *See* Compliance Manual 9.5.3.1(f). For example, a pool could not combine individual employee entries with job function entries that identify multiple individuals. FRA would likely not take exception to a pool consisting of train symbols where the crew sizes might slightly vary. However, FRA may take exception to a pool made up of both individual employees and job assignments, or with job assignments which might vary in size from one employee to dozens of employees, as pool entries of vastly different size and type would adversely affect the chances that some individuals may be selected over others. A railroad contemplating unusual or possibly controversial pool make-ups should request FRA approval for that approach in its random testing plan.

Paragraph (b)(2) would state that pool entries may not be constructed in a way that permits a railroad field manager or field supervisor to have discretion over which regulated employees would be selected for random testing. For example, if the selected entry was ''third shift dispatcher'' and more than one individual met this description, a railroad could not permit a field manager/supervisor to decide which third shift dispatcher would be subject to random testing. Field managers/supervisors may personally know the individuals involved in a random selection, and permitting a field manager/supervisor to exercise discretion in this manner could create a situation where he or she was using that discretion to target or protect a specific individual. This language would supplement other proposed provisions prohibiting railroads from utilizing a selection method or conducting random testing collections in a way that permits a railroad field manager or supervisor to have discretion over which particular regulated employees would be selected for random testing.

Paragraph (b)(3) would incorporate FRA guidance by requiring a railroad to construct and maintain pool entries so that all regulated employees have an equal chance of being selected for random testing during each selection draw. *See* Compliance Manual 9.6.3. This requirement would apply even to regulated employees who were selected for random testing during a previous selection draw. For example, a railroad could not remove a regulated employee from a testing pool simply because he or she had already been selected for random testing that year. In order for a random testing program to have a deterrence effect, each regulated employee must believe that he or she could be selected for testing during any selection draw, regardless of whether or not he or she was selected for testing the week, month, or year before.

Paragraph (c)—Minimum Number of Pool Entries

Paragraph (c) would contain new language requiring a random testing pool to have at least four entries. A railroad could not use placeholder entries (entries that do not represent legitimate selections of regulated employees, whether individuals, train symbols, or job assignments) to comply with this requirement. This would be a new requirement not currently found in the regulation, Compliance Manual, or other published FRA guidance.

This proposal would address FRA's concern that random testing pools with fewer than four entries (regardless of whether the entries are individuals, trains, or job assignments) can diminish the deterrence effect of random testing. For example, if a railroad with only three regulated employees as entries in a pool was required to test for alcohol at a minimum annual rate of 10 percent,[29] the railroad would meet this requirement once it had selected and tested only one regulated employee. Once this test was completed, the deterrence effect of random testing would vanish because the railroad's other regulated employees could learn that the only test required for the year had already been completed. The purpose of random testing is to make every regulated employee expect that he or she could be subject to an alcohol or drug test any day. If the railroad has a limited number of entries in its random testing pool, this purpose is defeated.

Of course, the problem of small random testing pools and a diminished deterrence effect does not vanish once a pool has four or more entries. The same concern can exist for random testing pools with 5, 10, or even more entries, depending on the minimum annual testing rate. For this reason, this proposed amendment is only one component of FRA's solution for this difficulty. The second component is found in proposed § 219.613(d), which would require a railroad to select and test at least one entry from a random testing pool per quarter (i.e., every three months), regardless of the size of the pool and regardless of whether the railroad has already met its minimum annual random testing rate requirement. (A quarter would not need to be based on a calendar determination if a railroad is making selections on a monthly basis.) While § 219.613(d) will be independently discussed below, its relevance to § 219.611(c) lies in the fact that even a small random testing pool can provide a deterrence effect, so long as the pool members anticipate that at least one individual will be selected and tested per quarter. FRA intends §§ 219.611(c) and 219.613(d) to work together to promote the deterrence effect of random testing.

FRA does not believe it would be appropriate under § 219.613(d) to require railroads to select and test at least one entry from a pool per quarter without also requiring pools to have at least four entries. If the four entry requirement did not exist, a railroad could theoretically maintain a random testing pool with only one entry, which would then necessarily be subject to random testing four times a year as a result of proposed § 219.613(d). FRA believes that four is appropriate for the minimum number of pool entries because it complements the proposed § 219.613(d) requirement to select and test at least one entry per pool per quarter, which results in a minimum number of four tests per year. Under this approach, perfect odds for a four entry pool would result in each entry being selected for random testing once per year. (Of course, the odds are not perfect, and any entry in a four entry pool could end up being selected for random testing four times a year. It is this imperfection that generates the deterrence effect of random testing, so that every regulated employee believes that he or she can be selected for testing at any time, regardless of whether he or she was previously selected for testing.)

Overall, FRA's experience in helping railroads implement random testing programs indicates that there is no compelling reason for a railroad to maintain a random testing pool with fewer than four entries. FRA believes that this new requirement would not adversely impact railroads with fewer than four regulated employees, since paragraph (c) would specify that a railroad with fewer than four regulated employees could comply with this requirement by having those employees incorporated into either a railroad program or a non-railroad program (e.g.,

[29] In this scenario, even though the railroad has 15 or fewer covered employees, it is required to implement a Subpart G random testing program under § 219.3 because it engages in joint operations with another railroad.

by joining a C/TPA), so long as the random testing pool contained at least four entries.

Paragraph (d)—Pool Construction

Paragraph (d) would contain requirements for the construction of random testing pools.

Paragraph (d)(1) would prohibit a railroad from placing in an FRA random testing pool anyone who is *not* an individual subject to the random alcohol and drug testing requirements of a DOT agency (i.e., an individual who is not a ''DOT-regulated employee''). Including non-DOT-regulated employees in an FRA random testing pool would dilute the chances of a DOT-regulated employee being selected, thereby diminishing the deterrence value of random testing. Furthermore, a railroad mixing DOT-regulated and non-DOT-regulated employees in random testing pools would find it difficult to determine whether it was properly testing at the mandatory minimum percentage rate for DOT-regulated employees.

Paragraph (d)(2) would prohibit a single railroad from including a regulated employee in more than one DOT random testing pool. For example, a railroad could not include a regulated employee who holds a CDL in both an FRA and an FMCSA random testing pool. Rather, as provided by proposed § 219.601(d), a railroad must determine which agency regulates more than 50 percent of a regulated employee's DOT safety-sensitive duties and place that employee in the random testing pool that is testing at the required minimum annual rate of that agency. This paragraph would not prohibit a regulated employee from belonging to more than one FRA random testing pool if he or she performs regulated service for more than one railroad, each of which includes him or her in its own random testing program. Rather, it merely would state that an individual cannot be included in more than one DOT testing pool *by the same railroad.*

Paragraph (d)(3) would permit a railroad to place all DOT-regulated employees (both FRA and non-FRA regulated individuals) in a single random testing pool. Such a mixed pool, however, would have to be tested at the highest minimum random testing rate mandated by a DOT agency for any individual pool entry. For example, if the highest rate for an individual pool entry was 50 percent, the entire pool must be tested at a rate of 50 percent, regardless of whether other individual pool entries were subject to a lower minimum testing rate. Similarly, this paragraph would also permit railroads to place different categories of FRA regulated employees into a single testing pool, even if the minimum annual testing rates for those categories were different, so long as the entire pool was tested at the highest minimum testing rate for any individual entry.

This proposal is different from the strict wording of certain provisions in current part 219, which require railroads using a service agent to ensure that only FRA ''covered employees'' are in the service agent's random testing pool. *See* §§ 219.601(b)(2)(iii) and 219.607(b)(1)(i). However, FRA has not been actively enforcing this requirement, and other current provisions contradict it. *See* §§ 219.602(i) and 219.608(f). Furthermore, both FRA and ODAPC have independently published guidance specifying that employees regulated by different DOT agencies can be mixed in the same pool. *See* Compliance Manual 9.5.3.1(e) and Office of Drug and Alcohol Policy and Compliance, Best Practices for DOT Random Drug and Alcohol Testing, available at *http://www.dot.gov/odapc/best-practices-dot-random-drug-and-alcohol-testing.* Paragraph (d)(3), therefore, would make the wording of part 219 consistent with FRA and DOT's actual practice.

Paragraph (d)(4) would incorporate FRA guidance indicating that a railroad does not need to place regulated employees in separate pools for random drug and alcohol testing selection. *See* Compliance Manual 9.5.3.1(c). This paragraph would not, however, permit a railroad to make selections from a pool for drug testing, and then sub-select for alcohol testing from within that selected group. It would permit a railroad, however, to select employees for drug testing only and other employees for both drug and alcohol testing so long as every employee in the pool had an equal chance for selection for each group.

Paragraph (d)(5) would require a railroad to incorporate an individual into a random testing pool as soon as possible after his or her hire or transfer into regulated service. This requirement would promote both safety and fairness by ensuring that an individual newly hired or transferred into regulated service would be subject to selection during the next random testing selection period. Railroads must have a mechanism to ensure that these personnel are entered into a random pool without delay.

Paragraph (e)—Frequency of Regulated Service

Paragraph (e) would incorporate FRA guidance addressing the potential dilution of random testing pools by individuals who perform regulated service on a de minimis basis. *See* Compliance Manual 9.5.3.2. FRA considers such individuals to present a lesser safety risk than individuals who routinely perform regulated service. The purpose of paragraph (e) is to promote safety by focusing random testing on the population of employees who perform regulated service on a routine basis.

Paragraph (e)(1) would prohibit a railroad from placing individuals into a random testing pool for any selection period in which they are not expected to perform regulated service. Such individuals present a lesser safety risk, and their inclusion in a random testing pool would dilute the chances that an individual who routinely performs regulated service would be selected.

Paragraph (e)(2) would address railroad employees who perform regulated service on average less than once a quarter. FRA considers such employees to be a de minimis safety concern and do not require them to be included in a railroad's random testing program. A railroad may randomly test de minimis employees, but must do so by placing them in a separate random testing pool, and not in a random testing pool that includes employees who perform regulated service on a routine basis.

Paragraph (e)(3) would require railroads to make a good faith effort when determining the frequency with which an individual performs regulated service. Individuals who perform regulated service on a de minimis basis would have to be evaluated each selection period as to the likelihood of their performing regulated service in the upcoming quarter.

Paragraph (f)—Pool Maintenance

Paragraph (f) would incorporate FRA guidance by requiring a railroad to update pool entries at least monthly, regardless of how often selections are made. *See* Compliance Manual 9.5.3.1 (introductory text) and 9.5.3.3. For example, if a railroad conducted selections every three months, it would still have to update the pool entries on a monthly basis. At each monthly update, a railroad would be required to ensure that each random testing pool was complete and did not contain outdated or inappropriate entries. It is important for outdated and inappropriate entries to be immediately removed from random testing pools because their inclusion dilutes the population of regulated employees in the pool.

Paragraph (g)—Multiple Pools

Paragraph (g) would permit a railroad to maintain more than one random testing pool if it can demonstrate that selecting from multiple pools would still meet the requirements of subpart G and that having multiple pools would not adversely impact the construction of pool entities. *See* Compliance Manual 9.5.3.1 (c). Multiple random testing pools can be problematic if they create an unnecessary level of complexity in the management of the railroad's random selection and testing process. Under paragraph (g), FRA would evaluate the structure of a railroad's random testing pools to ensure that it facilitates a coherent, effective, and efficient deterrence program. Multiple random testing pools that adversely impact the deterrence value of random testing would not be approved as part of a railroad's random testing plan.

Section 219.613—Random Testing Selections

Properly constructed pools will not guarantee an effective random testing program if the method of selection from those pools is flawed. Random testing selections must be conducted in a manner ensuring that each regulated employee has an equal chance of being selected during each selection draw. This applies to selections at the level of both the random testing pool and the railroad as a whole. The purpose of this section, therefore, is to ensure that a railroad's random testing selections are conducted in a way that promotes the deterrence effect of random testing.

Discussed in greater depth below, paragraphs (a) through (k) would incorporate FRA guidance on proper random testing selections. *See generally* Compliance Manual 9.6.

Paragraph (a)—General

Paragraph (a) would require a railroad to ensure that each regulated employee has an equal chance of being selected for random testing whenever a selection is performed. A railroad may not increase or decrease an individual's chance of selection by weighting any particular entry or pool. *See* Compliance Manual 9.6.3.3. For example, a railroad may not remove an already-selected regulated employee from a pool in order to increase the chances that another regulated employee will be selected for testing. This requirement is intended to help ensure that each regulated employee believes that he or she can be selected for testing during any selection draw, even if he or she was already selected for testing the week, month, or year before.

Paragraph (b)—Method of Selection

Paragraph (b)(1) would incorporate FRA guidance by requiring a railroad to utilize a selection method that meets the requirements of subpart G and that is acceptable to FRA. *See* Compliance Manual 9.6.4.2. An acceptable method would be either a computer selection program or the proper use of a random number table. *Id.* A railroad could include a different selection method in the random plan that it submits for FRA approval under § 219.603, but the plan would likely not be approved unless the railroad could demonstrate clearly that the method complied with subpart G. For railroads wishing to conduct selections through the use of a random number table, FRA has drafted a guidance document explaining how this approach can be implemented in compliance with subpart G. A railroad can obtain this guidance document by contacting the FRA Drug and Alcohol Program Manager. It is also included as Appendix C to the model random testing plan, available on FRA's Web site at *http://www.fra.dot.gov/Page/P0345.*

Paragraph (b)(2) would specify that a selection method must be free of bias (either real or apparent) and must employ objective, neutral criteria to ensure that every employee has a statistically equal chance of being selected during a specified time frame. A selection method could not utilize subjective factors that would permit a railroad to manipulate selections to either target or shield from testing a certain regulated employee. *See* Compliance Manual 9.6.1. These requirements are found in multiple sections of the current rule addressing random drug testing (for example, § 219.601(b)(1) and § 219.602(e)), but are missing from the sections on random alcohol testing. FRA believes that this is an accidental oversight, as there is no logical reason for drug selections to be made according to objective and neutral criteria, but not alcohol selections. Furthermore, FRA has historically interpreted subpart G in a manner that applies these requirements to random alcohol testing. *See generally* Compliance Manual 9.6 (discussing selection procedures without distinguishing between random drug and random alcohol testing). This paragraph would correct this oversight and ensure that the requirements specifically apply to both random drug and random alcohol testing.

Paragraph (b)(3) would require a railroad to be able to verify the randomness of its selection method. Examples of how a railroad could do so include, but are not limited to, analyzing the source code of a computer selection program or reviewing past selections to ensure that the results appear to conform to randomness (e.g., the same individual is not always selected first). Paragraph (b)(3) would also require a railroad to maintain any records necessary to document random selections for a minimum of two years from the date the designated testing window for the selection closed. Such records include, but are not limited to, documentation indicating the composition of the random selection pool and the entries that were selected from it. *See* Compliance Manual 9.6.2.

Paragraph (c)—Minimum Random Testing Rate

Paragraph (c) would incorporate FRA guidance by requiring a railroad to make sufficient selections to ensure that each random testing pool will meet the minimum annual testing rates. *See* Compliance Manual 9.6.5. To support the deterrence effect of random testing, railroads would also have to ensure that random tests are reasonably distributed throughout the calendar year. *See* Compliance Manual 9.6.5.1. FRA understands that the distribution of random selections and tests throughout the year cannot be absolutely perfect. Nevertheless, a railroad would be in violation of this section if its distribution of selections and tests throughout the year suggested that the tests were loaded into certain months or quarters because the railroad had failed to properly monitor its random test completion rate and was trying to comply with the minimum annual testing rate at the last minute. Similarly, a railroad would be in violation of this paragraph if it made all its selections and conducted all required testing within the first quarter of a year, thereby eliminating the deterrence value of random testing for the remainder of the year.

Paragraph (c)(2) would incorporate FRA guidance by requiring a railroad to continuously monitor changes in its workforce to ensure that the required number of selections and tests will be completed annually. *See* Compliance Manual 9.6.5.4.

Paragraph (c)(3) would explain how a railroad must calculate the total number of regulated employees eligible for random testing selection throughout a year and the total number of selections that it needs to complete and test to meet the minimum annual testing rate. The substantive requirements of this proposed paragraph are essentially the same as those contained in current

§§ 219.601(b)(2)(ii) and 219.607(b)(1), and no substantive change is intended.

Paragraph (d)—Selection Frequency

Paragraph (d) would require a railroad to select and test at least one entry from each random testing pool every three months (i.e., once per quarter), regardless of the size of the pool or how often selections are made. This is a new requirement not currently found in subpart G or FRA's published guidance. Paragraph (d) would not, however, excuse the railroad from complying with the applicable minimum annual percentage rates (e.g., for a pool of 16 MOW workers subject to a minimum annual random drug testing rate of 50 percent, a railroad would still have to select and test a minimum of eight entries per year).

This paragraph would complement proposed § 219.611(c) (discussed above), which would require random testing pools to include at least four entries. Both proposals would address FRA's concern that small random testing pools do not create a sufficient deterrence effect. As discussed above, FRA believes a sufficient deterrence effect would be created if at least one entry from a random testing pool is selected for testing each quarter. FRA is soliciting public comment on whether it should consider requiring at least one selection to be made at a rate greater or less than quarterly.

FRA does not believe that the combined requirements of proposed §§ 219.611(c) and 219.613(d) would create an undue burden for railroads. A railroad would have the following options to comply with these proposed provisions:

- If the railroad has four or more entries in each random testing pool, it could select and test at least one entry from each pool per quarter.
- If the railroad has fewer than four regulated employees, it could join a C/TPA so that its regulated employees are placed into a pool with regulated employees from other DOT-regulated entities. Any C/TPA pool with FRA regulated employees would still be required to have more than four entries, and at least one entry from each pool must still be tested per quarter.
- If an employer is a contractor company performing regulated service for a railroad, the contractor's regulated employees could be incorporated into the railroad's subpart G random testing program.

Paragraph (e)—Discarded Selection Draws

Paragraph (e) would require a railroad to utilize a completed selection draw to identify which individuals must be subject to random testing. This requirement would apply regardless of the number of entries selected. A completed selection draw could not be discarded without an acceptable explanation, such as the selection was made from a pool that was incomplete or inaccurate (e.g., a selected employee was no longer employed by the railroad).[30] For each instance where selected individuals were not random tested, a railroad would have to maintain records documenting the specific reason why testing was not completed. This requirement would prevent a railroad from discarding a selection simply because it was not satisfied with who was or was not selected for random testing (i.e., because the railroad wished to either target or protect certain regulated employees). For example, a railroad manager would be prohibited from discarding a selection draw because he wished to protect a selected individual whom he knew was using drugs or alcohol in violation of FRA prohibitions. *See* Compliance Manual 9.6.4.1.

Paragraph (f)—Increasing Random Selections

Paragraph (f) would specify that if a railroad was not able to complete a collection for all selections during the designated testing window, as provided by § 219.615(f) (which would require a railroad to have an acceptable reason for an incomplete collection) or § 219.617(a)(3) (which would excuse an employee notified of a random test in a situation involving a substantiated medical emergency involving the employee or an immediate family member), the railroad may over-select during the draw for the next designated window to ensure that it is meeting the minimum random testing rate. Railroads doing so should remain aware, however, of the § 219.613(c) requirements that random tests be distributed reasonably throughout the calendar year. A railroad could violate this requirement if it had numerous incomplete collections throughout the calendar year and then drastically increased selection during the final designated testing window in that year in order to meet the minimum random testing rate.

[30] Railroads should note that while proposed § 219.613(e) would permit a selection draw to be discarded for an ''acceptable'' reason, it does *not* permit the cancellation of a random test that has already been completed as a result of that draw. *See* § 40.209(b)(10) (prohibiting a railroad from cancelling a test because an employee claimed that he or she was improperly selected for testing).

Paragraph (g)—Selection Snapshots

Paragraph (g) would incorporate FRA guidance by requiring a railroad to capture and maintain an electronic or hard copy snapshot of the entries in each random testing pool at the time of a selection. While FRA guidance currently directs railroads to maintain a hard copy of such snapshots, this proposed provision would specifically permit electronic copies. *See* Compliance Manual 9.5.3.4. The snapshot must be contemporaneous with the time of the selection, and pool entries could not be re-created from records after the time of the selection. Documentation of each snapshot would be required to be maintained for two years, in accordance with the record-keeping requirements of subpart J (referenced by proposed § 219.623). FRA would review such snapshots during its audits to ensure that the random testing pool from which a selection was made was complete.

Paragraph (h)—Multiple DOT Agencies

Paragraph (h) would remind railroads that regulated employees who are subject to the regulations of more than one DOT agency must be subject to random drug testing at or above the minimum annual percentage rate set by the DOT agency regulating more than 50 percent of the employee's DOT functions, as provided by proposed § 219.601(d).

Section 219.615—Random Testing Collections

This section would contain requirements governing random testing collections, many of which are incorporated from traditional FRA guidance on the proper management of random testing collections. *See generally* Compliance Manual 9.7.3. These requirements would supplement, and not replace, the drug and alcohol testing procedural requirements of part 40, which apply to random testing under § 219.701.

Overall, the proposed requirements of this section would continue to emphasize the deterrence value of random testing. If specimen collections are thoughtfully planned and properly executed, regulated employees should generally perceive that they may be selected for random testing anytime they are subject to performing regulated service.

Paragraph (a)—Minimum Random Testing Rates

Paragraph (a) would require a railroad to complete a sufficient number of random testing collections from each

random testing pool to meet the minimum annual percentage rates.

Paragraph (b)—Designated Testing Window

Paragraph (b) would incorporate FRA guidance by requiring a railroad to complete the collection for a selected pool entry within its designated testing window (which a railroad must describe in its random testing plan under proposed § 219.607(c)(13)). *See generally* Compliance Manual 9.7.3.2. A designated testing window is the specified time frame within which a railroad must complete a collection once an entry has been selected for random testing (for example, from midnight on Monday through midnight the following Monday). Such designated testing windows are necessary because regulated employees may not be on-duty and subject to performing regulated service on the date for which they are selected. If a railroad does not complete a collection within the designated testing window, the selection is no longer valid. A selected employee cannot be subjected to random testing outside a designated testing window. *See generally* Compliance Manual 9.7.3.2.

Paragraph (c)—Collection Timing

Paragraph (c)(1) would state that a regulated employee may be subject to random testing only when he or she is on duty and subject to performing regulated service. Sections 219.601(b)(6) and 219.607(b)(5) currently require a covered employee to be on-duty when subject to testing. The additional language in this proposed paragraph is intended for clarification purposes only.

Paragraph (c)(2) would restate the current requirement that random collections must be unannounced and spread reasonably through the calendar year. *See* § 219.602(g) and § 219.607(b)(3). As provided by FRA guidance, collections must also be spread unpredictably throughout a designated testing window and reasonably cover all operating days of the week (including operating weekends and holidays), shifts, and locations. *See* Compliance Manual 9.7.3.3. While the distribution of collections during a specific time period does not have to be perfectly equal to that time period's percentage of a railroad's total operations (e.g., if 20 percent of a railroad's operations occur during a specific day in a week, a railroad is not required to conduct exactly 20 percent of its random tests during that day), sufficient random testing during a time period must be conducted to establish a deterrence effect. *Id.* For example, a railroad would be in violation of this provision if 30 percent of its operations occurred on Saturdays and Sundays, but only 5 percent of collections occurred on a Saturday and no tests occurred on Saturday afternoons. *Id.* If a railroad predictably did not perform random testing during a certain time, day, month, etc., an employee may believe that he or she could use drugs and/or alcohol at those times, without risk of FRA random testing.

Paragraph (c)(3) would incorporate FRA guidance by requiring random alcohol test collections to be performed unpredictably and in sufficient numbers at either end of an operating shift to establish an acceptable deterrence effect throughout the entire shift. *See* Compliance Manual 9.7.3.5. The predictability of alcohol testing is a special concern for FRA because breath testing can only detect alcohol use for a limited amount of time (a few hours) afterwards. As stated earlier, FRA realizes that railroads often conduct alcohol tests at the beginning or end of a train crew's shift for operational reasons, but alcohol testing must be conducted at other times to prevent crews from being able to predict when tests are likely to occur. For example, if random alcohol testing occurs only at the end of shifts, an employee may consume alcohol at the beginning of a shift under the assumption that his or her alcohol use would not be detectable by the end of the shift. FRA is therefore proposing to require a railroad to conduct some of its random alcohol tests at both the beginning and end of shifts. At least 10 percent of a railroad's random alcohol tests should occur at the opposite end of the shift in which it usually tests in order to generate an acceptable level of deterrence throughout an entire shift. *See* Compliance Manual 9.7.3.5.

Paragraph (c)(4) would clarify that if a regulated employee is selected for both random drug and alcohol testing, these tests may be conducted separately, so long as both tests can be completed by the end of the employee's shift and the railroad does not inform the employee that an additional random test will occur later. Conducting the tests in this manner could have two benefits for a railroad. First, it could minimize burdens resulting from either operational delays or possible hours-of-service violations due to the sometimes lengthy times required for drug testing specimen collections. Second, it could support the railroad's compliance with the FRA requirement that at least 10 percent of random alcohol tests must be conducted at opposite ends of the shift.

Paragraph (d)—Collection Scheduling

The introductory text of paragraph (d) would incorporate FRA guidance by clarifying that, while pool entries must be selected randomly, railroads do not have to select random testing dates or schedule specimen collections randomly. *See* Compliance Manual 9.7.3.2. A railroad may choose the date and time on which a pool entry is to be notified and tested, so long as its pool entries are randomly selected and urine collections and breath alcohol tests are completed within the railroad's designated testing window. As provided by paragraph (d)(1), scheduling could be based upon the availability of the selected pool entry, the logistics of performing the collection, and any other requirements of subpart G. *See* Compliance Manual 9.7.3.2. However, when a selected pool entry contains different employees at different times (such as a train crew or a job function), paragraph (d)(2) would prohibit a railroad from using its discretion to schedule the test on a date which would deliberately target or protect a particular employee. *See* Compliance Manual 9.7.3.2.

Similarly, paragraph (d)(2) would prohibit railroad field supervisors and/or managers from using their discretion or personal knowledge to intentionally choose dates or times that would alter the identity of who would be tested. *See* Compliance Manual 9.7.3.6. FRA understands that the individual who schedules testing dates for a railroad may have some personal knowledge as to who would be tested as a result of that scheduling. Generally, FRA believes that any risk to the integrity and credibility of a random testing program is minimized when the person making scheduling decisions is located at the level of the railroad's headquarters, rather than at the field level where it is easier for personal considerations to come into play.

Paragraph (e)—Notification Requirements

Paragraph (e)(1) would restate existing § 219.601(b)(4), which prohibits a railroad from notifying a regulated employee of his or her random testing selection until the duty tour in which the random testing collection is to be conducted. Consistent with this existing regulatory requirement, notification may occur only so far in advance as is reasonably necessary to ensure the regulated employee's presence at the

time and place of the scheduled collection.[31] *See* § 219.601(b)(4).

Paragraph (e)(2) would further provide that, unless there is an acceptable reason for the delay, collections must be conducted as soon as possible and commence no later than two hours after notification. This would be a new requirement not currently found in FRA regulations or guidance. (While FRA guidance currently directs railroads to notify train crews in transit no more than an hour before their arrival, this guidance applies only to train crews selected for random testing and does not directly address the time in which a random testing collection must begin. *See* Compliance Manual 9.7.3.8.) FRA believes that two hours is more than enough time to begin a collection once a regulated employee has been notified of his or her selection for random testing.

Consistent with current guidance, paragraph (e)(2) would require a regulated employee to be monitored after notification and, when possible, immediately escorted by supervisory or management personnel to the collection location. *Id.* These requirements would ensure that a regulated employee notified of his or her selection for random testing does not have the opportunity to either obtain false samples/contaminating products or to otherwise avoid the collection. *Id.*

Paragraph (e)(3) would restate current provisions requiring a railroad to inform a notified regulated employee that his or her selection was on a random basis. *See* §§ 219.601(b)(7) and 219.607(b)(7). It would also clarify that a railroad may satisfy this requirement by showing the regulated employee a completed DOT Custody and Control Form (CCF) or DOT Alcohol Testing Form (ATF) indicating the basis for testing, so long as the employee has been shown and directed to sign the CCF or ATF as required by §§ 40.73 and 40.241.

Paragraph (f)—Incomplete Collections

Paragraph (f) would require a railroad to use due diligence to ensure that a test is completed for each selection, unless there is an acceptable reason for not conducting the test. This language would incorporate historic FRA guidance directing railroads to ensure that a collection is completed for each selection, unless there is an acceptable reason for failing to do so. *See* Compliance Manual 9.7.3.7. New language would require a railroad to document its reasons for failing to complete the test of a selection in sufficient detail to allow FRA to determine whether due diligence was exercised and whether there was an acceptable reason for the failure.

Under this paragraph, only an unforeseen and unpredictable problem would be an acceptable explanation for not completing a collection. An example of an acceptable explanation would be an illness of a regulated employee that extended throughout the entire designated testing window. FRA would likely not accept explanations involving problems that should be within the railroad's control (for example, a collector that does not show up for a collection or the lack of an available supervisor when required). FRA would also not accept an explanation that was based upon convenience or the operational priority of certain trains within a railroad's system.

Paragraph (g)—Hours-of-Service Limitations

For covered employees, paragraph (g) would govern the relationship between FRA's random testing and HOS requirements. Under this paragraph, a random testing collection not completed within a covered employee's HOS limitations must be immediately terminated and may not be rescheduled. Since the railroad controls the timing of a random test, a railroad is responsible for ensuring that sufficient time is available to complete a random testing collection, even for situations involving an employee who has a shy bladder and utilizes the entire three hours permitted by § 40.193 to provide a urine sample for drug testing. *See* Interpretive Guidance Manual at 41.

Paragraph (g)(2), however, would require a railroad to continue a random testing collection regardless of any HOS limitations when a direct observation collection is required under § 40.67(a) or (c).[32] *See* Interpretive Guidance Manual at 41. Generally, a mandatory direct observation is required when: (1) There is evidence indicating that the employee may have attempted to tamper with his or her specimen at the collection site (for example, the temperature of the employee's urine specimen is out of the normal range); or (2) an MRO has ordered an immediate direct observation collection because the employee had no legitimate medical reason for an invalid laboratory result or because the employee's positive or refusal (adulterated/substituted) test result was cancelled because a split specimen test could not be performed. *See* Office of Drug and Alcohol Policy and Compliance, DOT's Direct Observation Procedures, available at *http://www.dot.gov/odapc/dot-direct-observation-procedures.* Direct observation collections would have to be completed in these situations, regardless of HOS limitations, because there is some indication that the employee, perhaps knowing that he or she may test positive, may have tried to beat the test. If a mandatory direct observation collection does result in an HOS violation, the railroad would be required to submit an excess service report as required by 49 CFR part 228. In such situations FRA would use its prosecutorial discretion in deciding whether to pursue action against the railroad for the HOS violation. *See* Interpretive Guidance Manual at 41.

Section 219.617—Participation in Random Alcohol and Drug Testing

This section would combine, clarify, and expand upon the participation requirements currently found at § 219.603 (for drug testing) and § 219.609 (for alcohol testing).

Under paragraph (a)(1), a railroad would have to require a selected regulated employee to cooperate in random testing. If an individual was performing regulated service when notified of his or her selection, paragraph (a)(2) would require the railroad to ensure that he or she ceased to perform regulated service and proceeded to the testing site as soon as possible without affecting safety. The railroad would also have to ensure that a regulated employee's absence from his or her assigned duties did not adversely affect safety.

Paragraph (a)(3) would specify that a regulated employee who has been notified of his or her selection could be excused from random testing only by a substantiated medical emergency involving either the employee or an immediate family member. This requirement is currently found in §§ 219.603 and 219.609, and railroads have often questioned FRA to clarify its meaning when faced with an employee who failed to appear for or abandoned

[31] As stated earlier, while § 219.601(b)(4) currently specifies that these notification requirements apply to random drug testing, similar language is missing from the sections on random alcohol testing. The proposed provision would correct this oversight and clarify that these requirements also apply to random alcohol testing.

[32] Direct observation collections are also required under § 40.67(b) for all return-to-duty and follow-up testing. Proposed paragraph (g)(2) would not apply to Federal return-to-duty tests, however, because an employee must have a negative return-to-duty test before resuming the performance of regulated service. It also would not apply to Federal follow-up tests because their scheduling is within the discretion of the railroad. However, a direct observation follow-up test would have to proceed regardless of HOS limitations if something occurred during the collection that would have independently triggered a mandatory direct observation test under §§ 40.67(a) and (c).

a random test, claiming a medical emergency.[33] New language in paragraph (a)(3) would clarify that a medical emergency is an acute medical condition requiring immediate emergency care. A regulated employee claiming that he or she had a medical emergency would be required to provide verifiable documentation from a credible outside professional (such as a doctor, dentist, hospital, law enforcement officer, or school authority) within a reasonable time after the emergency occurred. A regulated employee who was excused from random testing because of a properly documented medical emergency could not be later subject to random testing by the railroad under the same selection. A regulated employee who avoided a random test by claiming a medical emergency that was unverifiable or did not meet the threshold of an acute medical condition requiring immediate emergency care would be deemed to have refused the test.

While paragraph (a) would address the random testing responsibilities of a railroad, paragraph (b) would address the random testing responsibilities of a regulated employee. Under paragraph (b)(1), a regulated employee would be required to cooperate with the random selection and testing process and to proceed to a testing site upon notification as soon as possible without adversely affecting safety. Under paragraph (a)(2), the responsibility for determining whether there would be an adverse effect on safety would rest with the railroad, and a railroad should not notify a regulated employee of his or her selection for random testing until it has determined that the individual's absence from his or her duties would not adversely affect safety. A notified regulated employee should therefore assume that the railroad has already determined that he or she may report immediately for testing without adversely affecting safety. Under paragraph (b)(2), a regulated employee would be required to fully cooperate and comply with the testing procedures of part 40 (such as providing the required specimens and completing the required paperwork and certifications), which are incorporated into FRA's random testing requirements by § 219.701.

Section 219.619—Positive Alcohol and Drug Test Results and Refusals; Procedures

This section would combine the requirements for responding to positive random alcohol and drug testing results currently found in §§ 219.605 and 219.611, and would clarify that these procedures apply to refusals as well. No substantive change is intended to the current requirements.

Section 219.621—Use of Service Agents

This section would contain new provisions clarifying the role that a service agent, such as a consortium/third party administration (C/TPA), may play in supporting a railroad's FRA random testing program. Although the role of service agents is discussed in subpart Q and Appendix F of part 40, part 219 does not discuss the responsibilities and limitations for service agents that perform random testing responsibilities on behalf of railroads. Currently, service agents are only incompletely addressed in §§ 219.601(b)(2)(iii) and 219.607(b)(1)(i), which briefly mention how a railroad can use a service agent to maintain random testing pools and perform random selections. Proposed § 219.621 would improve the regulation by providing additional direction on how service agents may and may not be utilized.

Paragraph (a) would clarify that railroads may use service agents to perform any role specifically permitted under subpart Q of part 40 (Roles and Responsibilities of Service Agents). Examples of these roles include, but are not limited to, maintaining random testing pools, conducting random selections, and performing random drug collections or alcohol tests.

Paragraph (b) would prohibit railroads from using a service agent to notify a regulated employee that he or she has been selected for Federal random testing, as this function must be performed by the individual's direct employer. Using a service agent (such as a collector) to notify a regulated employee of his or her selection is problematic because the regulated employee may not be aware that the service agent is an authorized agent of the railroad. This doubt may lead the regulated employee to refuse to comply with the service agent's random testing instructions, which could result in the employee being charged with a refusal. Rather than addressing the difficulties of ensuring that regulated employees are fully aware and confident of a service agent's authority, FRA believes it is simpler to require all notifications to be issued by an individual's direct employer, unless otherwise provided for by the railroad's FRA-approved random testing plan. If a railroad's random testing plan does specifically authorize a service agent to notify regulated employees, FRA would likely only approve that plan if it specified that the railroad would train or otherwise ensure that its regulated employees knew that a service agent was authorized to provide such notification. A direct employer must notify regulated employees of their selection for random testing also because § 219.617(a)(2) requires a railroad to ensure that a notified regulated employee proceeds to the collection site as soon as possible without affecting safety. This safety determination should be made by an individual who is responsible for the operational safety of the railroad, not a service agent who would probably not have the requisite knowledge and experience to make such a safety determination.

Paragraph (b) would also remind railroads that a service agent may not perform any roles that are reserved for employers under § 40.355 and would specify that only a railroad or a contractor company performing railroad-accepted testing can be considered an employer under § 40.355.

Paragraph (c) would remind railroads and contractor companies of their responsibilities under § 219.9 (discussed above) by clarifying that the primary responsibility for subpart G compliance rests with the railroad, although FRA reserves the right to bring an enforcement action against a railroad, its service agents, its contractors, or its employees.

Paragraph (d) would clarify that a C/TPA conducting random testing may calculate the number of regulated employees who must be tested either for each individual railroad belonging to the C/TPA, or for the total number of regulated employees covered by the C/TPA. If a C/TPA is making selections from a combined employer random pool, it must ensure that it is testing at a rate equal to the highest minimum annual percentage rate established under the random testing regulations of a DOT agency for any individual member of that pool.

[33] The text of current §§ 219.603 and 219.609 specifically states that an employee may be excused from testing only for a ''documented medical or family emergency.'' Historically, FRA has interpreted a ''family emergency'' to mean a medical emergency involving a family member. In other words, FRA would not permit a covered employee to be excused from random testing for a ''family emergency'' that was not also a medical emergency. For example, a covered employee would not be excused from random testing because he or she needed to pick up his or her child at daycare, unless that child was experiencing a medical emergency. Therefore, the purpose of FRA's proposed language, which applies to a ''substantiated medical emergency involving the employee or an immediate family member,'' is to clarify how FRA has been interpreting the current language, and not to make any substantive changes to the current requirements.

Section 219.623—Records

This section would contain general provisions governing the maintenance of random testing records. This section would not make any major substantive changes to the record requirements currently found in subpart G.

Paragraph (a) would specify that railroads are required to maintain random testing records for a minimum of two years, as provided by proposed § 219.901. This requirement is currently found in § 219.901(c) and § 219.903(c).

Paragraph (b) would contain new language clarifying that contractor companies and service agents performing subpart G random testing requirements must provide required records whenever requested either by FRA or the employing railroad, although the railroad remains ultimately responsible for maintaining the records required by subpart G.

Section 219.625—FRA Administrator's Determination of Random Alcohol and Drug Testing Rates

FRA is proposing to combine the provisions currently addressing the Administrator's determination of the minimum annual percentage rate for random drug testing (current § 219.602) and random alcohol testing (current § 219.608) into a new § 219.625. No substantive changes have been made to the rate determination criteria found in the current rule for either drugs or alcohol, although some of the language has been streamlined and clarified. (For example, FRA is proposing minor changes to clarify that FRA only considers MIS data for random testing positives and/or violations when determining the minimum annual random percentage rates.) With the exception of the proposed provisions contained in paragraph (c), this section only contains provisions related to the determination of random testing rates that are already in current subpart G.

Paragraph (c) would contain new language establishing criteria for the future incorporation of any new category of regulated employees added to the scope of part 219. Although paragraph (c) would immediately affect the expansion of part 219 to MOW employees, it is also intended to apply if FRA decides to expand part 219 to cover additional categories of employees.

For any new category of employees, the introductory text of paragraph (c) would establish the initial minimum annual percentage rates for random drug testing (50 percent) and random alcohol testing (25 percent). As previously discussed in Section III.H of this NPRM in relation to MOW employees, FRA believes that these higher initial random testing rates are appropriate because FRA set the same rates when it initiated random testing for covered employees. FRA believes it is fair to start all new categories of regulated employees at the same rates.

Paragraph (c)(1) would provide that the Administrator would reconsider these initial minimum annual percentage rates once FRA had at least 18 months worth of MIS testing data for the new category of regulated employees. FRA briefly considered proposing that the rates could be changed once it had data for two years, but concluded that this approach could be problematic given that railroads are only required to submit MIS data annually. *See* § 219.800(a). If a new category of regulated employee was added to part 219 any time after the start of the MIS reporting year, it would take three MIS reporting cycles (three years) to collect two complete years' worth of data. By requiring only 18 months of MIS data, FRA could reconsider its initial testing rates based on only two years of MIS reports on the drug and alcohol testing results of regulated employees, so long as this new employee category was incorporated within the first six months of FRA's MIS reporting cycle. FRA believes this approach would provide greater flexibility to adjust initial testing rates in response to MIS data indicating that such an adjustment may be appropriate.

Paragraph (c)(2) would provide that the Administrator will determine separate random testing rates for each new category of regulated employees for a minimum of three full calendar years after that category has been incorporated into part 219. Paragraph (c)(3) would further provide that the Administrator could combine a new category of regulated employees with the larger regulated employee population once the categories' positive rates have been identical for two years. This would permit the Administrator sufficient time to ensure that the deterrence value of the random testing rates has been clearly established before considering whether to change the testing rates for a new employee category. The Administrator would also be able to carefully monitor positive rate trends for the new category that might otherwise be lost if these employees were automatically made part of the larger population of regulated employees.

Subpart H—Drug and Alcohol Testing Procedures

Section 219.701—Standards for Drug and Alcohol Testing

Paragraphs (a) and (b) of this section would be amended to reflect the proposed separation of the requirements for reasonable suspicion and reasonable cause into two separate subparts, as discussed in Section VI.A of this preamble. These paragraphs would also be amended to clarify that any alcohol or drug testing conducted as the result of a co-worker or non-peer referral under a proposed subpart K peer prevention program must be conducted under FRA authority and comply with the requirements of part 40.

Currently, paragraph (c) of this section requires covered employees notified of their selection for testing to proceed to the testing site immediately, or as soon as they can stop performing covered service safely. FRA is proposing to move this requirement to § 219.11(e). FRA believes this provision is a general requirement that belongs more appropriately in § 219.11, titled ''General conditions for chemical tests''.

Subpart I—Annual Report

Section 219.800—Annual Reports

Paragraph (b) of this section would be amended to update and correct the internet link containing the electronic version of the MIS form and information on where to submit the form.

FRA is also proposing a new paragraph (f) specifying that railroads would be required to report MIS information separately for covered employees and MOW employees. Separate MIS reporting would allow FRA to gather the data necessary to establish separate random testing rates for MOW employees. FRA is specifically requesting public comment on what type of burdens this would impose on railroads and whether separate MIS reporting should be required only when there are separate testing rates for covered employees and MOW employees.

Subpart J—Recordkeeping Requirements

Section 219.901—Retention of Alcohol and Drug Testing Records

FRA's requirements for the retention of alcohol testing records are currently contained in § 219.901, while the requirements for the retention of drug testing records are contained in § 219.903. The requirements contained in these two sections, however, are essentially identical. For the purpose of streamlining the regulations, therefore,

FRA is proposing to incorporate the requirements for both alcohol and drug testing records into § 219.901, which would be renamed ''Retention of alcohol and drug testing records.'' This structural change is intended for clarification purposes only, and no major substantive amendments are being proposed.

In addition to this structural change, FRA is also proposing several minimal and clarifying amendments to the provisions of § 219.901, as discussed below.

Paragraph (a)(2)

FRA currently requires railroads to maintain all Federal alcohol and drug test results, including negative or cancelled results, for a period of two years. *See* § 219.901(c)(2)(i)–(iii) and § 219.903(c)(2)(i)–(ii). Under § 40.333(a)(4), however, railroads must maintain documents related to negative or cancelled alcohol and drug tests only for a period of one year. Generally, whenever a railroad is subject to multiple recordkeeping requirements of different lengths, it must comply with the requirement that mandates the longest retention period. *See* Compliance Manual 14.5. Railroads are not excused from complying with FRA's two-year retention requirement for negative and cancelled test records, therefore, simply because § 40.333(a)(4) requires employers to keep such records only for one year.

However, in an effort to ease this recordkeeping burden on railroads, new language in proposed paragraph (a)(2) would permit railroads to maintain legible and accessible scanned or electronic copies of test records for the second year that they are required to be maintained by FRA, whenever § 40.333 requires those records to be kept only for one year. Permitting railroads to maintain legible and accessible scanned or electronic copies of test records for the second year of FRA's mandatory retention period would reduce any difficulties railroads may face in finding physical space in which to maintain hardcopies of these records.

Paragraph (b)(1)

Railroads must currently maintain a summary record of each covered employee's alcohol or drug test results for a period of five years. *See* § 219.901(b)(1) and § 219.903(b)(1)(i). FRA has not been actively enforcing this requirement, however, so long as a railroad has maintained the individual files of each regulated employee's alcohol and drug tests for a period of five years. Therefore, FRA is proposing to amend paragraph (b)(1) to permit a railroad to comply by maintaining either a summary record or the individual files for the five year period. This amendment would both reflect FRA's enforcement policy and support smaller railroads, which often find it impractical to maintain the summary records currently required.

Paragraph (c)(1)(ii)

Railroads must currently maintain documents related to the random testing process. Proposed paragraph (c)(1)(ii) would be amended to clarify that the scope of this requirement includes the railroad's approved random testing plan and FRA's approval letter for that plan.

Paragraph (c)(1)(iii)

Currently, the language of § 219.901(c)(1)(iii) and § 219.903(c)(1)(ii) specifies that railroads must maintain records related to decisions to administer Federal reasonable suspicion tests for a period of two years. Decisions to administer Federal reasonable cause tests, however, are not specifically addressed by this requirement. In its guidance, FRA states that this oversight was inadvertent and that this requirement also applies to Federal reasonable cause testing determinations. *See* Compliance Manual 14.5. Proposed paragraph (c)(1)(iii) would incorporate this guidance by clarifying that the two-year retention requirement also applies to records related to Federal reasonable cause testing determinations.

Paragraph (c)(4)(iii)

Railroads are currently required to maintain documentation on supervisor training regarding reasonable suspicion testing determinations. *See* § 219.901(c)(4)(iii) and § 219.903(c)(4)(iii). Under § 219.11(g), however, railroads must train supervisors regarding both reasonable suspicion testing determinations and the criteria for making determinations concerning PAT testing. New language in proposed paragraph (c)(4)(iii) would clarify that the maintained training documents must include training attendance records and training materials, and that railroads must also maintain supervisor training documents related to PAT testing determinations. FRA guidance applies this provision to documents related to the training requirements of § 219.11(g), which addresses both reasonable suspicion and PAT testing determinations. *Id.* The proposed amendment would incorporate this guidance into the regulations.

FRA Would No Longer Require Training Certification

Under § 219.901(c)(iv) and § 219.903(c)(iv), railroads are currently required to maintain records certifying that any training conducted under part 219 complies with the requirements for such training. In its retrospective review, FRA found that it had never inspected for this requirement because it audits railroads' training documents directly to ensure that they comply with part 219. FRA is proposing to reduce its recordkeeping requirements by removing the need to maintain certification records.

Section 219.903—Access to Facilities and Records

Due to the consolidation of the provisions in § 219.901 and § 219.903 into proposed § 219.901, which would apply both to alcohol and drug testing records, the requirements for facilities and records access currently contained in § 219.905 would be moved to proposed § 219.903, entitled ''Access to facilities and records.'' Paragraph (a) of this section would also be further amended to reflect the consolidation of § 219.901 and § 219.903 into a single § 219.901.

Subpart K—Peer Support Programs

Currently, subpart E requires railroads to design and implement voluntary referral and co-worker report policies. Under these policies, a covered employee who abuses alcohol or drugs as part of a treatable condition may maintain an employment relationship with a railroad so long as he or she obtains counseling and treatment by entering the railroad's subpart E program. These policies are beneficial because they provide assistance to valuable covered employees who have substance abuse disorders that can be addressed through appropriate counseling or treatment.

The success of peer support programs would be supported if the benefit of addressing substance abuse disorders through such rehabilitative programs is clearly understood by railroad management, employees, and any involved collective bargaining organizations. Over the years, however, FRA's experience enforcing the requirements of the current subpart E has revealed that the railroad industry is sometimes confused about the subpart's intent and FRA's expectations for compliance. This NPRM is therefore proposing to rewrite various peer support program provisions to provide additional detail, clarity, and focus. The proposed amendments would also give

railroads greater flexibility to develop peer support programs that both promote safety and encourage regulated employees to utilize the peer support programs to address any treatable substance abuse issues.

FRA's audits of subpart E programs have also discovered that covered employee usage of peer support programs can vary from railroad to railroad, even though the various programs all appear to meet the subpart E requirements. To the extent that low usage rates of a subpart E program at a railroad may be the result of policies that are unclear or misunderstood, FRA's proposed amendments are an effort to bolster participation by ensuring that the requirements for peer support programs are clearly understood by the railroad industry.

Furthermore, in order to accommodate dedicating an entire subpart each to reasonable cause testing and reasonable suspicion testing, as discussed above in Section VI.A of this preamble, this NPRM is proposing to move the requirements for peer support programs from the current subpart E to a new subpart K. FRA would also change the title of subpart K from ''Identification of Trouble Employees'' to ''Peer Support Programs.'' FRA believes the new title is a more accurate reflection of the purpose and intent of subpart K, which is to provide support to regulated employees who abuse alcohol or drugs as part of a treatable condition.

Similarly, FRA is proposing to replace the phrase ''co-worker report'' with the phrase ''co-worker referral'' throughout subpart K. FRA believes that ''referral'' is preferable in this situation because ''report'' may sometimes have a negative connotation that discourages employees from referring co-workers who genuinely need assistance.

FRA is also proposing to streamline the regulations by requiring railroads to maintain a single peer support program policy, as opposed to the current rule, which requires a separate voluntary referral policy and co-worker report policy. The peer support program policy required by proposed subpart K would then be required to contain both a self-referral policy and a co-worker referral policy. By making self-referrals and co-worker referrals part of the same peer support program policy, FRA is emphasizing that these programs work together towards the same purpose. FRA is also proposing to clarify that peer support program policies are permitted to accept non-peer referrals, as will be discussed further in the section-by-section analysis below.

Section 219.1001—Requirement for Peer Support Programs

Paragraph (a)

Paragraph (a) of this section would specify that the purpose of subpart K is to help prevent the adverse effects of alcohol misuse and drug use by regulated employees through the implementation of peer referral and support programs. This purpose is slightly more specific than that contained in current § 219.401(a), which states only that the purpose of subpart E is to prevent the use of alcohol and drugs in connection with covered service.

Paragraph (b)

Paragraph (b) would require a railroad to adopt, publish, and implement a subpart K-compliant peer support program policy that is designed to encourage and facilitate the referral and rehabilitative support of regulated employees who abuse alcohol or drugs. This language is slightly different from that contained in current § 219.401(b)(1), which states that the policy must be designed to also facilitate the ''identification'' of employees who abuse drugs or alcohol. Because FRA believes that the word ''identification'' does not accurately reflect the purpose of subpart K, FRA is proposing to generally remove it from the regulations' discussion of peer support program policies. Paragraph (b) would also clarify that peer support programs are established under the railroad's authority. For example, any follow-up testing recommended for a regulated employee who entered a peer support program would be conducted under the railroad's own authority and would not have to meet the part 40 requirements, unless the regulated employee had committed a substantiated part 219 violation.

Paragraph (c)

Paragraph (c) would specify that a railroad may comply with subpart K by either adopting, publishing, and implementing a policy meeting the requirements of proposed § 219.1003 or by complying with proposed § 219.1007 (which discusses alternate peer support program policies). The substance of this paragraph is essentially identical to current § 219.401(c).

Paragraph (d)

Paragraphs (d)(1), (d)(2), and (d)(5) would place specific limitations on how the requirements of subpart K may be construed. These provisions are not new, being identical to those contained in current § 219.401(e)(1)–(e)(3).

Paragraphs (d)(3) and (d)(4) would contain new proposed limitations on how the requirements of subpart K may be construed. Under paragraph (d)(3), subpart K could not be construed to interfere with mandatory reasonable suspicion testing under subpart D when a supervisor properly determines that a regulated employee is exhibiting signs and symptoms of alcohol or drug use. For example, if a trained (in accordance with § 219.11(g)) supervisor noticed that a regulated employee was exhibiting signs and symptoms, a railroad would not be excused from performing a Federal reasonable suspicion test if the individual choose that moment to inform the railroad that he or she wished to self-refer to the subpart K peer support program. A trained supervisor observing signs and symptoms may also not make a co-worker referral for the regulated employee in lieu of performing a reasonable suspicion test. These limitations are necessary because reasonable suspicion testing is mandatory when a supervisor's independent actions alert him or her to the signs and symptoms of alcohol or drug use.

Similarly, paragraph (d)(4) would specify that subpart K may not be construed to interfere with the § 219.104 responsive action requirements when a violation of § 219.101 or § 219.102 has been substantiated. For example, a regulated employee who tests positive on a Federal random drug test may not avoid the § 219.104 responsive action requirements by self-referring into the railroad's subpart K peer support program.

Section 219.1003—Peer Support Program Requirements

Paragraph (a)

Paragraph (a) would state that § 219.1003 prescribes the minimum requirements and standards for peer support programs. It also specifies that all individuals involved in the implementation of a peer support program must comply with the program's policies and implementation procedures.

Paragraph (b)—Policies Required

Paragraph (b)(1) would require a railroad peer support program policy to include a self-referral policy that provides regulated employees the opportunity to obtain referral, education, counseling, and/or treatment before the employee's alcohol or drug abuse problem results in an accident, injury, or detected part 219 violation. Because a self-referral does not involve

a 219 violation, a SAP may not provide such treatment. Instead, part 240 requires a locomotive engineer to receive these services from a qualified EAP counselor, while part 242 requires a conductor to receive such services from a DAC. For regulated employees who self-refer and are neither engineers or conductors, an EAP counselor evaluation would be required. Paragraph (b)(2), in turn, would require the establishment and support of a co-worker referral policy. Such policies are already required by §§ 219.403 and 219.405 of the current rule.

Paragraph (b)(3) would indicate that a peer support program policy may provide for the acceptance of referrals from non-peers. This language clarifies and expands upon the current § 219.403(b)(1), which states that a ''railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees.'' As used in proposed subpart K, the term ''non-peer'' would refer to an individual who is not considered an employee's co-worker, and could include a trained supervisor, representative of an employee's collective bargaining organization, or family member. This provision would not require a railroad to accept non-peer referrals. If a railroad did develop a non-peer referral policy, however, this paragraph would require the railroad to include that policy in its subpart K peer support program policy. FRA believes that permitting non-peer referral policies would create additional flexibility for railroads to accept referrals from various sources other than a regulated employee's co-workers. For example, a non-peer referral policy could permit a concerned family member to refer a regulated employee to the railroad's peer support program for assistance. Such a family member may be in a better position than a co-worker to realize that a regulated employee might be abusing alcohol or drugs to the extent that he or she is a safety concern that could require counseling and treatment.

Paragraph (c)—Referral Conditions

Paragraph (c) would generally require a peer support program policy to specify the conditions under which a referral could occur. Under paragraphs (c)(1)–(4) these conditions must encompass (but are not limited to) the following:

- For self-referrals, a policy would have to identify and include the contact information for a designated EAP or DAC (the phone number and email, if available). The policy would also have to indicate when a self-referral could be made. For example, a policy could provide that a self-referral could not be made while a regulated employee was actually on-duty and impaired;
- Whether non-peer referrals are accepted, and any allowances, conditions, or procedures of such referrals;
- A policy must specify that a railroad may accept a co-worker or non-peer referral only if it alleges that the regulated employee was apparently unsafe to work with or in violation of either part 219 or the railroad's alcohol and drug rules. Similar language for co-worker referrals is already found in current § 219.405(c)(1); and
- In order to remove from service a regulated employee who is the subject of a co-worker or non-peer referral, a railroad would have to confirm that the individual was indeed unsafe to work with or in violation of either part 219 or the railroad's alcohol and drug rules. Such confirmation could consist of a credible positive test result or an observation made by a supervisor trained according to the requirements of § 219.11(g). Similar language for co-worker referrals is already found in current § 219.405(c)(2).

Paragraphs (d)–(e)—Employment Maintained

To encourage utilization of peer prevention programs, the introductory text of paragraph (d) would state that a regulated employee affected by an alcohol or drug use problem may maintain an employment relationship with the railroad so long as he or she entered the railroad's peer support program (either through a self-referral, co-worker referral, or non-peer referral) and successfully completed the education, counseling, or treatment program specified by an EAP or DAC under the provisions of this subpart. Similar language specifying that an individual entering a peer support program may maintain an employment relationship with a railroad is currently found in § 219.403(b)(1) for voluntary referrals and § 219.405(b) for co-worker reports. Paragraph (e) would further clarify that a regulated employee with an alcohol or drug use problem would be subject to the railroad's normal employment action if he or she either did not enter the peer support program or failed to cooperate with the program.

Paragraph (f)–(g)—EAP/DAC or SAP Evaluations

Under paragraph (f)(1), a regulated employee entering a peer support program through a self-referral would have to be evaluated by an EAP counselor or DAC acceptable to the railroad. A regulated employee entering the program through a co-worker or non-peer referral would have to be evaluated by a SAP counselor acceptable to the railroad (under the standards of part 40) if the referral involved a substantiated violation of part 219. (As discussed in the section-by-section analysis for the proposed definition of ''Counselor,'' FRA is proposing to use the term Counselor whenever a requirement may be met by an DAC, EAP counselor or SAP, rather than repeating all three terms.) A SAP evaluation must be performed in such cases because a regulated employee who violates part 219 is subject to the responsive action requirements of § 219.104(d), which requires a SAP evaluation for all such violations if the individual wishes to return to regulated service. If a co-worker or non-peer referral does not involve a substantiated part 219 violation, but the individual is found to be unsafe to work with or in violation of only the railroad's alcohol and drug rules, the regulated employee must be evaluated by an EAP or DAC.

While this NPRM is proposing to provide EAP or DAC evaluations for individuals entering a peer support program without a part 219 violation, FRA is also taking this opportunity to solicit public input on whether a DAC evaluation should be required for all peer support program participants, regardless of whether they have had a part 219 violation. Part 242 already requires a DAC to have the same credentialing and qualifications a SAP must have under part 40. Would requiring SAP-level evaluations for all regulated employees more effectively support subpart K's goal of helping to prevent the adverse effects of alcohol and drug use by regulated employees? If so, how?

Paragraph (f)(3) would provide that a Counselor evaluating a regulated employee who has entered a peer support program must determine the appropriate level of care (education, counseling, and/or treatment) necessary to resolve any identified active substance abuse problem (such as, but not limited to, substance dependency). If treatment and/or education is required, the Counselor must refer the regulated employee to an appropriately qualified rehabilitation program in the community, if one is available. A regulated employee who fails to cooperate with the evaluation, referral process, or aftercare can be dismissed from the peer support program and made subject to the railroad's normal employment action.

Under paragraph (g), if a Counselor's evaluation determines that a regulated employee has an active substance abuse disorder, the peer support program policy would have to require the removal of that individual from regulated service until the Counselor determines that he or she can safely return to service. The railroad must do so in a manner that complies with the confidentiality provisions found in proposed paragraph (h) of this section. For example, a railroad could maintain confidentiality by coding the regulated employee's removal as a medical reason.

Paragraph (h)—Confidentiality

Paragraph (h) would require a peer support program policy to treat any referral and subsequent handling as confidential. Only personnel who administer the program may have access to the identities of individuals in it. The only required exception to this confidentiality requirement would be provided by paragraph (l) of proposed § 219.1003, which would state (in part) that confidentiality may be waived for a certified locomotive engineer or conductor (or candidate for engineer or conductor certification) who refuses to cooperate in a recommended course of counseling or treatment. The provisions of proposed paragraph (l) will be discussed further below.

Railroads are currently required to treat voluntary referrals as confidential under § 219.403(b)(2). The current § 219.403(c) also provides that a policy may contain provisions waiving confidentiality when an employee refuses to cooperate with the recommended treatment/counseling or is later determined to have been involved in an alcohol or drug related disciplinary offense growing out of subsequent conduct. An identical optional provision would also be included in proposed § 219.1005, discussed below.

Paragraph (i)—Leave of Absence

Paragraph (i) would require a railroad to grant a regulated employee who has entered a peer support program a leave of absence for the period necessary to complete any primary education, counseling, or treatment program recommended by a Counselor. The leave of absence must be long enough for the regulated employee to establish control over his or her alcohol or drug abuse problem to the extent that the evaluating Counselor determines that he or she is a low risk to return to substance abuse. Similar language is found in §§ 219.403(b)(3) and § 219.405(d)(1) of the current rule, except that the current rule specifically states that the leave of absence must be at least 45 days long, if necessary. FRA is proposing to remove this specific time requirement because it believes that a Counselor should determine the period of time an employee requires to obtain control over a substance abuse problem.

Paragraph (j)—Return to Regulated Service

Paragraph (j)(1) would state that a regulated employee must be returned to regulated service based upon a Counselor's recommendation when he or she has established controlled over any substance abuse problem, when the Counselor has determined that he or she is a low risk to return to substance abuse, and when he or she has completed any return-to-service requirements recommended by a Counselor. The only exceptions to this requirement would be found in proposed § 219.1005, which discusses optional provisions that may be contained in a peer support program policy, and in proposed § 219.1001(d)(4), which references the responsive action requirements of § 219.104 for part 219 violations. This proposed language would expand and clarify the language currently found in § 219.403(b)(4), which states that an employee who has voluntarily referred must be returned to service on the recommendation of a SAP.[34] The proposed language is otherwise essentially identical to that contained in § 219.405(d)(3)–(d)(4) for co-worker reports, except that the proposed language would not contain the current requirement that a program for follow-up treatment may not exceed 60 months. A new limitation on how long any follow-up treatment may last would be found in proposed paragraph (o) of this section.

Paragraph (j)(2) would specify that a Counselor is required to determine the appropriate number and frequency of follow-up tests (if required), while the railroad would determine the dates of the testing.

Paragraph (j)(3) would state that an employee's return to regulated service may be conditioned upon successful completion of a return-to-service medical evaluation, as directed by the railroad. This is currently permitted for co-worker reports under § 219.405(d)(3), and would be expanded in the proposed language to self-referrals and non-peer referrals as well.

Paragraph (j)(4) would state that approval to return to regulated service may not be unreasonably withheld; a railroad must return an employee to regulated service within five working days of a Counselor's recommendation that the employee is fit to return. The requirement that such approval may not be unreasonably withheld is currently found in § 219.403(b)(4) and § 219.405(d)(3), although the proposed language goes further in specifying that the regulated employee must be returned to service within five days. The current § 219.405(e)(1) requires a railroad to return an employee to covered service within five days only in situations where the SAP has determined that treatment is not required for a co-worker reported employee.

Paragraph (k)—Rehabilitation Plan

Paragraph (k) would provide that no person or entity may change a Counselor's evaluation or recommendation for assistance. However, the Counselor who made the initial evaluation would be permitted to modify that evaluation and any follow-up recommendations based upon new or additional information.

Paragraph (l)—Locomotive Engineers and Conductors

Paragraph (l) would state that a peer support program policy must waive confidentiality for a locomotive engineer, conductor, or candidate for engineer or conductor certification who refuses to cooperate in recommended counseling or treatment, to the extent that the Counselor must provide the railroad official notice if the locomotive engineer or conductor has an active substance abuse disorder. A railroad receiving such notice must suspend, revoke, or deny the engineer's or conductor's certification, as appropriate. For locomotive engineers, this requirement is currently found for voluntary referrals in § 219.403(b)(5), which simply requires railroads to comply with the requirements of § 240.119(e). (Part 219 does not currently have a similar requirement for certified conductors because these individuals only recently became subject to the certification requirements of part 242.) FRA believes it is important in the proposed rule to also apply this requirement to co-worker and non-peer referrals.

New language in this paragraph would also specify that a Counselor who is managing the employee's case is not required to provide this notice if the locomotive engineer or conductor is medically restricted from performing regulated service while undergoing treatment to correct the active substance

[34] Under the proposed rule, this recommendation would be made by an EAP counselor because employee who self-refers would not be required to have a SAP counselor evaluation.

abuse disorder. If, in the Counselor's opinion, the engineer or conductor fails to make the necessary rehabilitative progress during this medical restriction from regulated service, then the Counselor must provide the railroad official notice of the active substance abuse disorder.

Paragraph (m)—Contacting a SAP

Paragraph (m) would state that if a regulated employee enters a peer support program as the result of a co-worker or non-peer referral for a verified violation of § 219.101 or § 219.102, he or she must contact a SAP within a reasonable period of time, specified by the railroad's peer support program policy. If the regulated employee does not contact a SAP within this time period, the railroad could investigate his or her cooperation and compliance with the peer support program.

Paragraph (n)—Time Requirements for Counselor Evaluations

Paragraph (n) would state that once a regulated employee entering a peer support program contacts the designated Counselor, the Counselor's evaluation must be completed within 10 working days. If more than one evaluation is required, they must be completed within 20 working days. This requirement is currently found in § 219.405(b)(4) for co-worker reports, and FRA's proposed language would expand it to non-peer and self-referrals as well.

Paragraph (o)—Regulated Employee Agreement

Paragraph (o) would provide that a peer support program policy must require a participating regulated employee to agree to undertake and successfully complete a course of prescribed care and any Counselor recommended follow-up care (including follow-up testing). This paragraph would also state that any follow-up treatment, care, or testing may not exceed 24 months beyond the regulated employee's removal from service, unless the regulated employee had committed a substantiated part 219 violation. If the regulated employee has committed such a violation, any follow-up treatment would be subject to the requirements of part 40, which states that a SAP may require follow-up testing for 60 months following the violation. *See* 49 CFR 40.307(d)(2). Currently, § 219.405(d)(4) states that the follow-up treatment for a co-worker report may not exceed 60 months. FRA is proposing this change because it believes that 24 months is a more appropriate time frame for regulated employees who have not committed a substantiated part 219 violation to be part of a peer support program.

Section 219.1005—Optional Provisions

This section would describe provisions that a railroad may, but is not required to, include in its peer support program policy. The inclusion of any such provisions may be subject to the agreement of an affected labor organization.

Under paragraph (a), the policy could include a mark-off provision under which a regulated employee may refuse an assignment because of a concern that he or she may not be safe to work due to alcohol or prescription medication use.

Paragraphs (b)–(e) would contain optional provisions that are essentially identical to optional provisions currently provided for voluntary referral policies by § 219.403(c)(1)–(4). FRA's proposed text would make these optional provisions available to peer support program policies in general (including co-worker and non-peer referral policies).

Paragraph (b) would permit a peer support program policy to waive the rule of confidentiality if a regulated employee refuses to cooperate in a course of education, counseling, or treatment recommended by a Counselor or if the railroad determines later, after investigation, that a regulated employee was involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct. This proposed text is identical to that currently found in § 219.403(c)(1) for voluntary referrals.

Under paragraph (c), a peer support program policy could require successful completion of a return-to-service medical examination as a condition of reinstatement in regulated service.

Under paragraph (d), a peer support program policy could state that it does not apply to a regulated employee who has previously been assisted by the railroad under a policy or program substantially consistent with the requirements of subpart K.

Under paragraph (e), a policy could provide that an employee invoking the benefits of a peer support program policy must report to a railroad-designated contact either during non-duty hours or while unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with proposed subpart K.

Section 219.1007—Alternate Peer Support Programs

This paragraph would permit a railroad to comply with subpart K by developing, publishing, and implementing an alternate program or policy meeting the various standards of § 219.1003. Paragraphs (a)–(d) of this section are very similar to provisions contained in current § 219.407(a)–(d), although there are some minor differences intended to clarify the applicable standards.

Paragraph (a) would permit a railroad to develop, publish, and implement an alternate program or policy that meets the standards of § 219.1003. Any alternate program or policy must have the written concurrence of the recognized representatives of the regulated employees.

Paragraph (a) would also specify that nothing in subpart K prevents a railroad or labor organization from adopting, publishing, and implementing peer support program policies that afford more favorable conditions to regulated employees with substance abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102. This language is currently found in §§ 219.403(a) and 219.405(a), but FRA believes it belongs more appropriately in the section addressing alternative programs.

Paragraph (b) would provide that the concurrence of the recognized representatives of the regulated employees in an alternate program must be evidenced by a collective bargaining agreement or other document describing the class or craft of employees to which the alternate program applies. This agreement would have to expressly reference subpart K and the intention of the railroad and the employee representatives that the alternate program applies in lieu of the program required by subpart K. With a few non-substantive revisions, this language is identical to that currently found in § 219.407(b).

Paragraph (c) would require a railroad to file the agreement or other document described in paragraph (b), along with the alternate program described in paragraph (a), with the FRA Drug and Alcohol Program Manager for approval. Currently, § 219.407(c) only requires the railroad to file with FRA the agreement described in § 219.407(b). FRA believes that the railroad must also be required to submit the alternate program for FRA approval, so that FRA can ensure that the program does indeed meet the requirements and objectives of proposed § 219.1003. This paragraph would specify that this approval would be based on FRA's ability to ascertain whether the alternative program meets the § 219.1003 standards. An alternative program would not have to meet each specific § 219.1003 component, but would be required to meet the general

standards and intent of § 219.1003. If an alternate policy is amended or revoked, a railroad must file a notice with FRA of such at least 30 days prior to the effective date, as a railroad is currently required to do by § 219.407(c).

Paragraph (d) would specify that § 219.1007 does not excuse a railroad from adopting, publishing, and implementing the § 219.1003-required programs for any group of regulated employees not covered by an approved alternate program. This provision is essentially identical to that currently found in § 219.407(d).

New language in paragraph (e) would reference a proposed provision of § 219.105(d), which specifies that FRA has the authority to audit any railroad alcohol and/or drug use education, prevention, identification, and rehabilitation program or policy (including, but not limited to, alternate peer support programs), to ensure that they are not designed or implemented in such a way that they circumvent or otherwise undermine Federal requirements, including the requirements in this part regarding peer support programs. Peer support program usage data could be requested as one tool to evaluate whether a railroad program or policy is having a positive or negative impact on a required subpart K peer support program. For example, a railroad program or policy may not be implemented in a way that directly or indirectly discourages regulated employees from entering a subpart K peer support program, and FRA may compare usage data from both the railroad program and the subpart K program to determine whether the railroad program may be having a negative impact on the subpart K program.

VIII. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant, under both Executive Orders 12866, and 13563, and DOT policies and procedures. *See* 44 FR 11034, Feb. 26, 1979. FRA has prepared and placed in the docket (No. FRA–2009–0039) a regulatory impact analysis (RIA) addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. As part of the RIA, FRA has assessed quantitative measurements of the cost and benefit streams expected to result from implementation of this proposed rule. Overall, the proposed rule would result in safety benefits and potential business benefits for the railroad industry. It would also, however, generate an additional burden on railroads and railroad contractors, mainly due to the expenses associated with increased drug and alcohol testing and program administration, particularly regarding MOW employees.

The costs would primarily be derived from implementation of the statutory mandate to expand the scope of part 219 to cover MOW employees. The benefits will primarily accrue from the expected injury, fatality, and property damage avoidance resulting from the expansion of part 219 to cover MOW employees, as well as the PAT testing threshold increase.

Table 1 summarizes the quantified costs and benefits expected to accrue from implementation of the proposed rule over a 20-year period. It presents costs associated with the various types of drug and alcohol testing proposed in the NPRM and details the statutory costs (those required by the RSIA mandate to expand part 219 to MOW employees), discretionary costs (those that are due to the non-RSIA requirements that FRA is proposing) and the total of the two types of costs. Table 1 also presents the quantified benefits expected to accrue over a 20-year period and details the statutory benefits (those that would result from implementation of the RSIA mandate to expand part 219 to MOW employees) and the discretionary benefits (those that are due to the non-RSIA requirements that FRA is proposing). The benefits include not only injury, fatality, and property damage avoidance (accident reduction benefits), but also the savings, or benefit, that would accrue from fewer PAT tests being conducted due to FRA's proposal to increase the property damage threshold for major train accidents.

For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals $24, 261,999 (undiscounted), with discounted costs totaling $14.2 million (Present Value (PV), 7 percent) and $18.9 million (PV, 3 percent). The estimated quantified benefits for this 20-year period total approximately $115.8 million (undiscounted), with discounted benefits totally $57.4 million (PV, 7 percent) and $83.6 million (PV, 3 percent).

TABLE 1—SUMMARY COSTS AND BENEFITS: DISCRETIONARY AND STATUTORY—UNDISCOUNTED VALUES

20 Year costs	Statutory	Discretionary
PAT Testing Costs—Adding MOW	$52,000	
PAT Testing Costs—Impact Def + Xing		$241,974
Reasonable Suspicion Testing Costs	842,398	
Pre-Emp. Testing Costs—Adding MOW	673,897	
Pre-Emp. Testing Costs—Sm. RR		29,904
Random Testing Costs	20,863,074	
Annual Report Costs	160,911	
Recordkeeping Requirements Costs	1,397,840	
Total Costs	23,990,121	271,878
	24,261,999	
20 Year benefits	**Statutory**	**Discretionary**
Accident Reduction Benefits	115,369,281	
PAT Testing Threshold Reduction Benefits		388,295
Total Benefits	115,757,576	

Overall, the RIA demonstrates that the costs, both statutory and discretionary, associated with implementing the proposed rule are expected to be outweighed by the benefits resulting from reduced injuries, fatalities, and property damage attributable to drug and alcohol misuse by regulated employees. FRA has also found that the costs would be outweighed by injury and fatality mitigation alone, and benefits will further accrue due to reduced property damage. Specifically, the statutory requirements incur a discounted 20-year cost of $14.1 million (PV, 7 percent) and $18.6 million (PV, 3 percent). The discretionary proposals incur a discounted 20-year cost of $143,665 (PV, 7 percent) and $202,023 (PV, 3 percent), with discounted 20-year benefits of $205,574 (PV, 7 percent) and $288,776 (PV, 3 percent).

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) and Executive Order 13272 (67 FR 53461; Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. The Federal Railroad Administration (FRA) has used the available data and robust assumptions to evaluate the impacts of this proposed rule and believes that it would not have a significant economic impact on a substantial number of small entities. FRA is publishing this IRFA to aid the public in commenting on the potential small business impact of the proposed requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a determination regarding economic impacts on small entities in the final rule.

The proposed rule would apply to all employees of railroad carriers, contractors, or subcontractors to railroad carriers who perform maintenance-of-way activities. Based on information currently available, FRA estimates that less than 14 percent of the total railroad costs associated with implementing the proposed rule would be borne by small entities. This percentage is based directly upon the percentage of affected employees estimated to be working for small entities. Small entities are exempt from certain requirements of the current and proposed rule, and otherwise bear proportional burden for the rule based upon the number of regulated employees each entity employs. Small entities will not incur greater costs per employee than the larger entities.

FRA generally uses conservative assumptions in its costing of rules; based on those assumptions, FRA estimates that the cost for the proposed rule will be approximately $24 million for the railroad industry. There are 654 railroads that would be considered small for purposes of this analysis, and together they comprise approximately 93 percent of the railroads impacted directly by this proposed regulation. The 14 percent of the burden would be spread amongst the 654 entities, based proportionally upon the number of employees each has. Thus, although a substantial number of small entities in this sector would likely be impacted, the economic impact on them would likely be insignificant. This IRFA is not intended to be a stand-alone document. In order to get a better understanding of the total costs for the railroad industry (which forms the basis for the estimates in this IRFA), or more cost detail on any specific requirement, please see the RIA that FRA has placed in the docket for this rulemaking.

In accordance with the Regulatory Flexibility Act, an IRFA must contain:

1. A description of the reasons why action by the agency is being considered.

2. A succinct statement of the objectives of, and the legal basis for, the proposed rule.

3. A description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

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

5. An identification to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

1. Reasons for Considering Agency Action

FRA proposes to amend part 219 to further reduce the risk of serious injury or death to railroad employees, contractors, and anyone else affected by railroad accidents and incidents. In accordance with the statutory mandate of Section 412 of the RSIA and to respond to NTSB safety recommendation R–08–07, FRA proposes to expand the applicability of the current part 219 requirements regarding testing and procedures to include maintenance-of-way (MOW) employees and contractors, as defined in the proposed regulation. FRA also proposes to amend part 219 for safety and clarity purposes by multiple discretionary changes that it believes will provide clarification and/or enhance and update the program to achieve safety benefits. Some of these discretionary proposals have associated costs.

2. Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

The purpose of part 219 and this proposed rule is to prevent accidents and casualties in railroad operations resulting from impairment of railroad employees and contractors due to the misuse of alcohol or drugs. FRA considers random drug and alcohol testing to be an important tool to deter drug use and alcohol misuse; therefore, expanding part 219 to include MOW employees (who would then be subject to selection for random testing) is expected to result in the reduction of the number of accidents and casualties to MOW employees.

The Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides that ''[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.'' The Secretary's responsibilities under this provision, and the balance of the railroad safety laws, have been delegated to the FRA Administrator (49 CFR 1.89). Reducing the use of drugs and alcohol among railroad employees has long been a concern of FRA. Both the industry and FRA have approached this concern by issuing regulations on the control of alcohol and drug use by certain railroad employees. While certain drug use is already illegal, FRA found a need to create a further deterrence against the use of drugs and alcohol before and/or during duty on the railroad. Furthermore, part 219 has a peer prevention component requiring railroads to establish a program permitting employees to self-refer if they have a substance abuse issue (and FRA is proposing clarifying changes to this program). These peer prevention programs are required to contain provisions protecting the employee's job so long as the employee complies.

Therefore, safety is increased while protecting employees' jobs.

FRA has proposed the revision to part 219 in order to comply with Section 412 of the RSIA, Alcohol and Controlled Substance Testing for Maintenance-Of-Way Employees, required the Secretary of Transportation to ''complete a rulemaking proceeding to revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors, volunteers, and random employees to railroad carriers who perform maintenance-of-way activities.'' FRA has also proposed various substantive amendments that would reflect lessons learned from the practical implementation of part 219 and improve the clarity and organization of the regulations, including the following: (1) Small railroads would no longer be excepted from the requirements for reasonable suspicion testing and pre-employment drug testing; (2) the PAT testing damage threshold for major train accidents would be increased; (3) the exceptions for derailment collisions and raking collisions would be removed from the part 219 definition of impact accident; (4) the provisions governing whether regulated employees could be recalled for PAT testing would be amended to remove the requirement that the qualifying event occurred while a regulated employee was on duty and to make recall of a regulated employee mandatory in certain circumstances; (5) reasonable cause testing would be authorized only for reportable ''train accidents'' and ''train incidents''; and (6) federal reasonable cause testing would be authorized for additional operating rule violations or other errors.

3. Description of, and Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The ''universe'' of the entities considered in an IRFA generally includes only those small entities that can reasonably expect to be directly regulated by this proposed action. The types of small entities potentially affected by this proposed rule are: (1) Small railroads; (2) small contractors that engage in MOW operations; and (3) small contractors that provide HOS services (such as dispatching, signal, and train and engine services).

''Small entity'' is defined in 5 U.S.C. 601(3) as having the same meaning as ''small business concern'' under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is ''for profit'' may be and still be classified as a ''small entity'' is 1,500 employees for ''Line Haul Operating Railroads'' and 500 employees for ''Switching and Terminal Establishments.'' Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. (See 68 FR 24891; May 9, 2003, codified at Appendix C to 49 CFR part 209.) The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

An estimated 1,098 entities will be affected by the rule. FRA estimates that there are approximately 400 MOW contractor companies and 698 railroads on the general system. All but 44 railroads and an estimated 30 MOW contractor companies, are small businesses as defined by the FRA waiver of small business size standard. FRA estimates that 86 percent of employees that will be regulated under this rule work for these 74 railroads and contractors. Most railroads must comply with all provisions of part 219. However, as previously indicated, FRA has a ''small railroad'' definition associated with part 219 that limits compliance requirements for railroads with 15 HOS employees or less and no joint operations to reduce burden on the smallest of railroads.

There are approximately 654 small railroads (as defined by revenue size). Class II and Class III railroads do not report to the STB, and although the number of Class II railroads is known, the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially, all small railroads could be impacted by this proposed regulation. Part 219 has a small railroad exception for all railroads with 15 or fewer covered employees, except when these railroads have joint operations with another railroad, therefore increasing risk. Thus a railroad with such characteristics shall be called a ''partially excepted small railroad'' in this analysis, and is a subsection of the ''small entities'' as defined by the STB and FRA, addressed above. Currently, there are 288 partially excepted small railroads and, as FRA is not proposing amendments to the substantive criteria of classification, there should be no change in the number of partially excepted small railroads associated with the proposed rule.

FRA is aware of two commuter railroads that qualify as small entities: Saratoga & North Creek Railway, and Hawkeye Express, which is operated by the Iowa Northern Railway Company. All other commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population.

As mentioned, all railroads must comply with all or limited subparts of part 219. For partially excepted small railroads, per FRA's definition, the significant burden involves the costs of adding MOW employees to the existing testing programs, and adding reasonable suspicion and pre-employment drug testing (which they currently do not need to comply with).

A significant portion of the MOW industry consists of contractors. FRA has determined that risk lies as heavily with contractors as with railroad employees, so contractors and subcontractors will be subject to the same provisions of part 219 as the railroads for which they do contract work. Whether contractors must comply with all or part of the provisions of part 219 will depend on the size of the largest railroad (assumed to have the largest risk) for which the contractor works.

FRA discussed with industry representatives how to ascertain the number of contractors that would be involved with this rulemaking. FRA is aware that some railroads hire contractors to conduct some or all of the MOW worker functions on their railroads. Generally, the costs for the

burdens associated with this rulemaking would get passed on from the contractor to the pertinent railroad. FRA has determined that there are approximately 400 MOW-related contractor companies who would be covered by the proposed rule. Of those, 370 are considered to be a ''small entity.'' FRA has sought estimates of the number of contractors that may be fully compliant and how many may be partially excepted, depending on the size of the largest railroad for which they work. FRA requests comments on both the number of small contractors affected and the number of small railroads affected, as well as the burdens they may incur as a result of the proposed rulemaking and whether those burdens (costs) will be passed on the railroads.

FRA expects that some HOS small contractors will be impacted based upon the proposed compliance requirements for part 219 small railroads to now include reasonable suspicion testing and pre-employment drug testing. This burden is estimated to be minimal, as reasonable suspicion tests occur extremely infrequently on small railroads (average less than one time per year for all small railroads), and pre-employment drug tests, the least costly of all tests, will only be required for new employees.

No other small businesses (non-railroad related) are expected to be negatively impacted significantly by this proposed rulemaking. Conversely, this proposed regulation will bring business to consortiums, collectors, testing labs, and other companies involved in the drug and alcohol program business.

Expanding the program to cover MOW employees will only have a small effect in terms of testing burden for railroads, based upon the cost of pre-employment drug testing for new employees and the testing of MOW employees. FRA estimates that 90 percent of small railroads already conduct pre-employment drug testing under their own company authority. Many of these contractors have employees with commercial drivers' licenses (CDLs), and therefore fall under the drug and alcohol program requirements of the Federal Motor Carrier Safety Administration (FMCSA). Therefore, an estimated 40 percent of MOW contracted employees already participate in a DOT drug and alcohol testing program. Furthermore, FRA estimates that as many as 50–75 percent of all MOW contractor companies have some form of a drug and alcohol testing program, and that around 25 percent of these companies currently complete random testing (the most burdensome type of testing).

Consortiums are companies that provide testing, random selection, collection, policy development, and training services to help employers stay compliant. Consortiums alleviate much of the administrative burden of a testing program and negotiate volume discounts on behalf of their clients. It is likely that all part 219 small railroads already have a compliant testing program for employees currently covered under the existing regulation. It should also be noted that approximately 125 of the small railroads that would be impacted are subsidiaries of large short line holding companies with resources comparable to larger railroads. Additionally, many small railroads are members of ASLRRA, which was consulted throughout the development of this regulatory proposal. ASLRRA has helped create a consortium for its members in the past, and FRA will work to ensure that small entities, as well as large, have the ability to adhere to the regulation as easily as possible. The consortium market will be affected in a positive manner due to new business from this rulemaking; this is a secondary benefit not discussed in this IRFA.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

The updating of a drug and alcohol program to be compliant with proposed part 219 changes can generate a burden for all entities, and especially small entities. However, FRA has taken steps to minimize the significant economic impact on small entities. For example, FRA currently exempts railroads with 15 or fewer hours of service (HOS) employees and no joint operations (as defined by § 219.5) from certain part 219 requirements, and is not proposing to amend this exemption definition in the proposed rule. *See* § 219.3(b)(2). (However there will be certain compliance requirements incurred by this proposed rule for those small railroads.) FRA has an extensive compliance manual available on its Web site at *www.fra.dot.gov* that can be used to help railroads of all sizes understand and comply with the regulations. FRA also provides a model railroad plan, a model contract plan, and model prohibitions for small railroads. Furthermore, FRA is active with railroad organizations, large and small, that provide training on the current part 219, such as the American Short Line and Regional Railroad Association (ASLRRA), the Association of American Railroads (AAR), and labor unions. FRA will be prepared to assist all small railroads, or other entities that will need to comply with the proposed regulation. FRA's Web site *(http://www.fra.dot.gov/rrs/pages/fp_504.shtml)* has model plans, programs, and tools needed to comply with the requirements of the proposed regulation.

There is a small amount of reporting, recordkeeping, and compliance costs associated with the proposed regulation. However, many of the entities are already doing some sort of employer-based testing, reporting, recordkeeping, and compliance in accordance with the recordkeeping requirements subpart. FRA believes that the added burden due to these requirements is minimal. The total 20-year cost of this proposed rulemaking is $44.4 million, of which FRA estimates approximately 14 percent will be to the 644 small railroads and 370 small contractors. FRA believes this total burden for small businesses of $6.2 million from this proposed rule does not impose a substantial burden. This averages approximately $306 a year per small entity. For a thorough presentation of cost estimates, please refer to the RIA, which has been placed in the docket for this rulemaking.

Based on the information in this analysis, FRA has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. Absent evidence to the contrary being submitted in response to this NPRM, FRA intends to certify at the final rule stage that no regulatory flexibility analysis is necessary.

In summary Table 1 breaks out the types of entities affected by the proposed rule and the specific impact area.

TABLE 1—EXPLANATION OF ENTITIES

Type of entity		Subparts applicable, current	Subparts applicable, proposed
SBA definition	Part 219 definition		
Non-Small Entities—Railroads and contractors with revenue of a Class I or II railroad as defined by STB: 46 Railroads and 30 Contractors, 86% of regulated employees.	Railroads with 400,000 + employee hours: 38 Railroads.	ALL	ALL.
Small entities—Railroads and contractors with revenue of a Class III railroad as defined by STB: 654 Railroads and 370 Contractors, 14% of regulated employees.	Railroads with less than 400,000 employee hours, but more than 15 covered service employees, railroads with joint operations, and contractors who work for them: 372 Railroads, unknown number of contractors.	All except for Subpart I.	All except for Subpart I.
	Smallest railroads—15 or fewer covered employees with no joint operations: 288 railroads, unknown number of contractors.	Subparts A, B, C, H, J	Subparts A, B, C, D, F, H, and J.

The following section outlines the potential additional burden on small railroads for each subpart of the proposed rule:

Subpart A—General

The majority of the policies and procedures outlined in subpart A do not impose any direct burdens on small railroads. However, § 219.23 will have an effect on the MOW contractors who are not already part of an FRA drug and alcohol testing program because they will be responsible for complying with the policies whenever a breath or body fluid test is required. These costs are accounted for in different subparts, and there is no direct burden on small entities from subpart A. Additionally, FRA has a sample drug and alcohol plan on its Web site that includes all pertinent compliance information.

Subpart C—Post-Accident Toxicological Testing

All MOW employees must be subject to post-accident toxicological (PAT) testing when a qualifying event occurs, as provided in subpart C. Additionally, several new qualifying events regarding highway-rail grade crossing accidents/incidents will trigger PAT testing. As smaller railroads generally have smaller risk, FRA expects fewer burdens per small railroad employee or contracted employee associated with this subpart. The only cost that the railroad is responsible for is the collection and shipment of the specimens. FRA bears the costs of testing the specimens. Historically, there are only one or two events that qualify for PAT testing involving any short line each year. All railroads, regardless of size, must currently train their covered service supervisors on PAT testing procedures, and thus already have existing compliance procedures. Additionally, MOW employees are already subject to subpart C PAT testing if they are fatally injured during a qualifying event. This portion of the proposed rule will create less than 1 percent of the total burden for small entities.

Subpart D—Reasonable Suspicion Testing

Small railroads (15 or fewer covered service employees with no joint operation) and MOW workers will be subject to reasonable suspicion testing. The burden to small railroads is expected to be minimal as there are currently few reasonable suspicion tests performed on HOS employees (currently covered under part 219) by railroads of any size. FRA does not expect there to be proportionally more reasonable suspicion tests for MOW employees or other small railroads. FRA never intended to exclude small railroads from reasonable suspicion requirements and has been training short lines and small railroads to perform reasonable suspicion testing for years. This portion of the proposed rule will create approximately 1 percent of the total burden for small entities.

Subpart E—Reasonable Cause Testing

For this subpart all railroads can choose to use Federal or company authority reasonable cause testing. Furthermore, FRA has excluded partially excepted small railroads from the provisions of this subpart.

Subpart F—Pre-Employment Testing

FRA is proposing to change the pre-employment drug testing requirement to remove the small railroad exception, so small railroads (15 or fewer covered service employers) will now have to conduct Federal pre-employment drug testing. Many small railroads and contractors already test employees for drugs under company authority prior to hiring and are already in compliance with the regulation. This portion of the proposed rule will create approximately 1 percent of the total burden for small entities.

In order to alleviate some of the burdens for all railroads, FRA proposes to allow all current MOW employees to be grandfathered for this requirement of the regulation.

Subpart G—Random Alcohol and Drug Testing Program

FRA has excluded small railroads from the requirements of this subpart. All MOW employees of railroads that do not qualify for the small railroad exception will be subject to random alcohol and drug tests. Contractors will be required to conform to the requirements of the largest railroad for which they work. All companies that must comply with this subpart are required to create and administer random plans, although the testing burden is proportional to the number of employees in each company. As previously mentioned, FRA has model plans for railroads and contractors; these plans include random plans. Consortiums also exist that will organize administration and testing, to include random selection and testing. Consortiums are a very convenient option for small businesses because they lessen the administrative burden. This portion of the proposed rule will create approximately 37 percent of the total burden for small entities.

Subpart H—Drug and Alcohol Testing Procedures

FRA is not proposing any substantive changes to this subpart, so there are no expected impacts on small businesses.

Subpart I—Annual Report

Annual reporting requirements have been required for railroads with 400,000 employee hours, and there are no proposed substantive changes to this subpart. FRA does not expect any impact on small businesses.

Subpart J—Recordkeeping Requirements

FRA is not proposing any substantive changes to this subpart, so the only impact on small businesses is for the recordkeeping requirements for the MOW employees added to the rule. This portion of the proposed rule will create less than 1 percent of the total burden for small entities.

Subpart K—Peer Support Programs

FRA is proposing amendments that are designed to provide additional detail, clarity, and focus to the peer support programs. Both partially excepted small railroads and contractors are excluded from this subpart, so the smallest railroads do not need to comply. Other Class III railroads that do not qualify for the small railroad exception under part 219 must have peer support programs. This may require railroads to redesign or reconfigure their existing programs. The proposed rule specifies that a railroad may comply with subpart K by adopting, publishing, or implementing a policy meeting the requirements of proposed § 219.1003, or by complying with proposed § 219.1007 (which discusses alternate peer support program policies). This provides flexibility for railroads. FRA will make its expertise available to all railroads and will be providing templates for peer support programs that railroads will be able to use. This portion of the proposed rule will create less than 1 percent of the total burden for small entities.

The economic impact from this regulation is primarily a result of the proposed requirements to expand drug and alcohol testing to MOW employees. The number of railroads and contractors expected to be affected (who are not already covered by part 219 or participating in some other form of voluntary or employer-based drug and alcohol testing) is small, and therefore the effect will be minimal. As such, there is not a significant impact on a substantial number of small entities. While there are many railroads considered to be small entities, per the SBA definition, many of these small railroads have 15 or fewer regulated employees or contractors with no joint operations and therefore are not required to comply with all subparts of the regulation. Those that must implement full compliance programs should already be testing covered employees and have an established drug and alcohol testing program. For those contractors who do not fall under the current regulation but will fall under the proposed rule, the ability to join a consortium exists thus providing an effective way to mitigate the costs of starting and administering a program.

Market and Competition Considerations

The small railroad segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as ''feeders'' to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for larger railroads. They transport those cars over relatively short distances and then turn them over to the larger systems, which transport them to their final destination or for handoff back to a smaller railroad for final delivery. The relationship between the large and small entity segments of the railroad industry are more supportive and codependent than competitive. Furthermore, small railroads rarely compete with each other because they serve the smaller, lower-density markets and customers, and these markets generally do not have enough traffic to attract larger carriers or even other small carriers. The railroad industry has several significant barriers to entry, such as the need to own the right-of-way and the high capital expenditure needed to purchase a fleet, track, and equipment. As such, small railroads usually have monopolies over the small and segmented markets in which they operate. Thus, while this rule may have an economic impact on all railroads, it should not have an impact on the intramodal competitive position of small railroads.

Contractors in the railroad industry, such as those who provide MOW services, are likely to have more competition in the marketplace than railroads. Several barriers to entry exist, such as the capital required to purchase MOW machinery. Many contractors already have employees who have CDLs, and as such must follow the Federal drug and alcohol testing regulations promulgated by FMCSA, which are similar to FRA requirements. Implementation of the proposed rule is expected to be more efficient if a company already has a process in place for testing some of its employees for drugs and alcohol under FMCSA regulations.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule, except for the alcohol and drug testing requirements of other DOT agencies (such as FMCSA's requirements for CDL holders). The proposed rule specifies, however, that: (1) FRA will accept a pre-employment drug testing conducted by an employer under any DOT regulation; and (2) regulated employees subject to random testing under the rules of more than one DOT agency for the same railroad are only subject to random testing selection at the applicable rate set by the DOT agency regulating more than 50% of the employee's functions. FRA believes this approach eliminates any potential duplication, overlap, or conflict with the alcohol and drug testing requirements of other DOT agencies. Furthermore, this approach is the one already taken for the potential duplication, overlap, or conflict that currently may exist for covered employees who are subject to both part 219 and the alcohol and drug testing requirements of other DOT agencies (e.g., train engineers who also have a CDL). Because this established approach has been successful with covered employees, FRA does not anticipate problems applying it to MOW employees as well.

Part 219 also incorporates the procedures established in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. FRA's proposed revision to part 219 will not conflict with Part 40, nor will it be duplicative or overlapping. It is supplemental, specifying procedures directly related to the railroad industry.

C. Paperwork Reduction Act

The new information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.4—Petition for Recognition of a Foreign Railroad's Workplace Testing Program (New Requirement).	2 Railroads	2 petitions	40 hours	80 hours.
219.7—Waivers	142,000 employees	4 waivers	2 hours	8 hours.
219.9—Joint Operating Agreement between Railroads Assigning Responsibility for Compliance this Part Amongst Themselves (Rev. Requirement).	698 railroads + 400 MOW contractors.	525 agreements	30 minutes	263 hours.
—Request to railroad for documents by employee engaged in joint operation and subject to adverse action after being required to participate in breath/body fluid testing under subpart C, D, or E of Part 219 (Rev. Requirement).	698 railroads + 400 MOW contractors.	2 requests/documents	1 hour	2 hours.
—Document by railroad/contractor delineating responsibility for Compliance with this Part (Rev. Requirement).	698 railroads + 400 MOW contractors.	10 documents	2 hours	20 hours.
219.11—Employee consent to participate in body fluid testing under subparts C.	698 railroads + 400 MOW contractors.	30 consent forms	2 minutes	1 hour.
—Notification to employees for testing (New Requirement).	142,000 employees	9,508 notices	5 seconds	13 hours.
—RR Alcohol & Drug Program that provides training to supervisors and information on criteria for post-accident toxicological testing contained in Part 219 subpart C and appendix C (Rev. Requirement).	698 railroads + 400 MOW contractors.	698 modified Programs	1 hour	698 hours.
—Alcohol and Drug Programs —New RRs	5 railroads	5 programs	3 hours	15 hours.
—Training of Supervisory Employees in signs/symptoms of alcohol/drug influence.	698 railroads + 400 MOW contractors.	2,462 trained supervisors.	3 hours	7,386 hours.
219.12—RR Documentation on need to place employee on duty for follow-up tests.	698 railroads + 400 MOW contractors.	5 documents	30 minutes	3 hours.
219.23—Educational materials concerning the effects of alcohol/drug misuse on individual employees.	698 railroads + 400 MOW contractors.	1,098 revised educational documents.	1 hour	1,098 hours.
—Copies of educational materials to employees.	142,000 employees	142,000 copies of documents.	2 minutes	4,733 hours.
219.104—Removal of employee from regulated service —(Rev. Requirement) Verbal Notice + Follow-up Written Letter.	698 railroads + 400 MOW contractors.	500 notices + 500 letters	30 seconds + 2 minutes.	21 hours.
—Request for Hearing by Employee who Denies Test Result or other Information is Valid Evidence of Part 219 Violation.	698 railroads + 400 MOW contractors.	50 requests + 50 hearings.	2 minutes + 4 hours.	202 hours.
—Applicants Declining Pre-Employment Testing and Withdrawing Employment Application—Communications (New Requirement).	698 railroads + 400 MOW contractors.	60 notices/communications.	2 minutes	2 hours.
219.105—RR Duty to prevent violation—Documents provided to FRA after agency request regarding RR's Alcohol and/or Drug Use Education/Prevention/Etc. Program (New Requirement).	698 railroads + 400 MOW contractors.	2 documents	5 minutes	.17 hour.
219.201(c)—Report by RR concerning decision by person other than RR representative about whether an accident/incident qualifies for testing.	698 railroads + 400 MOW contractors.	2 reports	30 minutes	1 hour.
19.203/207—Major train accidents—Post Accident Toxicological Testing Forms				
—Completion of FRA F 6180.73	142,000 employees	240 forms	10 minutes	40 hours.
—Determination by RR representative to exclude surviving crewmember from testing (New Requirement).	698 railroads + 400 MOW contractors.	50 decisions/d determinations.	5 minutes	4 hours.
—Verbal notification and subsequent written report of failure to collect urine/blood specimens within four hours (New Requirement).	698 railroads + 400 MOW contractors.	80 notifications + 80 reports.	2 minutes + 30 minutes.	43 hours.
—Recall of employees for testing and Narrative Report Completion (New Requirement).	698 railroads + 400 MOW contractors.	4 calls + 4 reports	2 minutes + 30 minutes.	2 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—RR Reference to Part 219 requirements and FRA's post-accident toxicological kit in seeking to obtain facility cooperation (New Requirement).	698 railroads + 400 MOW contractors.	80 references	15 minutes	20 hours.
—RR Notification to National Response Center of injured employee unconscious or otherwise unable to give testing consent (New Requirement).	698 railroads + 400 MOW contractors.	2 phone calls	10 minutes	.33 hour.
219.205—Specimen Handling/Collection (New Requirement)				
— Completion of Form FRA F 6180.74 by train crew members after accident.	698 railroads + 400 MOW contractors.	240 forms	15 minutes	60 hours.
—RR representative request to medical facility representative to complete remaining information on FRA F 6180.74.	698 railroads + 400 MOW contractors.	80 ph. requests	2 minutes	3 hours.
—RR representative completion of Form FRA F 6180.73.	698 railroads + 400 MOW contractors.	80 forms	10 minutes	13 hours.
—Request to FRA Alcohol and Drug Program Manager for order form for Standard Shipping Kits.	698 railroads + 400 MOW contractors.	5 requests	2 minutes	.17 hour.
—Request to National Response Center (NRC) for Post-Mortem Shipping Kit.	698 railroads + 400 MOW contractors.	1 request	2 minutes	.03333 hour.
—RR Request to Medical Facility to Transfer Sealed Toxicology Kit (Current Requirement).	698 railroads + 400 MOW contractors.	40 ph. Requests	2 minutes	1 hour.
—RR/Medical Facility Record of Kit Error ..	698 RRs + 400 Contr	20 Wr. Records	2 minutes	1 hour.
219.209(a)—Notification to NRC and FRA of Accident/Incident where Samples were Obtained.	698 railroads + 400 MOW contractors.	40 phone reports	2 minutes	1 hour.
219.211(b)—Results of post-accident toxicological testing to RR MRO and RR Employee.	698 railroads + 400 MOW contractors.	10 reports	15 minutes	3 hours.
(c)—MRO Report to FRA of positive test for alcohol/drugs of surviving employee.	698 railroads + 400 MOW contractors.	10 reports	15 minutes	3 hours.
219.303—Reasonable Suspicion Observations (Drug Test)				
—Communication between On-Site and Off-Site Supervisors regarding Reasonable Suspicion Observation (New Requirement).	698 railroads + 400 MOW contractors.	50 phone communications.	2 minutes	2 hours.
—RR Written Documentation of Observed Signs/Symptoms for Reasonable Suspicion Determination (New Requirement).	698 railroads + 400 MOW contractors.	30 documents	5 minutes	3 hours.
219.305—RR Written Record Stating Reasons Test was Not Promptly Administered (New Requirement).	698 railroads + 400 MOW contractors.	30 records	2 minutes	1 hour.
219.401—Notification to Employee regarding Reasonable Cause Testing (New Requirement).	698 railroads + 400 MOW contractors.	50 notifications	15 minutes	13 hours.
219.405—RR Documentation Describing Basis of Reasonable Cause Testing (New Requirement).	698 railroads + 400 MOW contractors.	50 documents	15 minutes	13 hours.
—RR Documentation of Rule/Part 225 Violation for Each Reasonable Cause Test (New Requirement).	698 railroads + 400 MOW contractors.	20 documents	15 minutes	5 hours.
219.407—Prompt specimen collection time limitation exceeded—Record (New Requirement).	698 railroads + 400 MOW contractors.	15 records	15 minutes	4 hours.
219.501—RR Documentation of Negative Pre-Employment Drug Tests (New Requirement).	698 railroads + 400 MOW contractors.	1,200 tests + 1,200 documents.	15 minutes + 5 minutes.	400 hours.
219.605—Submission of random testing plan (New Requirement)—Existing RRs.	698 railroads + 400 MOW contractors.	200 plans	1 hour	200 hours.
—New Railroads submission of random testing plans (New Requirement).	5 railroads	5 plans	1 hour	5 hours.
—Amendments to Currently-Approve FRA Random Testing Plan (New Requirement).	698 railroads + 400 MOW contractors.	20 amendments	1 hour	20 hours.
—Resubmitted random testing plans after notice of FRA disapproval (New Requirement).	698 railroads + 400 MOW contractors.	21 resubmitted plans	15 minutes	5 hours.
—Non-Substantive Amendment to an Approved Plan (New Requirement).	698 railroads + 400 MOW contractors.	50 amendments	10 minutes	8 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—New/Combined/Amended Random Testing Plans Incorporating New Categories of Regulated Employees (New Requirement).	698 railroads + 400 MOW contractors.	20 random testing plans	15 minutes	5 hours.
219.607—RR Requests to Contractor or Service Agent to Submit Part 219 Compliant Random Testing Plan on Its Behalf (New Requirement).	698 railroads + 400 MOW contractors.	50 requests	15 minutes	13 hours.
—Contractor Random Testing Plan (New Requirement).	400 MOW contractors	50 plans	1 hour	50 hours.
219.609—Inclusion of Regulated Service Contractor Employees/Volunteers in RR Random Testing Plan (New Requirement).	698 railroads + 400 MOW contractors.	15 plans	10 minutes	3 hours.
—Addenda to RR Random Testing Plan Describing Method Used to Test Contractor/Volunteer Employees in Non-Random Testing Plan (New Requirement).	698 railroads + 400 MOW contractors.	15 addenda	10 minutes	3 hours.
219.611—Random Alcohol and Drug Test Pools: Good Faith Determinations and Evaluations of Employee Likelihood of Performing Regulated Service (New Requirement).	698 railroads + 400 MOW contractors.	25,000 determinations + 25,000 evaluations.	30 seconds + 30 seconds.	417 hours.
—Random Testing Pool Updates (New Requirement).	698 railroads + 400 MOW contractors.	13,176 pool updates	5 minutes	1,098 hours.
—Documents on RR Multiple Random Testing Pools (New Requirement).	698 railroads + 400 MOW contractors.	96 documents	5 minutes	8 hours.
219.613—RR Identification of Total Number of Eligible Employees for Random Testing (New Requirement).	698 railroads + 400 MOW contractors.	2,196 IDs	2 minutes	73 hours.
—RR Records/Explanation of Discarded Selection Draws (New Requirement).	698 railroads + 400 MOW contractors.	10 records/explanations	2 minutes	.33 hour.
—Electronic or Hard Copy of RR Snapshot of Each Random Testing Pool (New Requirement).	698 railroads + 400 MOW contractors.	13,176 snapshots	2 minutes	1,098 hours.
219.615—Incomplete Random Testing Collections—Documentation (New Requirement).	698 railroads + 400 MOW contractors.	2,000 documents	.5 minute	17 hours.
219.617—Employee Exclusion from Random alcohol/drug testing after providing verifiable evidence from credible outside professional (New Requirement).	698 railroads + 400 MOW contractors.	5 documents	1 hour	5 hours.
219.619—Report by MRO of Verified Positive Test or by Breath Alcohol Technician of Breath Alcohol Specimen of 04 or Greater (New Requirement).	698 railroads + 400 MOW contractors.	88 reports	5 minutes	7 hours.
219.623—Random Testing Records (New Requirement).	698 railroads + 400 MOW contractors.	40,000 records	1 minute	667 hours.
219.901—RR Alcohol and Drug Misuse Prevention Records for MOW Employees Kept by FRA (New Requirement).	698 railroads + 400 MOW contractors.	16,960 records	5 minutes	1,413 hours.
219.1001—RR Adoption of Peer Support Program (New Requirement).	698 railroads + 400 MOW contractors.	698 programs	30 minutes	349 hours.
—New Railroads Adoption of Peer Support Program (New Requirement).	5 railroads	5 programs	30 minutes	3 hours.
219.1005—Peer Support Programs with Labor Organization Approvals that Include Optional Provisions (New Requirement).	698 railroads + 400 MOW contractors.	10 Peer Support Programs.	20 hours	200 hours.
219.1007—Filing of Documents/Records with FRA of Labor Concurrences for Alternate Peer Support Programs (New Requirement).	698 railroads + 400 MOW contractors.	10 documents	1 hour	10 hours.
—Notice to FRA of Amendment or Revocation of FRA Approved Alternate Peer Support Program (New Requirement).	698 railroads + 400 MOW contractors.	1 notice/amended peer support program.	1 hour	1 hour.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For

information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kim.Toone@dot.gov.* OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that the proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this proposed rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This NPRM complies with a statutory mandate and would not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this NPRM would not have any federalism implications that impose substantial direct compliance costs on State and local governments.

However, FRA notes that this part could have preemptive effect by the operation of law under a provision of the former Federal Railroad Safety Act of 1970, repealed and codified at 49 U.S.C. 20106 (Sec. 20106). Sec. 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to Sec. 20106.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106 and 20119. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

E. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This proposed rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this NPRM in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment). In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this NPRM that might trigger the need for a more detailed environmental review. As a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted

annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This monetary amount of $100,000,000 has been adjusted to $140,800,000 to account for inflation. This proposed rule would not result in the expenditure of more than $140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking, that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM would not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

I. Privacy Act Information

Interested parties should be aware that anyone is able to search the electronic form of all written communications and comments received into any agency docket 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.*

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Rule

For the reasons stated above, FRA proposes to amend 49 CFR part 219 as follows:

PART 219—[Amended]

■ 1. The authority citation for part 219 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; Sec. 412, Pub. L. 110–432, 122 Stat. 4889; and 49 CFR 1.89.

Subpart A—General

■ 2. Revise § 219.1(a) to read as follows:

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees (as defined in § 219.5) by alcohol or drugs.

* * * * *

■ 3. Revise § 219.3 to read as follows:

§ 219.3 Application.

(a) *General.* This part applies to all railroads, except as provided in paragraphs (b), (c), and (d) of this section, and except for:

(1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (i.e., plant railroads, as defined in § 219.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation, as defined in § 219.5; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) *Annual report requirements.* (1) Subpart I of this part does not apply to any domestic or foreign railroad that has fewer than 400,000 total annual employee work hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States, but also while outside the United States.

(2) Subpart I of this part does not apply to any contractor that performs regulated service exclusively for railroads with fewer than 400,000 total annual employee work hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States, but also while outside the United States.

(3) When a contractor performs regulated service for at least one railroad with fewer than 400,000 total annual employee hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States, but also while outside the United States, subpart I applies as follows:

(i) A railroad with more than 400,000 total annual employee work hours must comply with Subpart I regarding any contractor employees it integrates into its own alcohol and drug testing program under this part; and

(ii) If a contractor establishes its own independent alcohol and drug testing program that meets the requirements of this part and is acceptable to the railroad, the contractor must comply with subpart I if it has 200 or more regulated employees.

(c) *Small railroad exception.* (1) Subparts E, G, and K of this part do not apply to small railroads, and a small railroad may not perform the Federal alcohol and drug testing authorized by these subparts (except that a small railroad may establish a Federal authority peer prevention program that complies with the requirements of subpart K). For purposes of this part, a small railroad means a railroad that:

(i) Has a total of 15 or fewer employees who are covered by the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, or who would be subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105 if their services were performed in the United States; and

(ii) Does not have joint operations, as defined in § 219.5, with another railroad that operates in the United States, except as necessary for purposes of interchange.

(2) An employee performing only MOW activities, as defined in § 219.5, does not count towards a railroad's total number of covered employees for the purpose of determining whether it qualifies for the small railroad exception.

(3) A contractor performing MOW activities exclusively for small railroads also qualifies for the small railroad exception (i.e., is excepted from the requirements of subparts E, G, and K of this part). However, a contractor who would otherwise qualify for the small railroad exception is not excepted if it performs MOW activities for multiple railroads, and at least one or more of those railroads does not qualify for the small railroad exception under this section.

(4) If a contractor is subject to all of part 219 because it performs regulated service for multiple railroads, not all of which qualify for the small railroad exception, the responsibility for ensuring that the contractor complies with subparts E, G, and K is shared

between the contractor and any railroad using the contractor that does not qualify for the small railroad exception.

(d) *Foreign railroad.* (1) This part does not apply to the operations of a foreign railroad that take place outside the United States. A foreign railroad is required to conduct post-accident toxicological testing or reasonable suspicion testing only for operations that occur within the United States.

(2) Subparts F, G, and K of this part do not apply to an employee of a foreign railroad whose primary reporting point is outside the United States if that employee is:

(i) Performing train or dispatching service on that portion of a rail line in the United States extending up to 10 route miles from the point that the line crosses into the United States from Canada or Mexico; or

(ii) Performing signal service in the United States.

■ 4. In § 219.4, revise paragraphs (a)(1) introductory text and (b)(1) and (2) to read as follows:

§ 219.4 Recognition of a foreign railroad's workplace testing program.

(a) * * *

(1) To be so considered, the petition must document that the foreign railroad's workplace testing program contains equivalents to subparts B, F, G, and K of this part:

* * * * *

(b) * * *

(1) Upon FRA's recognition of a foreign railroad's workplace alcohol and drug use program as compatible with the return-to-service requirements in subpart B and the requirements of subparts F, G, and K of this part, the foreign railroad must comply with either the enumerated provisions of part 219 or with the standards of its recognized program, and any imposed conditions, with respect to its employees whose primary reporting point is outside the United States and who perform train or dispatching service in the United States. The foreign railroad must also, with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such train or dispatching service in the United States, comply with either subpart F of this part or the standards of its recognized program.

(2) The foreign railroad must comply with subparts A (general), B (prohibitions, other than the return-to-service provisions in § 219.104(d)), C (post-accident toxicological testing), D (reasonable suspicion testing), I (annual report requirements), and J (recordkeeping requirements) of this part. Drug or alcohol testing required by these subparts (except for post-accident toxicological testing required by subpart C) must be conducted in compliance with all applicable provisions of the DOT Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

* * * * *

■ 5. Section 219.5 is amended by:

■ a. Revising the introductory text;

■ b. Adding definitions of ''Administrator'', ''Associate Administrator'', ''category of regulated employee'', ''contractor'', and ''Counselor'';

■ c. Revising the definitions of ''covered employee'', ''covered service'', and ''DOT agency'';

■ d. Adding definitions of ''DOT, The Department, or DOT agency'', ''DOT-regulated employee'', ''DOT safety-sensitive duties or DOT safety-sensitive functions'', ''Drug and Alcohol Counselor or DAC,'' ''employee'', ''Employee Assistance Program Counselor or EAP Counselor'', ''evacuation'', ''flagman'', and ''fouling a track'';

■ e. Revising the definition of ''FRA representative'';

■ f. Removing the definition of ''general railroad system of transportation'';

■ g. Adding definitions of ''highway-rail grade crossing'' and ''highway-rail grade crossing accident/incident'';

■ h. Revising the definition of ''impact accident'';

■ i. Adding definitions of ''joint operations'', ''maintenance-of-way activities or MOW activities'', and ''maintenance-of-way employee or MOW employee'';

■ j. Revising the definition of ''medical facility'';

■ j. Adding definitions of ''on-track or fouling equipment'', ''other impact accident'', ''person'', and ''plant railroad'';

■ k. Revising the definition of ''railroad property damage or damage to railroad property'';

■ l. Adding the definitions of ''raking collision'', ''regulated employee'', ''regulated service'', ''responsible railroad supervisor'', ''side collision'', and ''tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation'';

■ m. Removing the definition of ''train'';

■ n. Revising the definitions of ''train accident'' and ''train incident''; and

■ o. Adding the definition of ''watchman/lookout''.

The revisions and additions read as follows:

§ 219.5 Definitions.

As used in this part only—

* * * * *

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Associate Administrator means the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, or the Associate Administrator's delegate.

Category of regulated employee means a broad class of either covered service or maintenance-of-way employees (as defined in this section). For the purpose of determining random testing rates under § 219.625, if an individual performs both covered service and maintenance-of-way activities, he or she belongs in the category of regulated employee that corresponds with the type of regulated service comprising more than 50 percent of his or her regulated service.

* * * * *

Contractor means a contractor or subcontractor performing functions for a railroad.

* * * * *

Counselor means a person who meets the qualifications and credentialing requirements for a Drug and Alcohol Counselor, Employee Assistance Program Counselor, or Substance Abuse Professional.

Covered employee means an employee (as defined in this section to include an employee, volunteer, or probationary employee performing activities for a railroad or a contractor to a railroad) who is performing covered service under the hours of service laws at 49 U.S.C. ch. 21101, 21104, or 21105 or who is subject to performing such covered service, regardless of whether the person has performed or is currently performing covered service. (An employee is not a ''covered employee'' under this definition exclusively because he or she is an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term ''covered employee'' includes a person applying to perform covered service in the United States.

Covered service means service in the United States that is subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction. Generally, this includes train and engine service persons who are involved in the movement of trains (e.g., a locomotive engineer, fireman, conductor, trainman, brakeman, switchman, or locomotive

hostler/helper); persons who handle orders governing the movement of trains (e.g., train dispatchers and control operators); and persons who inspect, repair, or install railroad signal systems (e.g., signal maintainers). See Appendix A to 49 CFR part 228, *Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation.*

* * * * *

DOT, The Department, or DOT agency means all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

DOT-regulated employee means any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing DOT safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing conducted under the provisions of 49 CFR part 40, the term employee has the same meaning as the term ''donor'' as found on the Custody and Control Form and related guidance materials produced by the Department of Health and Human Services.

DOT safety-sensitive duties or DOT-safety sensitive functions means functions or duties designated by a DOT agency, the performance of which makes an individual subject to the drug testing and/or alcohol testing requirements of that DOT agency. For purposes of this part, regulated service has been designated by FRA as a DOT safety-sensitive duty or function.

* * * * *

Drug and Alcohol Counselor or DAC means a person who meets the credentialing and qualification requirements described in § 242.7 of this chapter.

Employee means any individual (including a volunteer or a probationary employee) performing activities for a railroad or a contractor to a railroad.

Employee assistance program or EAP Counselor means a person qualified by experience, education, or training to counsel people affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An EAP counselor can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or substance abuse evaluation or counseling. As used in this part, the EAP counselor has a duty to make an honest and fully informed evaluation of the condition and progress of an employee.

Evacuation means the mandatory or voluntary relocation of at least one person who is not a railroad employee for the purpose of avoiding exposure to a hazardous material release. It does not include the closure of public transportation roadways for the purpose of containing a hazardous material release, unless the closure is accompanied by an evacuation order.

Flagman means any person designated by the railroad to direct or restrict the movement of trains past a point on a track to provide on-track safety for maintenance-of-way employees, while engaged solely in performing that function.

* * * * *

Fouling a track means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail.

* * * * *

FRA representative means the Associate Administrator for Railroad Safety of FRA and staff, the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel of FRA, the Chief Counsel's delegate, or FRA's Drug and Alcohol Program oversight contractor.

* * * * *

Highway-rail grade crossing means:

(1) A location where a public highway, road, or street, or a private roadway, including associated sidewalks, crosses one or more railroad tracks at grade; or

(2) A location where a pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others. The term ''sidewalk'' means that portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line or, on easements of private property, that portion of a street that is paved or improved and intended for use by pedestrians.

Highway-rail grade crossing accident/incident means any impact between railroad on-track equipment and a highway user at a highway-rail grade crossing. The term ''highway user'' includes pedestrians, as well as automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, pedestrians, and all other modes of surface transportation motorized and un-motorized.

Impact accident means a train accident, as defined in this section, consisting either of—

(1) A head-on or rear-end collision between on-track equipment;

(2) A side collision, derailment collision, raking collision, switching collision, or ''other impact accident,'' as defined by this section;

(3) Impact with a deliberately-placed obstruction, such as a bumping post (but not a derail); or

(4) Impact between on-track equipment and any railroad equipment fouling the track, such as an impact between a train and the boom of an off-rail vehicle.

The definition of ''impact accident'' does not include an impact with naturally-occurring obstructions such as fallen trees, rock or snow slides, livestock, etc.

* * * * *

Joint operations means rail operations conducted by more than one railroad on the same track (except for minimal joint operations necessary for the purpose of interchange), regardless of whether such operations are the result of contractual arrangements between the railroads, order of a governmental agency or a court of law, or any other legally binding directive. For purposes of this part only, minimal joint operations are considered necessary for the purpose of interchange when:

(1) The maximum authorized speed for operations on the shared track does not exceed 20 mph;

(2) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer;

(3) The maximum distance for operations on the shared track does not exceed 3 miles; and

(4) Any operations extending into another railroad's yard are for the sole purpose of setting out or picking up cars on a designated interchange track.

Maintenance-of-way activities or MOW activities means:

(1) The inspection, repair, or maintenance of track, roadbed, or electric traction systems;

(2) The operation of on-track or fouling equipment utilized for the inspection, repair, or maintenance of track, roadbed, or electric traction systems;

(3) The performance of flagman or watchman/lookout duties, as defined in this section;

(4) The obtaining of on-track authority and/or permission for the performance of the activities listed in paragraphs (1) through (3) of this definition; or

(5) The granting of on-track authority and/or permission for operation over a segment of track while workers are performing the activities listed in paragraphs (1) through (3) of this definition.

Maintenance-of-way employee or MOW employee means any employee (as defined in this section) who performs maintenance-of-way activities for a railroad.

Medical facility means a hospital, clinic, physician's office, or laboratory where post-accident toxicological testing specimens can be collected according to recognized professional standards, and where an individual's post-accident medical needs can be attended to.

* * * * *

On-track or fouling equipment means any railroad equipment that is positioned on the rails or that is fouling the track, and includes, but is not limited to, the following: A train, locomotive, cut of cars, single car, motorcar, yard switching train, work train, inspection train, track motorcar, highway-rail vehicle, push car, crane, or other roadway maintenance machine, such as a ballast tamping machine, if the machine is positioned on or over the rails or is fouling the track.

Other impact accident means an accident or incident, not classified as a head-on, rear-end, side, derailment, raking, or switching collision, that involves contact between on-track or fouling equipment. This includes impacts in which single cars or cuts of cars are damaged during operations involving switching, train makeup, setting out, etc.

* * * * *

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad, such as a service agent performing functions under part 40 of this title; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

* * * * *

Railroad property damage or damage to railroad property means damage to railroad property (specifically, on-track equipment, signals, track, track structure, or roadbed) and must be calculated according to the provisions for calculating costs and reportable damage in the FRA Guide for Preparing Accident/Incident Reports (see § 225.21 of this chapter for instructions on how to obtain a copy). Generally, railroad property damage includes labor costs and all other costs to repair or replace in-kind damaged on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed. (Labor costs that must be accounted for include hourly wages, transportation costs, and hotel expenses.) It does not include the cost of clearing a wreck; however, additional damage to the above-listed items caused while clearing the wreck must be included in the damage estimate. It also includes the cost of rental and/or operation of machinery such as cranes and bulldozers, including the services of contractors, to replace or repair the track right-of-way and associated structures. Railroad property damage does not include damage to lading. Trailers/containers on flatcars are considered to be lading and damage to these is not to be included in on-track equipment damage. Damage to a flat car carrying a trailer/container, however, is included in railroad property damage. Railroads should refer directly to the FRA Guide for Preparing Accident/Incident Reports for additional guidance on what constitutes railroad property damage.

Raking collision means a collision between parts or lading of a consist on an adjacent track, or with a structure such as a bridge.

Regulated employee means a covered employee or maintenance-of-way employee who performs regulated service for a railroad subject to the requirements of this part.

Regulated service means covered service or maintenance-of-way activities, the performance of which makes an employee subject to the requirements of this part.

* * * * *

Responsible railroad supervisor means any responsible line supervisor (e.g., a trainmaster or road foreman of engines) or superior official in authority over the regulated employees to be tested.

* * * * *

Side collision means a collision at a turnout where one consist strikes the side of another consist.

* * * * *

Train accident means a rail equipment accident described in § 225.19(c) of this chapter involving damage in excess of the current reporting threshold (see § 225.19(e) of this chapter), including an accident involving a switching movement. Rail equipment accidents include, but are not limited to, collisions, derailments, and other events involving the operations of on-track or fouling equipment (whether standing or moving).

Train incident means an event involving the operation of railroad on-track or fouling equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (i.e., there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

* * * * *

Watchman/lookout means an employee who has been annually trained and qualified to provide warning of approaching trains or on-track equipment. Watchmen/lookouts must be properly equipped to provide visual and auditory warning by such

means as a whistle, air horn, white disk, red flag, lantern, or fusee. A watchman/lookout's sole duty is to look out for approaching trains/on-track equipment and provide at least fifteen seconds advanced warning to employees before arrival of trains/on-track equipment.

■ 6. Revise § 219.9 to read as follows:

§ 219.9 Responsibility for compliance.

(a) *General.* Although the requirements of this part are stated in terms of the duty of a railroad, when any person, as defined by § 219.5, performs any function required by this part, that person (whether or not a railroad) shall perform that function in accordance with this part.

(b) *Joint operations.* (1) In the case of joint operations, primary responsibility for compliance with subparts C, D, and E of this part rests with the host railroad, and all affected employees must be responsive to direction from the host railroad that is consistent with this part. However, nothing in this paragraph restricts railroads engaged in joint operations from appropriately assigning responsibility for compliance with this part amongst themselves through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with this part against the host railroad, the employing railroad, or both.

(2) Where an employee of a railroad engaged in joint operations is required to participate in breath or body fluid testing under subpart C, D, or E of this part and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad engaged in the joint operations must be made available to the employee and his or her employing railroad on a reasonable basis.

(c) *Contractor responsibility for compliance.* As provided by paragraph (a) of this section, any independent contractor or other entity that performs regulated service for a railroad, or any other services under this part or part 40 of this title, has the same responsibilities as a railroad under this part with respect to its employees who perform regulated service or other service required by this part or part 40 of this title for the railroad. The entity's responsibility for compliance with this part may be fulfilled either directly by that entity or by the railroad treating the entity's regulated employees as if they were the railroad's own employees for purposes of this part. The responsibility for compliance must be clearly spelled out in the contract between the railroad and the other entity or in another document. In the absence of a clear delineation of responsibility, FRA may hold the railroad and the other entity jointly and severally liable for compliance.

■ 7. Add § 219.10 to read as follows:

§ 219.10 Penalties.

Any person, as defined by § 219.5, who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $650 and not more than $16,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, e.g., § 219.105, which is construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates § 219.101 or § 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues constitutes a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

■ 8. In § 219.11, revise paragraphs (a), (b)(1) and (2), and (c) through (h) to read as follows:

§ 219.11 General conditions for chemical tests.

(a)(1) Any regulated employee who is subject to performing regulated service for a railroad is deemed to have consented to testing as required in subparts B, C, D, E, G, and K of this part.

(2) A regulated employee required to participate in alcohol and/or drug testing under this part must be on-duty and subject to performing regulated service when the specimen collection is initiated and the alcohol testing/urine specimen collection is conducted (with the exception of pre-employment testing under subpart F of this part).

(b)(1) Each regulated employee must participate in such testing, as required under the conditions set forth in this part and implemented by a representative of the railroad or employing contractor.

(2) In any case where an employee is suffering a substantiated medical emergency and is subject to alcohol or drug testing under this part, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimen(s). A medical emergency is an acute medical condition requiring immediate medical care. A railroad may require an employee to substantiate a medical emergency by providing verifiable documentation from a credible outside professional (e.g., doctor, dentist, hospital, or law enforcement officer) substantiating the medical emergency within a reasonable period of time.

* * * * *

(c) A regulated employee who is required to be tested under subpart C, D, or E of this part and who is taken to a medical facility for observation or treatment after an accident or incident is deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid specimen taken by the medical facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such specimen;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the medical facility on such specimen;

(3) The identity, dosage, and time of administration of any drugs administered by the medical facility prior to the time specimens were taken by the medical facility or prior to the time specimens were taken in compliance with this part; and

(4) The results of any breath tests for alcohol conducted by or for the medical facility.

(d) Any person required to participate in body fluid testing under subpart C of this part (post-accident toxicological testing) shall, if requested by a representative of the railroad or the medical facility, evidence consent to the taking of specimens, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the railroad, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section may be construed to extend only to those actions specified in this section.

(e)(1) A regulated employee who is notified of selection for testing under this part must cease to perform his or

her assigned duties and proceed to the testing site either immediately or as soon as possible without adversely affecting safety.

(2) A railroad must ensure that the absence of a regulated employee from his or her assigned duties to report for testing does not adversely affect safety.

(3) Nothing in this part may be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any employee performing duties for a railroad who is involved in a qualifying accident or incident described in subpart C of this part, and who dies within 12 hours of that accident or incident as the result thereof, is deemed to have consented to the removal of body fluid and/or tissue specimens necessary for toxicological analysis from the remains of such person, and this consent is implied by the performance of duties for the railroad (i.e., a consent form is not required). This consent provision applies to all employees performing duties for a railroad, and not just regulated employees.

(g) Each supervisor responsible for regulated employees (except a working supervisor who is a co-worker as defined in § 219.5) must be trained in the signs and symptoms of alcohol and drug influence, intoxication, and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol, the major drug groups on the controlled substances list, and other impairing drugs. The program must also provide training on the qualifying criteria for post-accident toxicological testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and Appendix C of this part.

(h) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional breath or body fluid testing. However, no such testing may be performed on urine or blood specimens provided under this part. For purposes of this paragraph, all urine from a void constitutes a single specimen.

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■ 9. Add § 219.12 to read as follows:

§ 219.12 Hours-of-service laws implications.

(a) Railroads are not excused from performing alcohol or drug testing under subpart C (post-accident toxicological testing) and subpart D (reasonable suspicion testing) of this part because the performance of such testing would violate the hours-of-service laws at 49 U.S.C. ch. 211. If a railroad establishes that a violation of the hours-of-service laws is caused solely because it was required to conduct post-accident toxicological testing or reasonable suspicion testing, FRA will not take enforcement action for the violation if the railroad used reasonable due diligence in completing the collection and otherwise completed it within the time limitations of § 219.203(d) (for post-accident toxicological testing) or § 219.305 (for reasonable suspicion testing), although the railroad must still report any excess service to FRA.

(b) Railroads may perform alcohol or drug testing authorized under subpart E (reasonable cause testing) of this part even if the performance of such testing would violate the hours-of-service laws at 49 U.S.C. ch. 211. If a railroad establishes that a violation of the hours-of-service laws is caused solely by its decision to conduct authorized reasonable cause testing, FRA will not take enforcement action for the violation if the railroad used reasonable due diligence in completing the collection and otherwise completed it within the time limitations of § 219.407, although the railroad must still report any excess service to FRA.

(c) Railroads must schedule random alcohol and drug tests under subpart G of this part so that sufficient time is provided to complete the test within a covered employee's hours-of-service limitations under 49 U.S.C. ch. 211. However, if a direct observation collection is required during a random test per the requirements of part 40 of this title, then the random test must be completed regardless of the hours-of-service law limitations. A railroad may not place a regulated employee on-duty for the sole purpose of conducting a random alcohol or drug test under subpart G of this part.

(d) Railroads must schedule follow-up tests under § 219.104 so that sufficient time is provided to complete a test within a covered employee's hours-of-service limitations under 49 U.S.C. ch. 211. If a railroad is having a difficult time scheduling the required number of follow-up tests because a covered employee's work schedule is unpredictable, there is no prohibition against the railroad placing an employee (who is subject to being called to perform regulated service) on duty for the purpose of conducting the follow-up tests; except that an employee may be placed on duty for a follow-up alcohol test only if he or she is required to completely abstain from alcohol by a return-to-duty agreement, as provided by § 40.303(b) of this title. A railroad must maintain documentation establishing the need to place the employee on duty for purpose of conducting the follow-up test and provide this documentation for review upon request of an FRA representative.

■ 10. Revise § 219.23 to read as follows:

§ 219.23 Railroad policies.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad (either through a railroad employee or a designated agent, such as a contracted collector) must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations and is being conducted under Federal authority. The railroad must also provide the employee clear and unequivocal written notice of the type of test that is required (e.g., reasonable suspicion, reasonable cause, random selection, follow-up, etc.). These notice requirements are satisfied if:

(1) For all FRA testing except mandatory post-accident toxicological testing under subpart C of this part, a railroad uses the mandated DOT alcohol or drug testing form, circles or checks off the box corresponding to the type of test, and shows this form to the employee prior to the commencement of testing; or

(2) For mandatory post-accident toxicological testing under subpart C of this part, a railroad uses the approved FRA form and shows this form to the employee prior to the commencement of testing.

(b) Use of the mandated DOT alcohol or drug testing forms for non-Federal tests or mandatory post-accident toxicological testing under subpart C is prohibited (except for post-accident breath alcohol testing permitted under § 219.203(c)). Use of the approved FRA post-accident toxicological testing form for any testing other than that mandated under subpart C is prohibited.

(c) Each railroad must develop and publish educational materials, specifically designed for regulated employees, that clearly explain the requirements of this part, as well as the railroad's policies and procedures with respect to meeting those requirements. The railroad must ensure that a copy of these materials is distributed to each regulated employee hired for or transferred to a position that requires alcohol and drug testing under this part. (This requirement does not apply to an applicant for a regulated service

position who either refuses to provide a specimen for pre-employment testing or who has a pre-employment test with a result indicating a violation of the alcohol or drug prohibitions of this part.) A railroad may satisfy this requirement by either—

(1) Continually posting the materials in a location that is easily visible to all regulated employees going on duty at their designated reporting place and, if applicable, providing a copy of the materials to any employee labor organization representing a class or craft of regulated employees of the railroad;

(2) Providing a copy of the materials in some other manner that will ensure that regulated employees can find and access these materials explaining the critical aspects of the program (e.g., by posting the materials on a company Web site that is accessible to all regulated employees); or

(3) For a minimum of three years after the effective date of the final rule, a railroad must also ensure that a hard copy of these materials is provided to each maintenance-of-way employee.

(d) *Required content.* The materials to be made available to employees under paragraph (c) of this section must, at a minimum, include clear and detailed discussion of the following:

(1) The position title, name, and means of contacting the person(s) designated by the railroad to answer employee questions about the materials;

(2) The specific classes or crafts of employees who are subject to the provisions of this part, such as engineers, conductors, MOW employees, signal maintainers, or train dispatchers;

(3) Sufficient information about the regulated service functions performed by those employees to make clear that the period of the work day the regulated employee is required to be in compliance with the alcohol prohibitions of this part is that period when the employee is on duty and is required to perform or is available to perform regulated service;

(4) Specific information concerning employee conduct that is prohibited under subpart B of this part (e.g., the minimum requirements of §§ 219.101, 219.102, and 219.103);

(5) The requirement that a railroad utilizing the reasonable cause testing authority provided by subpart E of this part must give prior notice to regulated employees of the circumstances under which they will be subject to reasonable cause testing;

(6) The circumstances under which a regulated employee will be tested under this part;

(7) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee;

(8) The requirement that a regulated employee submit to alcohol and drug tests administered in accordance with this part;

(9) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences;

(10) The consequences for a regulated employee found to have violated subpart B of this part, including the requirement that the employee be removed immediately from regulated service, and the responsive action requirements of § 219.104;

(11) The consequences for a regulated employee who has a Federal alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04;

(12) Information concerning the effects of alcohol and drug misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a co-worker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol and drugs, including utilization of the procedures set forth in subpart K of this part and the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(e) *Optional provisions.* The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration that are based on the railroad's company authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on the railroad's independent company authority.

■ 11. Add § 219.25 to subpart A to read as follows:

§ 219.25 Previous employer drug and alcohol checks.

(a) As required by § 219.701(a) and (b), which mandates that drug or alcohol testing conducted under this part be conducted in compliance with part 40 of this title (except for post-accident toxicological testing under subpart C of this part), a railroad must comply with § 40.25 and check the alcohol and drug testing record of any direct employee (an employee who is not employed by a contractor to the railroad) it intends to use for regulated service before the employee performs such service for the first time. A railroad is not required to check the alcohol and drug testing record of contractor employees performing regulated service on its behalf (the alcohol and drug testing record of those contractor employees must be checked by their direct employers).

(b) When determining whether a person may become or remain certified as a locomotive engineer or a conductor, a railroad must comply with the requirements in § 240.119(c) (for engineers) or § 242.115(e) (for conductors) of this chapter regarding the consideration of Federal alcohol and drug violations that occurred within a period of 60 consecutive months prior to the review of the person's records.

Subpart B—Prohibitions

■ 12. Revise § 219.101(a) to read as follows:

§ 219.101 Alcohol and drug use prohibited.

(a) *Prohibitions.* Except as provided in § 219.103—

(1) No regulated employee may use or possess alcohol or any controlled substance when the employee is on duty and subject to performing regulated service for a railroad.

(2) No regulated employee may report for regulated service, or go or remain on duty in regulated service, while—

(i) Under the influence of or impaired by alcohol;

(ii) Having 0.04 or more alcohol concentration in the breath or blood; or

(iii) Under the influence of or impaired by any controlled substance.

(3) No regulated employee may use alcohol for whichever is the lesser of the following periods:

(i) Within four hours of reporting for regulated service; or

(ii) After receiving notice to report for regulated service.

(4)(i) No regulated employee tested under the provisions of this part whose Federal test result indicates an alcohol concentration of 0.02 or greater but less than 0.04 may perform or continue to perform regulated service for a railroad, nor may a railroad permit the regulated employee to perform or continue to perform regulated service, until the start of the regulated employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(ii) Nothing in this section prohibits a railroad from taking further action under its own independent company authority when a regulated employee tested under the provisions of this part

has a Federal test result indicating an alcohol concentration of 0.02 or greater, but less than 0.04. However, while a Federal test result of 0.02 or greater but less than 0.04 is a positive test and may be a violation of a railroad's operating rules, it is not a violation of § 219.101 and cannot be used to decertify an engineer under part 240 of this chapter or a conductor under part 242 of this chapter.

(5) If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test is negative and is not evidence of alcohol misuse. A railroad may not use a Federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may take further action to compel cooperation in other breath or body fluid testing only if it has an independent basis for doing so. An independent basis for subsequent company authority testing will exist only when, after having a negative Federal reasonable suspicion alcohol test result, the employee exhibits additional or continuing signs and symptoms of alcohol use. If a company authority test then indicates a violation of the railroad's operating rules, this result is independent of the Federal test result and must stand on its own merits.

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■ 13. Revise § 219.102 to read as follows:

§ 219.102 Prohibition on abuse of controlled substances.

No regulated employee may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103.

■ 14. Revise § 219.104 to read as follows:

§ 219.104 Responsive action.

(a) *Removal from regulated service.* (1) If a railroad determines that a regulated employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from regulated service and the procedures described in paragraphs (b) through (d) of this section apply.

(2) If a regulated employee refuses to provide a breath or body fluid specimen or specimens when required to by the railroad under a provision of this part, a railroad must immediately remove the regulated employee from regulated service, and the procedures described in paragraphs (b) through (d) of this section apply. This provision also applies to Federal reasonable cause testing under subpart E of this part (if the railroad has elected to conduct this testing under Federal authority).

(b) *Notice.* Prior to or upon removing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice to the employee as soon as possible. In addition to the reason for the employee's withdrawal from regulated service, the written notice must also inform the regulated employee that he may not perform any DOT safety-sensitive duties until he completes the return-to-duty process of part 40.

(c) *Hearing procedures.* (1) Except as provided in paragraph (e)(5) of this section, if a regulated employee denies that a test result or other information is valid evidence of a § 219.101 or § 219.102 violation, the regulated employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer must make separate findings as to compliance with §§ 219.101 and 219.102.

(2) The hearing must be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the regulated employee may demand that the hearing be convened within 10 calendar days of the employee's suspension or, in the case of a regulated employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the regulated employee becomes available for the hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under sec. 3 of the Railway Labor Act (49 U.S.C. 153), satisfies the procedural requirements of this paragraph (c).

(4) With respect to a removal or other adverse action taken as a consequence of a positive test result or refusal in a test authorized or required by this part, nothing in this part may be deemed to abridge any procedural rights or remedies consistent with this part that are available to a regulated employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law.

(5) Nothing in this part restricts the discretion of a railroad to treat a regulated employee's denial of prohibited alcohol or drug use as a waiver of any privilege the regulated employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

(d) *Compliance.* A railroad must comply with the requirements for Substance Abuse Professional evaluations, the return-to-duty process, and follow-up testing contained in part 40 of this title.

(e) *Applicability.* (1) This section does not apply to actions based on breath or body fluid tests for alcohol or drugs that are conducted exclusively under authority other than that provided in this part (e.g., testing under a company medical policy, for-cause testing policy wholly independent of the subpart E Federal authority of this part, or testing under a labor agreement).

(2) This section does not apply to Federal alcohol tests indicating an alcohol concentration less than 0.04.

(3) This section does not apply to locomotive engineers or conductors who have an off-duty conviction for, or a completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for operating while under the influence of or impaired by alcohol or a controlled substance. (However, this information remains relevant for the purpose of locomotive engineer or conductor certification, according to the requirements of part 240 or 242 of this chapter.)

(4) This section does not apply to an applicant who declines to be subject to pre-employment testing and withdraws an application for employment prior to the commencement of the test. The determination of when a drug or alcohol test commences is made according to the provisions found in subparts E and L of part 40 of this title.

(5) Paragraph (c) of this section does not apply to an applicant who tests positive or refuses a DOT pre-employment test.

(6) As provided by § 40.25(j) of this title, paragraph (d) of this section applies to any DOT-regulated employer seeking to hire for DOT safety-sensitive functions an applicant who tested positive or refused a DOT pre-employment test.

■ 15. Revise § 219.105 to read as follows:

§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit a regulated employee to go or remain on duty in regulated

service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the actual knowledge imputed to the railroad is limited to that of a railroad management employee (such as a supervisor deemed an ''officer,'' whether or not such person is a corporate officer) or a supervisory employee in the offending regulated employee's chain of command. A railroad management or supervisory employee has actual knowledge of a violation when he or she:

(1) Personally observes a regulated employee use or possess alcohol or use drugs in violation of this subpart. It is not sufficient for actual knowledge if the supervisory or management employee merely observes the signs and symptoms of alcohol or drug use that would require a reasonable suspicion test under § 219.301;

(2) Receives information regarding a violation of this subpart from a previous employer of a regulated employee, in response to a background information request required by § 40.25 of this title; or

(3) Receives a regulated employee's admission of prohibited alcohol possession or prohibited alcohol or drug use.

(b) A railroad must exercise due diligence to assure compliance with §§ 219.101 and 219.102 by each regulated employee.

(c) A railroad's alcohol and/or drug use education, prevention, identification, intervention, and rehabilitation programs and policies must be designed and implemented in such a way that they do not circumvent or otherwise undermine the requirements, standards, and policies of this part. Upon FRA's request, a railroad must make available for FRA review all documents, data, or other records related to such programs and policies.

■ 16. Revise § 219.107 to read as follows:

§ 219.107 Consequences of unlawful refusal.

(a) A regulated employee who refuses to provide a breath or ~~a~~ body fluid specimen or specimens when required to by the railroad under a provision of this part must be withdrawn from regulated service for a period of nine (9) months. Per the requirements of part 40 of this title, a regulated employee who provides an adulterated or substituted specimen is deemed to have refused to provide the required specimen and must be withdrawn from regulated service in accordance with this section.

(b) *Notice.* Prior to or upon withdrawing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action, and the procedures described in § 219.104(c) apply. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice as soon as possible.

(c) The withdrawal required by this section applies only to an employee's performance of regulated service for any railroad with notice of such withdrawal. During the period of withdrawal, a railroad with notice of such withdrawal must not authorize or permit the employee to perform any regulated service for the railroad.

(d) The requirement of withdrawal for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(e) Upon the expiration of the nine month period described in this section, a railroad may permit an employee to return to regulated service only under the conditions specified in § 219.104(d), and the regulated employee must be subject to return-to-duty and follow-up tests, as provided by that section.

Subpart C—Post-Accident Toxicological Testing

■ 17. In § 219.201, revise paragraphs (a) and (b) to read as follows:

§ 219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, FRA post-accident toxicological tests must be conducted after any event that involves one or more of the circumstances described in paragraphs (a)(1) through (5) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one or more of the following:

(i) A fatality to any person;

(ii) A release of hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of $1,500,000 or more.

(2) *Impact accident.* Any impact accident (i.e., a rail equipment accident defined as an ''impact accident'' in § 219.5) that involves damage in excess of the current reporting threshold, resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $150,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to an on-duty employee (as defined in § 219.5) who dies within 12 hours of the incident as a result of the operation of on-track equipment, regardless of whether that employee was performing regulated service.

(4) *Passenger train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train and a reportable injury to any person.

(5) *Human-factor highway-rail grade crossing accident/incident.* A highway-rail grade crossing accident/incident when it involves:

(i) A regulated employee who interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first taking measures to provide for the safety of highway traffic that depends on the normal functioning of such system, as prohibited by § 234.209 of this chapter;

(ii) A train crewmember who was, or who should have been, flagging highway traffic to a stop as the result of an activation failure of the grade crossing system, as provided by § 234.105(c)(3) of this chapter;

(iii) A regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5 of this chapter) as a result of an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105(c)(2), § 234.106, or § 234.107(c)(1)(i) of this chapter;

(iv) A fatality to any regulated employee performing duties for the railroad, regardless of fault; or

(v) A regulated employee who violated an FRA regulation or railroad operating rule and whose actions may have played a role in the cause or severity of the accident/incident.

(b) *Exceptions.* Except for a human-factor highway-rail grade crossing accident/incident described in paragraph (a)(5) of this section, no test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a highway/rail grade crossing. No test may be required for an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts

by the railroad representative responding to the scene.

* * * * *

■ 18. Revise § 219.203 to read as follows:

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* Regulated employees subject to post-accident toxicological testing under this subpart must cooperate in the provision of specimens as described in this part and Appendix C to this part.

(1) *General.* Except as otherwise provided for by this section, following each qualifying event described in § 219.201, all regulated employees directly involved in a qualifying event under this subpart must provide blood and urine specimens for toxicological testing by FRA. This includes any regulated employee who may not have been present or on-duty at the time or location of the event, but whose actions may have played a role in its cause or severity, including, but not limited to, an operator, dispatcher, or signal maintainer.

(2) *Fatalities.* Testing of the remains of an on-duty employee (as defined in § 219.5) who is fatally injured in a qualifying event described in § 219.201 is required, regardless of fault, if the employee dies within 12 hours of the qualifying event as a result of such qualifying event.

(3) *Major train accidents.* (i) For an accident or incident meeting the criteria of a Major Train Accident in § 219.201(a)(1), all assigned crew members of all trains or other on-track equipment involved in the qualifying event must be subjected to post-accident toxicological testing, regardless of fault.

(ii) Other surviving regulated employees who are not assigned crew members of an involved train or other on-track equipment (e.g., a dispatcher or a signal maintainer) must be tested if a railroad representative can immediately determine, on the basis of specific information, that the employee may have had a role in the cause or severity of the accident/incident. In making this determination, the railroad representative must consider any such information that is immediately available at the time the qualifying event determination is made under § 219.201.

(4) *Fatal train incidents.* For a Fatal Train Incident under § 219.201(a)(3), the remains of any on-duty employee (as defined in § 219.5) performing duties for a railroad who is fatally injured in the event are always subject to post-accident toxicological testing, regardless of fault.

(5) *Human-factor highway-rail grade crossing accident/incidents.* (i) For a Human-Factor Highway-Rail Grade Crossing Accident/Incident under § 219.201(a)(5)(i), only a regulated employee who interfered with the normal functioning of a grade crossing signal system and whose actions may have contributed to the cause or severity of the event is subject to testing.

(ii) For a Human-Factor Highway-Rail Grade Crossing Accident/Incident under § 219.201(a)(5)(ii), only a regulated employee who was a train crew member responsible for flagging highway traffic to a stop as the result of an activation failure of a grade crossing system (or who was on-site and directly responsible for ensuring that flagging was being performed), but who failed to do so, and whose actions may have contributed to the cause or severity of the event, is subject to testing.

(iii) For a Human-Factor Highway-Rail Grade Crossing Accident/Incident under § 219.201(a)(5)(iii), only a regulated employee who was responsible for performing the duties of an appropriately equipped flagger (as defined in § 234.5 of this chapter), but who failed to do so, and whose actions may have contributed to the cause or severity of the event is subject to testing.

(iv) For a Human-Factor Highway-Rail Grade Crossing Accident/Incident under § 219.201(a)(5)(iv), only the remains of any fatally-injured employee(s) (as defined in § 219.5) performing regulated service for the railroad are subject to testing.

(v) For a Human-Factor Highway-Rail Grade Crossing Accident/Incident under § 219.201(a)(5)(v), only a regulated employee who violated an FRA regulation or railroad operating rule and whose actions may have contributed to the cause or severity of the event is subject to testing.

(6) *Exception.* For a qualifying Impact Accident, Passenger Train Accident, Fatal Train Incident, or Human-Factor Highway-Rail Grade Crossing Accident/Incident under § 219.201(a)(2) through (5), a surviving crewmember or other regulated employee must be excluded from testing if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause or severity of the accident/incident. In making this determination, the railroad representative must consider any information that is immediately available at the time the qualifying event determination is made under § 219.201.

(i) This exception is not available for assigned crew members of all involved trains if the qualifying event also meets the criteria for a Major Train Accident under § 219.201(a)(1) (e.g., this exception is not available for an Impact Accident that also qualifies as a Major Train Accident because it results in damage to railroad property of $1,500,000 or more).

(ii) This exception is not available for any on-duty employee who is fatally-injured in a qualifying event.

(b) *Railroad responsibility.* (1) A railroad must take all practicable steps to ensure that all surviving regulated employees of the railroad are subject to FRA post-accident toxicological testing under this subpart provide blood and urine specimens for the toxicological testing required by FRA. This includes any regulated employee who may not have been present or on-duty at the time or location of the event, but whose actions may have played a role in its cause or severity, including, but not limited to, an operator, dispatcher, or signal maintainer.

(2) A railroad must take all practicable steps to ensure that tissue and fluid specimens taken from fatally injured employees are subject to FRA post-accident toxicological testing under this subpart.

(3) FRA post-accident toxicological testing under this subpart takes priority over toxicological testing conducted by state or local law enforcement officials.

(c) *Alcohol testing.* Except as provided for in paragraph (e)(4) of this section, if the conditions for mandatory post-accident toxicological testing exist, a railroad may also require employees to provide breath for testing in accordance with the procedures set forth in part 40 of this title and in this part, if such testing does not interfere with timely collection of required urine and blood specimens.

(d) *Timely specimen collection.* (1) A railroad must make every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident, preferably within four hours. Specimens not collected within four hours after a qualifying accident or incident must be collected as soon thereafter as practicable. If a specimen is not collected within four hours of a qualifying event, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202–493–6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also submit a concise, written narrative report of the reasons for such a delay to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave. SE., Washington, DC 20590. The report must be submitted within 30

days after the expiration of the month during which the accident or incident occurred. This report may also be submitted via email to an email address provided by the FRA Drug and Alcohol Program Manager.

(2) The requirements of paragraph (d) of this paragraph must not be construed to inhibit employees required to be post-accident toxicological tested from performing, in the immediate aftermath of an accident or incident, any duties that may be necessary for the preservation of life or property. Where practical, however, a railroad must utilize other employees to perform such duties.

(3) If a passenger train is in proper condition to continue to the next station or its destination after an accident or incident, the railroad must consider the safety and convenience of passengers in determining whether the crew should be made immediately available for post-accident toxicological testing. A relief crew must be called to relieve the train crew as soon as possible.

(4) Regulated employees who may be subject to post-accident toxicological testing under this subpart must be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete specimen collection.

(e) *Recall of employees for testing.* (1) Except as otherwise provided for in paragraph (e)(2) of this section, a regulated employee may not be recalled for testing under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Furthermore, nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (e.g., an employee who is absent without leave). However, subsequent testing does not excuse a refusal by the employee to provide the specimens in a timely manner.

(2) A railroad must immediately recall and place on duty a regulated employee for post-accident drug testing, if—

(i) The employee could not be retained in duty status because the employee went off duty under normal railroad procedures prior to being contacted by a railroad supervisor and instructed to remain on duty pending completion of the required determinations (e.g., in the case of a dispatcher or signal maintainer remote from the scene of an accident who was unaware of the occurrence at the time he or she went off duty); and

(ii) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201) indicates a clear probability that the employee played a role in the cause or severity of the accident/incident.

(3) If the criteria in paragraphs (e)(2)(i) and (ii) of this section are met, a regulated employee must be recalled for post-accident drug testing regardless of whether the qualifying event happened or did not happen during the employee's tour of duty. However, an employee may not be recalled for testing if more than 24 hours have passed since the qualifying event. An employee who has been recalled must be placed on duty for the purpose of accomplishing the required post-accident drug testing.

(4) Urine and blood specimens must be collected from an employee who is recalled for testing in accordance with this section. If the employee left railroad property prior to being recalled, however, the specimens must be tested for drugs only. A railroad is prohibited from requiring a recalled employee to provide breath specimens for alcohol testing, unless the regulated employee has remained on railroad property since the time of the qualifying event and the railroad has a company policy completely prohibiting the use of alcohol on railroad property.

(5) A railroad must document its attempts to contact an employee subject to the recall provisions of this section. If a railroad is unable, as a result of the non-cooperation of an employee or for any other reason, to obtain a specimen(s) from an employee subject to mandatory recall within the 24 hour period after a qualifying event and to submit specimen(s) to FRA as required by this subpart, the railroad must contact FRA and prepare a concise narrative report according to the requirements of paragraph (d)(1) of this section. The report must also document the railroad's good faith attempts to contact and recall the employee.

(f) *Place of specimen collection.* (1) With the exception of Federal breath testing for alcohol (when conducted as authorized under this subpart), employees must be transported to an independent medical facility for specimen collection. In all cases blood may be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional (e.g., a phlebotomist). A collector contracted by a railroad or medical facility may collect and/or assist in the collection of specimens at the medical facility if the medical facility does not object and the collector is qualified to do so.

(2) If an employee has been injured, a railroad must request the treating medical facility to obtain the specimens. Urine may be collected from an injured employee (conscious or unconscious) who has already been catheterized for medical purposes, but an employee may not be catheterized solely for the purpose of providing a specimen under this subpart. Under § 219.11(a), an employee is deemed to have consented to FRA post-accident toxicological testing by the act of being a regulated employee subject to performing regulated service for a railroad.

(g) *Obtaining cooperation of facility.* (1) In seeking the cooperation of a medical facility in obtaining a specimen under this subpart, a railroad must, as necessary, make specific reference to the requirements of this subpart and the instructions in FRA's post-accident toxicological shipping kit.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood and/or urine specimens after having been informed of the requirements of this subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8802, stating the employee's name, the name and location of the medical facility, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required specimens.

(h) *Discretion of physician.* Nothing in this subpart may be construed to limit the discretion of a medical professional to determine whether drawing a blood specimen is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

■ 29. Revise § 219.205 to read as follows:

§ 219.205 Specimen collection and handling.

(a) *General.* Urine and blood specimens must be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this subpart, the instructions provided inside the FRA post-accident toxicological shipping kit, and the technical specifications set forth in Appendix C to this part.

(b) *Information requirements.* In order to process specimens, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain

basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA 6180.73 (revised) for shipping with the specimens. Each employee subject to testing must cooperate in completion of the required information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the specimens. The railroad representative must request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74. One Form 6180.73 must be forwarded in the shipping kit with each group of specimens. One Form 6180.74 must be forwarded in the shipping kit for each employee who provides specimens. Form 6180.73 and either Form 6180.74 or Form 6180.75 (for fatalities) are included in the shipping kit. (See paragraph (c) of this section.)

(c) *Shipping kits.* (1) FRA and the laboratory designated in Appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of post-accident toxicological specimens under this subpart. Specimens must be placed in the shipping kit and prepared for shipment according to the instructions provided in the kit and Appendix C to this part.

(2) Standard shipping kits may be ordered directly from the laboratory designated in Appendix B to this part by first requesting an order form from FRA's Drug and Alcohol Program Manager at 202–493–6313. In addition to the standard kit for surviving employees, FRA also has a post-mortem shipping kit that has been distributed to Class I, II, and commuter railroads. The post-mortem kit may not be ordered by other railroads. If a smaller railroad has a qualifying event involving a fatality to an on-duty employee, the railroad should advise the NRC at 1–800–424–8802 of the need for a post-mortem kit, and FRA will send one overnight to the medical examiner's office or assist the railroad in obtaining one from a nearby railroad.

(d) *Shipment.* Specimens must be shipped as soon as possible by pre-paid air express (or other means adequate to ensure delivery within 24 hours from time of shipment) to the laboratory designated in Appendix B to this part. However, if delivery cannot be ensured within 24 hours due to a suspension in air express delivery services, the specimens must be held in a secure refrigerator until delivery can be accomplished. In no circumstances may specimens be held for more than 72 hours. Where express courier pickup is available, the railroad must request the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the specimens are collected or if for any other reason a prompt transfer by the medical facility cannot be assured, the railroad must promptly transport the sealed shipping kit holding the specimens to the most expeditious point of shipment via air express. The railroad must maintain and document secure chain of custody of the kit(s) from release by the medical facility to delivery for transportation, as described in Appendix C to this part.

(e) *Specimen security.* After a specimen kit or transportation box has been sealed, no entity other than the laboratory designated in Appendix B to this part may open it. If the railroad or medical facility discovers an error with either the specimens or the chain of custody form after the kit or transportation box has been sealed, the railroad or medical facility must make a contemporaneous written record of that error and send it to the laboratory, preferably with the transportation box.

§ 219.207 [Amended]

■ 20. Section 219.207 is amended by—

■ a. In paragraph (a), removing the word ''and/or'' and adding, in its place, the word ''and''; removing the words ''timely collected'' and adding, in their place, ''collected in a timely fashion''; removing the word ''shipping'' and adding, in its place, ''post-mortem shipping''; and removing the words ''if a person'' and adding, in their place, ''if the custodian is someone'';

■ b. In paragraph (b) introductory text, removing ''(800) 424–8801 or'';

■ c. In paragraph (c), removing the word ''and/or'' and adding, in its place, the word ''and''; and

■ d. In paragraph (d), removing the word ''specifies'' and adding, in its place, the words ''and the instructions included inside the shipping kits specify''.

■ 21. In § 219.209, revise paragraphs (a)(2)(iv) and (v) and (b) and remove paragraph (c).

The revisions read as follows:

§ 219.209 Reports of tests and refusals.

(a) * * *

(2) * * *

(iv) Brief summary of the circumstances of the accident/incident, including basis for testing (e.g., Impact Accident with a reportable injury); and

(v) Number of employees tested.

(b) If a railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a specimen and provide it to FRA as required by this subpart, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202–493–6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also provide a concise narrative written report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report must be appended to the report of the accident/incident required to be submitted under part 225 of this chapter and must also be mailed to the FRA Drug and Alcohol Program Manager at 1200 New Jersey Avenue SE., Washington, DC 20590.

■ 22. Section 219.211 is amended by—

■ a. Adding a sentence at the end of paragraph (b);

■ b. Revising the second sentence of paragraph (c) and the second sentence of paragraph (e); and

■ c. Revising paragraph (g)(3).

The revisions and addition read as follows:

§ 219.211 Analysis and follow-up.

* * * * *

(b) * * * An employer is prohibited from temporarily removing an employee from the performance of regulated service based only on a report from the laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

(c) * * * The Medical Review Officer must promptly report the results of each review to the Associate Administrator for Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590. * * *

(e) * * * An employee wishing to respond may do so by email or letter addressed to the Drug and Alcohol Program Manager, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 within 45 days of receipt of the test results. * * *

* * * * *

(g) * * *

(3) This provision does not authorize holding any employee out of service pending receipt of PAT testing results. It also does not restrict a railroad from taking such action based on the employee's underlying conduct, so long as it is consistent with the railroad's disciplinary policy and any such action is done under the railroad's own company authority.

* * * * *

§ 219.213 [Amended]

■ 23. In § 219.213, paragraphs (a) and (b), revise all references to ''covered service'' to read ''regulated service,'' and in paragraph (b), adding the word ''written'' in front of the word ''notice''.

■ 24. Revise subpart D to read as follows:

Subpart D—Reasonable Suspicion Testing

Sec.

219.301 Mandatory reasonable suspicion testing.
219.303 Reasonable suspicion observations.
219.305 Prompt specimen collection; time limitation.

Subpart D—Reasonable Suspicion Testing

§ 219.301 Mandatory reasonable suspicion testing.

(a) A railroad must require a regulated employee to submit to a breath alcohol test when the railroad has reasonable suspicion to believe that the regulated employee has violated any prohibition of subpart B of this part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the regulated employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. A Federal reasonable suspicion alcohol test is not required to confirm the on-duty possession of alcohol.

(b) A railroad must require a regulated employee to submit to a drug test when the railroad has reasonable suspicion to believe that the regulated employee has violated the prohibitions of subpart B of this part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the regulated employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(c) Reasonable suspicion observations made under this section must comply with the requirements of § 219.303.

(d) As provided by § 219.11(b)(2), in any case where an employee is suffering a substantiated medical emergency and is subject to alcohol or drug testing under this subpart, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimens. However, when the employee's condition is stabilized, reasonable suspicion testing must be completed if within the eight-hour limit provided for in § 219.305.

§ 219.303 Reasonable suspicion observations.

(a) With respect to an alcohol test, the required observations must be made by a responsible railroad supervisor (defined by § 219.5) trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct the reasonable suspicion testing on that regulated employee.

(b) With respect to a drug test, the required observations must be made by two responsible railroad supervisors (defined by § 219.5), at least one of whom must be is both on site and trained in accordance with § 219.11(g). If one of the supervisors is off-site, the on-site supervisor must communicate with the off-site supervisor, as necessary, to provide him or her the information needed to make the required observation. This communication may be performed via telephone, but not via radio or any other form of electronic communication.

(c) This subpart does not authorize holding any employee out of service pending receipt of toxicological analysis for reasonable suspicion testing, nor does it restrict a railroad from taking such action based on the employee's underlying conduct, so long as it is consistent with the railroad's policy and any such action is done under the railroad's own company authority.

(d) The railroad must maintain written documentation that specifically describes the observed signs and symptoms upon which determination that reasonable suspicion exists is based. This documentation must be completed promptly by the trained supervisor.

§ 219.305 Prompt specimen collection; time limitations.

(a) Consistent with the need to protect life and property, testing under this subpart must be conducted promptly following the observations upon which the testing decision is based.

(b) If a test required by this subpart is not administered within two hours following a determination made under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not administered within that time period. If an alcohol or drug test required by this subpart is not administered within eight hours of the determination made under this subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the specimens within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager.

(c) A regulated employee may not be tested under this subpart if that individual has been released from duty under the normal procedures of a railroad. An individual who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave).

■ 25. Revise subpart E to read as follows:

Subpart E—Reasonable Cause Testing

Sec.

219.401 Authorization for reasonable cause testing.
219.403 Requirements for reasonable cause testing.
219.405 Documentation requirements.
219.407 Prompt specimen collection; time limitations.
219.409 Limitations on authority.

Subpart E—Reasonable Cause Testing

§ 219.401 Authorization for reasonable cause testing.

(a) A railroad may, at its own discretion, elect to conduct Federal reasonable cause testing authorized by this subpart. If a railroad chooses to do so, the railroad must use only Federal authority for all reasonable cause testing that meets the criteria of § 219.403. In addition, the railroad must notify its regulated employees of its decision to use Federal reasonable cause testing authority in the employee educational policy required by § 219.23(e)(5). The railroad must also provide written notification of its decision to FRA's Drug and Alcohol Program Manager, 1200 New Jersey Ave. SE., Washington, DC, 20590.

(b) If a railroad elects to conduct reasonable cause testing under the authority of this subpart, the railroad may, under the conditions specified in this subpart, require any regulated employee, as a condition of employment in regulated service, to cooperate with breath or body fluid testing, or both, to determine compliance with §§ 219.101 and 219.102 or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of

this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

§ 219.403 Requirements for reasonable cause testing.

A railroad's decision process regarding whether reasonable cause testing is authorized must be completed before the reasonable cause testing is performed and documented according to the requirements of § 219.405. The following circumstances constitute reasonable cause for the administration of alcohol and/or drug tests under the authority of this subpart.

(a) *Train accident or train incident.* The regulated employee has been involved in a train accident or train incident (as defined in § 219.5) reportable under part 225 of this chapter, and a responsible railroad supervisor (as defined in § 219.5) has a reasonable belief, based on specific, articulable facts, that the individual employee's acts or omissions contributed to the occurrence or severity of the accident; or

(b) *Rule violation.* The regulated employee has been directly involved in one or more of the following railroad or FRA rule violations or other errors:

(1) Noncompliance with a train order, track warrant, track bulletin, track permit, stop and flag order, timetable, signal indication, special instruction or other directive with respect to movement of railroad on-track equipment that involves—

(i) Occupancy of a block or other segment of track to which entry was not authorized;

(ii) Failure to clear a track to permit opposing or following movements to pass;

(iii) Moving across a railroad crossing at grade without authorization; or

(iv) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(2) Failure to protect on-track equipment, including leaving on-track equipment fouling an adjacent track;

(3) Operation of a train or other speedometer-equipped on-track equipment at a speed that exceeds the maximum authorized speed by at least 10 miles per hour or by 50% of such maximum authorized speed, whichever is less;

(4) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under on-track equipment, or unauthorized running through a switch;

(5) Failure to restore and secure a main track switch as required;

(6) Failure to apply brakes or stop short of a derail as required;

(7) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(8) Entering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover movement is completed;

(9) Failure to provide point protection by visually determining that the track is clear and giving the signals or instructions necessary to control the movement of on-track equipment when engaged in a shoving or pushing movement;

(10) In the case of a person performing a dispatching function or block operator function, issuance of a mandatory directive or establishment of a route that fails to provide proper protection for on-track equipment;

(11) Interference with the normal functioning of any grade crossing signal system or any signal or train control device without first taking measures to provide for the safety of highway traffic or train operations which depend on the normal functioning of such a device. Such interference includes, but is not limited to, failure to provide alternative methods of maintaining safety for highway traffic or train operations while testing or performing work on the devices or on track and other railroad systems or structures which may affect the integrity of the system;

(12) Failure to perform stop-and-flag duties necessary as a result of a malfunction of a grade crossing signal system;

(13) Failure of a machine operator that results in a collision between a roadway maintenance machine and on-track equipment or a regulated employee;

(14) Failure of a roadway worker-in-charge to notify all affected employees when releasing working limits;

(15) Failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment;

(16) Failure to ascertain that provision was made for on-track safety before fouling a track;

(17) Improper use of individual train detection (ITD) in a manual interlocking or control point; or

(18) Failure to apply three point protection (fully apply the locomotive and train brakes, center the reverser, and place the generator field switch in the off position) that results in a reportable injury to a regulated employee.

§ 219.405 Documentation requirements.

(a) A railroad must maintain written documentation that specifically describes the basis for each reasonable cause test it performs under Federal authority. This documentation must be completed promptly by the responsible railroad supervisor; although it does not need to be completed before reasonable cause testing is conducted.

(b) For a rule violation, the documentation must include the type of rule violation and the involvement of each tested regulated employee. For a train accident or train incident reportable under part 225 of this chapter, it must describe either the amount of railroad property damage or the reportable casualty and the basis for the supervisor's belief that the employee's acts or omissions contributed to the occurrence or severity of the train accident or train incident.

§ 219.407 Prompt specimen collection; time limitations.

(a) Consistent with the need to protect life and property, testing under this subpart must be conducted promptly following the observations upon which the testing decision is based.

(b) If a test conducted pursuant to the authority of this subpart is not administered within two hours following the observations upon which the testing decision is based, the railroad must prepare and maintain on file a record stating the reasons the test was not conducted within that time period. If an alcohol or drug test authorized by this subpart is not administered within eight hours of the event under this subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. The eight-hour time period begins at the time a responsible railroad supervisor receives notice of the train accident, train incident, or rule violation. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of specimen(s) within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager.

(c) A regulated employee may not be tested under this subpart if that individual has been released from duty under the normal procedures of the railroad. An individual who has been transported to receive medical care is not released from duty for purposes of

this section. Nothing in this section prohibits the subsequent testing of a regulated employee who has failed to remain available for testing as required (i.e., who is absent without leave).

§ 219.409 Limitations on authority.

(a) The alcohol and/or drug testing authority conferred by this subpart does not apply with respect to any event that meets the criteria for post-accident toxicological testing required under subpart C of this part.

(b) This subpart does not authorize holding an employee out of service pending receipt of toxicological analysis for reasonable cause testing because meeting the testing criteria is only a basis to inquire whether alcohol or drugs may have played a role in the accident or rule violation. Notwithstanding this paragraph (b), this subpart does not restrict a railroad from holding an employee out of service based on the employee's underlying conduct, so long as it is consistent with the railroad's policy and any such action is done under the railroad's own company authority, not Federal authority.

(c) When determining whether reasonable cause testing is justified, a railroad must consider the involvement of each crewmember in the qualifying event, not the involvement of the crew as a whole.

Subpart F—Pre-Employment Tests

■ 26. Revise § 219.501 to read as follows:

§ 219.501 Pre-employment drug testing.

(a) Prior to the first time an individual performs regulated service for a railroad, the railroad must ensure that the employee undergoes testing for drugs in accordance with the regulations of a DOT agency. No railroad may allow a direct employee (a railroad employee who is not employed by a contractor to the railroad) to perform regulated service, unless that railroad has conducted a DOT pre-employment test for drugs on that individual with a result that did not indicate the misuse of any controlled substance. This requirement applies both to a final applicant for direct employment and to a direct employee seeking to transfer for the first time from non-regulated service to duties involving regulated service. A regulated employee must have a negative DOT pre-employment drug test for each railroad for which he or she performs regulated service as the result of a direct employment relationship.

(b) A railroad must ensure that each employee of a contractor who performs regulated service on the railroad's behalf has a negative DOT pre-employment drug test on file with his or her employer. The railroad must also maintain documentation indicating that it had verified that the contractor employee had a negative DOT pre-employment drug test on file with his or her direct employer. A contractor employee who performs regulated service for more than one railroad does not need to have a DOT pre-employment drug test for each railroad for which he or she provides service.

(c) If a railroad has already conducted a DOT pre-employment test resulting in a negative for a regulated service applicant under the rules and regulations of another DOT agency (such as the Federal Motor Carrier Safety Administration), FRA will accept the result of that negative DOT pre-employment test for purposes of the requirements of this subpart.

(d) As used in subpart H of this part with respect to a test required under this subpart, the term regulated employee includes an applicant for pre-employment testing only. If an applicant declines to be tested and withdraws an application for employment before the pre-employment testing process commences, no record may be maintained of the declination. The determination of when a drug test commences must be made according to the provisions found in subpart E of part 40 of this title.

(e) The pre-employment drug testing requirements of this section do not apply to covered employees of railroads qualifying for the small railroad exception (see § 219.3(c)) or maintenance-of-way employees who were performing duties for a railroad prior to [EFFECTIVE DATE OF FINAL RULE]. However, a grandfathered employee must have a negative pre-employment drug test before performing regulated service for a new employing railroad after [EFFECTIVE DATE OF FINAL RULE].

■ 27. In § 219.502, revise paragraphs (a) introductory text, (a)(1), (a)(2), (a)(5), and (b) to read as follows:

§ 219.502 Pre-employment alcohol testing.

(a) A railroad may, but is not required to, conduct pre-employment alcohol testing under this part. If a railroad chooses to conduct pre-employment alcohol testing, the railroad must comply with the following requirements:

(1) The railroad must conduct a pre-employment alcohol test before the first performance of regulated service by every regulated employee, regardless of whether he or she is a new employee or a first-time transfer to a position involving the performance of regulated service.

(2) The railroad must treat all regulated employees performing regulated service the same for the purpose of pre-employment alcohol testing (i.e., a railroad must not test some regulated employees and not others.)

* * * * *

(5) If a regulated employee's Federal pre-employment test indicates an alcohol concentration of 0.04 or greater, a railroad may not allow him or her to begin performing regulated service until he or she has completed the Federal return-to-duty process under § 219.104(d).

(b) As used in subpart H of this part with respect to a test authorized under this subpart, the term regulated employee includes an applicant for pre-employment testing only. If an applicant declines to be tested and withdraws his or her application for employment before the testing process commences, no record may be maintained of the declination. The determination of when an alcohol test commences must be made according to the provisions of § 40.243(a) of this title.

■ 28. Revise § 219.503 to read as follows:

§ 219.503 Notification; records.

The railroad must provide for medical review of drug test results according to the requirements of part 40 of this title, as provided in subpart H of this part. The railroad must also notify the applicant in writing of the results of any Federal drug and/or alcohol test that is a positive, adulteration, substitution, or refusal in the same manner as provided for employees in part 40 of this title and subpart H of this part. Records must be maintained confidentially and be retained in the same manner as required under subpart J of this part for employee test records, except that such records need not reflect the identity of an applicant who withdrew an application to perform regulated service prior to the commencement of the testing process.

■ 29. Revise § 219.505 to read as follows:

§ 219.505 Non-negative tests and refusals.

An applicant who has tested positive or refused to submit to pre-employment testing under this section may not perform regulated service for any railroad until he or she has completed the Federal return-to-duty process under § 219.104(d). Such applicants may also not perform DOT safety-sensitive functions for any other employer regulated by a DOT agency until they have completed the Federal return-to-

duty process under § 219.104(d). This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

■ 30. Revise subpart G to read as follows:

Subpart G—Random Alcohol and Drug Testing Programs

Sec.
219.601 Purpose and scope of random testing programs.
219.603 General requirements for random testing programs.
219.605 Submission and approval of random testing plans.
219.607 Requirements for random testing plans.
219.609 Inclusion of contractor employees and volunteers in random testing plans.
219.611 Random drug and alcohol testing pools.
219.613 Random testing selections.
219.615 Random testing collections.
219.617 Participation in random drug and alcohol testing.
219.619 Positive drug and alcohol test results and refusals; procedures.
219.621 Use of service agents.
219.623 Records.
219.625 FRA Administrator's determination of random drug and alcohol testing rates.

Subpart G—Random Alcohol and Drug Testing Programs

§ 219.601 Purpose and scope of random testing programs.

(a) *Purpose.* The purpose of random alcohol and drug testing is to promote safety by deterring the misuse of drugs and the abuse of alcohol by regulated employees.

(b) *Regulated employees.* A railroad must ensure that its regulated employees are subject to being selected for random testing as required by this subpart whenever they perform regulated service on the railroad's behalf.

(c) *Contractor employees and volunteers.* A regulated service employee who is a volunteer or an employee of a contractor to a railroad may be incorporated into the random testing program of more than one railroad if:

(i) The contractor employee or volunteer is not part of a random testing program that meets the requirements of this subpart and that is acceptable to the railroad for whom he or she performs regulated service (as described by § 219.609); or

(ii) The railroad for which the contractor employee or volunteer performs regulated service is unable to verify that the individual is part of a random testing program acceptable to the railroad that meets the requirements of this subpart.

(d) *Multiple DOT agencies.* (1) If a regulated employee performs functions subject to the random testing requirements of more than one DOT agency, a railroad must ensure that the employee is subject to selection for random drug and alcohol testing at or above the current minimum annual testing rate set by the DOT agency that regulates more than 50 percent of the employee's DOT-regulated functions.

(2) A railroad may not include a regulated employee in more than one DOT random testing pool for regulated service performed on its behalf, even if the regulated employee is subject to the random testing requirements of more than one DOT agency.

§ 219.603 General requirements for random testing programs.

(a) *General.* To the extent possible, a railroad must ensure that its FRA random testing program is designed and implemented so that every regulated employee performing regulated service on its behalf should reasonably anticipate that he or she may be called for a random test without advance warning at any time while on-duty and subject to performing regulated service.

(b) *Prohibited selection bias.* A random testing program may not have a selection bias or an appearance of selection bias, or appear to provide an opportunity for a regulated employee to avoid complying with this section.

(c) *Plans.* As required by §§ 219.603–219.609, each railroad must submit for FRA approval a random testing plan meeting the requirements of this subpart. The plan must address all regulated employees, as defined in § 219.5.

(d) *Pools.* A railroad must construct and maintain random testing pools in accordance with § 219.611.

(e) *Selections.* A railroad must conduct random testing selections in accordance with § 219.613.

(f) *Collections.* A railroad must perform random testing collections in accordance with § 219.615.

(g) *Cooperation.* A railroad and its regulated employees must cooperate with and participate in random testing in accordance with § 219.617.

(h) *Responsive action.* A railroad must handle positive random tests and verified refusals to test in accordance with § 219.619.

(i) *Service agents.* A railroad may use a service agent to perform its random testing responsibilities in accordance with § 219.621.

(j) *Records.* A railroad must maintain records required by this subpart in accordance with § 219.623.

§ 219.605 Submission and approval of random testing plans.

(a) *Plan submission.* (1) Each railroad must submit for review and approval a random testing plan meeting the requirements of § 219.607 and § 219.609 to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave. SE., Washington, DC 20590. A railroad commencing start-up operations must submit its plan no later than 30 days prior to its date of commencing operations. A railroad that must comply with subpart G because it no longer qualifies for the small railroad exception under § 219.3 (due to a change in operations or its number of covered employees) must submit its plan no later than 30 days after it becomes subject to the requirements of this subpart. A railroad may not implement a Federal random testing plan or any substantive amendment to that plan prior to FRA approval.

(2) A railroad may submit separate random testing plans for each category of regulated employees (as defined in § 219.5), combine all categories into a single plan, or amend its current FRA-approved plan to add additional categories of regulated employees, as defined by this part.

(b) *Plan approval notification.* FRA will notify a railroad in writing whether its plan is approved. If the plan is not approved because it does not meet the requirements of this subpart, FRA will inform the railroad of its non-approval, with specific explanation as to necessary revisions. The railroad must resubmit its plan with the required revisions within 30 days of the date of FRA's written notice. Failure to resubmit the plan with the necessary revisions will be considered a failure to submit a plan under this part.

(c) *Plan implementation.* A railroad must implement its random testing plan no later than 30 days from the date of approval by FRA.

(d) *Plan amendments.* (1) A substantive amendment to an approved plan must be submitted to FRA at least 30 days prior to its intended effective date. A railroad may not implement any substantive amendment prior to FRA approval.

(2) Non-substantive amendments to an approved plan (such as replacing or adding service providers) must be provided to the FRA Drug and Alcohol Program Manager in writing (by letter or email) before their effective date, but do not require pre-approval by FRA.

(e) *Existing approved plans.* A railroad random testing plan approved before [EFFECTIVE DATE OF FINAL RULE] does not have to be resubmitted unless it has to be amended to comply with the requirements of this subpart. New plans, combined plans, or amended plans incorporating new categories of regulated employees (i.e. maintenance-of-way employees) must be submitted for FRA approval by a railroad at least 30 days before [EFFECTIVE DATE OF FINAL RULE].

§ 219.607 Requirements for random testing plans.

(a) *General.* A random testing plan submitted by a railroad under this subpart must address and comply with the requirements of this subpart. The railroad must also comply with these requirements in implementing the plan.

(b) *Model random testing plan.* A railroad (or a contractor or service agent requested to submit a part 219-compliant random testing plan to a railroad for submission as a part of the railroad's random testing plan) may complete, modify if necessary, and submit a plan based on the FRA model random testing plan that can be downloaded from FRA's Drug and Alcohol Program Web site.

(c) *Specific plan requirements.* Random testing plans must contain the following items of information, each of which must be contained in a separate, clearly identified section:

(1) Total number of covered employees, including covered service contractor employees and volunteers;

(2) Total number of maintenance-of-way employees, including maintenance-of-way contractor employees and volunteers;

(3) Names of any contractors who perform regulated service for the railroad, with contact information;

(4) Method used to ensure that any regulated service contractor employees and volunteers are subject to the requirements of this subpart, as required by § 219.609;

(5) Name, address, and contact information for the railroad's Designated Employer Representative (DER) and any back-ups (if applicable);

(6) Name, address, and contact information for any service providers, including the railroad's Medical Review Officer (MRO), Substance Abuse and Mental Health Services Administration (SAMHSA) certified drug testing laboratory(ies), Substance Abuse Professional(s) (SAPs), and C/TPA or collection site management companies. Individual collection sites do not have to be identified;

(7) Number of random testing pools and the proposed general pool entry assignments for each pool. If using a C/TPA, a railroad must identify whether its regulated employees are combined into one pool, contained in separate pools, or combined in a larger pool with other FRA and/or other DOT agency regulated employees.

(8) Target random testing rates;

(9) Method used to make random selections, including a detailed description of the computer program or random number table selection process employed;

(10) Selection unit(s) for each random pool (e.g., employee name or ID number, job assignment, train symbol) and whether the individual selection unit(s) will be selected for drugs, alcohol, or both;

(11) If a railroad makes alternate selections, under what limited circumstances these alternate selections will be tested (see § 219.613);

(12) Frequency of random selections (e.g., monthly);

(13) Designated testing window. The designated testing window extends from the beginning to the end of the designated testing period established in the railroad's FRA-approved random plan (see § 219.603), after which time any individual selections for that designated testing window that have not been collected are no longer active (valid); and

(14) Description of how the railroad will notify a regulated employee that he or she has been selected for random testing.

§ 219.609 Inclusion of contractor employees and volunteers in random testing plans.

(a) A railroad's random testing plan must demonstrate that all of its regulated service contractor employees and volunteers are subject to random testing that meets the requirements of this subpart. A railroad can demonstrate that its regulated service contractor employees and volunteers are in compliance with this subpart by either:

(1) Directly including regulated service contractor employees and volunteers in its own random testing plan and ensuring that they are tested according to that plan; or

(2) Indicating in its random testing plan that its regulated service contractor employees and volunteers are part of a random testing program, compliant with the requirements of this subpart, conducted by a contractor or a service agent, such as a C/TPA (''non-railroad random testing program''). If a railroad chooses this option, the railroad must append to its own random testing plan one or more addenda describing the method it will use to ensure that the non-railroad random testing program is testing its regulated service contractor employees and volunteers according to the requirements of this subpart. A railroad could comply with this requirement by appending either the non-railroad random testing program or a detailed description of the program and how it complies with this subpart.

(b) A railroad's random testing plan(s) and any addenda must contain sufficient detail to fully document that the railroad is meeting the requirements of this subpart for all personnel performing regulated service on its behalf.

(c) If a railroad chooses to use regulated service contractor employees and volunteers who are part of a non-railroad random testing program, the railroad remains responsible for ensuring that the non-railroad program is testing the regulated service contractor employees and volunteers according to the requirements of this subpart.

(d) FRA does not pre-approve contractor or service agent random testing plans, but may accept them as part of its approval process of a railroad's plan.

§ 219.611 Random alcohol and drug testing pools.

(a) *General.* A railroad must ensure that its random testing pools include all regulated employees who perform regulated service on its behalf, except that a railroad's random testing pools do not have to include regulated employees who are part of a non-railroad random testing program that is compliant with the requirements of this subpart and that has been accepted by the railroad.

(b) *Pool entries.* A railroad must clearly indicate who will be tested when a specific pool entry is selected.

(1) Pool entries may be either employee names or identification numbers, train symbols, or specific job assignments, although all the entries in a single pool must be of generally consistent sizes and types.

(2) Pool entries may not be constructed in a manner that permits a field manager or field supervisor to have discretion over which employee would be tested when an entry is selected.

(3) Pool entries must be constructed and maintained so that all regulated employees have an equal chance of being selected for random testing for each selection draw.

(c) *Minimum number of pool entries.* A railroad (including a service agent used by a railroad to carry out its responsibilities under this subpart) may

not maintain a random testing pool with fewer than four pool entries. No placeholder pool entries (entries that do not represent legitimate selections of regulated employees) are permitted. A railroad or contractor with fewer than four regulated employees can comply with this requirement by having its regulated employees incorporated into either a railroad or a non-railroad random testing pool containing more than four entries.

(d) *Pool construction.*

(1) An individual who is not subject to the random testing requirements of FRA or another DOT agency may not be mixed in the same pool as regulated employees.

(2) A railroad may not include a regulated employee in more than one random testing pool established under the regulations of a DOT agency.

(3) A regulated employee can be placed in a random testing pool with other employees subject to the random testing requirements of FRA or another DOT agency. However, all entries in a pool must be subject to testing at the highest minimum random testing rate required by the regulations of a DOT agency for any single member of that pool.

(4) A regulated employee does not need to be placed in separate pools for random drug and random alcohol testing selection.

(5) A regulated employee must be incorporated into a random testing pool as soon as possible after his or her hire or first transfer into regulated service.

(e) *Frequency of regulated service.* (1) A railroad may not place a person in a random testing pool for any selection period in which he or she is not expected to perform regulated service.

(2) Railroad employees who perform covered service on average less than once a quarter are considered a de minimis safety concern for random testing purposes, and a railroad is not required to include them in a random testing program. A railroad may choose to randomly test such de minimis employees, but only if they are placed in a separate random testing pool and not in a random testing pool with employees who perform regulated service on a regular basis (e.g, engineers, conductors, dispatchers, and signal maintainers).

(3) A railroad must make a good faith effort when determining the frequency of an employee's performance of regulated service and must evaluate an employee's likelihood of performing regulated service in each upcoming selection period.

(f) *Pool maintenance.* Pool entries must be updated at least monthly, regardless of how often selections are made, and a railroad must ensure that each random testing pool is complete and does not contain outdated or inappropriate entries.

(g) *Multiple random testing pools.* A railroad may maintain more than one random testing pool if it can demonstrate that its random testing program is not adversely impacted by the number and types of pools or the construction of pool entries, and that selections from each pool will meet the requirements of this subpart.

§ 219.613 Random testing selections.

(a) *General.* A railroad must ensure that each regulated employee has an equal chance of being selected for random testing whenever selections are performed. A railroad may not increase or decrease an employee's chance of being selected by weighting an entry or pool.

(b) *Method of selection.* (1) A railroad must use a selection method that is acceptable to FRA and that meets the requirements of this subpart. Acceptable selection methods are a computer selection program, a method that makes proper use of a random number table, or an alternative method included in a railroad's random testing plan and approved by FRA.

(2) A selection method must be free of bias or apparent bias and employ objective, neutral criteria to ensure that every regulated employee has an equal statistical chance of being selected within a specified time frame. The selection method may not utilize subjective factors that permit a railroad to manipulate or control selections in an effort to either target or protect any employee, job, or operational unit from testing.

(3) The randomness of a selection method must be verifiable, and, as required by § 219.623, any records necessary to document the randomness of a selection must be retained for not less than two years from the date the designated testing window for that selection expired.

(c) *Minimum random testing rate.* (1) Sufficient selections must be made to ensure that each random testing pool meets the minimum annual random testing rates established by the Administrator according to § 219.625 and that random tests are reasonably distributed throughout the calendar year.

(2) A railroad must continually monitor changes in its workforce to ensure that the required number of selections and tests are conducted each year.

(3) To establish the total number of regulated employees eligible for random testing throughout the year and the number of tests which need to be conducted, a railroad must separately identify the total number of regulated employees (as defined by § 219.5) eligible for random testing during each random testing period for the year for each employee category for which the Administrator has established a separate random rate requirement. The railroad must then divide the subtotal by the number of random testing periods and apply the Administrator's random rate determination against this result. A railroad does not need to perform this calculation more than once per month even if the railroad conducts random testing selections more often than once per month (e.g., selecting every two weeks).

(d) *Selection frequency.* At least one entry must be selected from each random testing pool every three months (i.e., once every quarter). FRA considers a quarter to be a three month period.

(e) *Discarded selection draws.* Once a selection draw has been made, it must be used to identify which individuals will be subject to random testing. A selection draw cannot be discarded without an acceptable explanation (e.g., the pool from which the selection draw was made was incomplete or inaccurate). Records for all discarded selection draws, including the specific reason the selection draw was not used, must be documented and retained according to the requirements of § 219.623.

(f) *Increasing random selections.* If a railroad is not able to complete a collection for all selections during the designated testing period, as provided by §§ 219.615(f) or 219.617(a)(3), the railroad may increase the number of selections for a subsequent selection period to ensure that it is meeting the annual minimum random testing rate for the calendar year.

(g) *Selection snapshots.* A railroad must capture and maintain an electronic or hard copy snapshot of each random testing pool at the time it makes a testing selection. The pool entries must not be re-created from records after the time of the original selection. The railroad must maintain this snapshot for a period of two years, as required by subpart J of this part.

(h) *Multiple DOT agencies.* In accordance with § 219.601(a), if a regulated employee performs functions subject to the random testing requirements of more than one DOT agency, the railroad must ensure that the employee is subject to selection for random testing at or above the current

minimum annual testing rate set by the DOT agency that regulates more than 50 percent of the employee's DOT-regulated functions.

§ 219.615 Random testing collections.

(a) *Minimum random testing rates.* A railroad must complete a sufficient number of random alcohol and drug testing collections from each of its random testing pools to meet the minimum annual testing rates established by the Administrator in § 219.625.

(b) *Designated testing window.* A railroad must complete the collection for a selected pool entry within the designated testing window approved by FRA for that selection. Once a designated testing window is closed, selections for that window which have not been collected are no longer active (valid) and may not be subject to random testing.

(c) *Collection timing.* (1) A regulated employee may be subject to random testing only while on duty and subject to performing regulated service.

(2) Random alcohol and drug testing collections must be unannounced and their dates spread reasonably throughout the calendar year. Collections must also be distributed unpredictably throughout the designated testing window and must reasonably cover all operating days of the week (including operating weekends and holidays), shifts, and locations.

(3) Random alcohol test collections must be performed unpredictably and in sufficient numbers at either end of an operating shift to attain an acceptable level of deterrence throughout the entire shift. At a minimum, a railroad must perform 10% of its random alcohol tests at the beginning of shifts and 10% of its random alcohol tests at the end of a shift.

(4) If a regulated employee has been selected for both random drug and alcohol testing, the railroad may conduct these tests separately, so long as both required collections can be completed by the end of the employee's shift and the railroad does not inform the employee that an additional collection will occur later.

(d) *Collection scheduling.* While pool entries must be selected randomly, the scheduling of a random test collection during the designated testing window is within the discretion of the railroad according to its approved plan.

(1) A railroad may schedule a collection based on the availability of the selected pool entry, the logistics of performing the collection, and any other requirements of this subpart.

(2) When a selected pool entry involves changing personnel (i.e., train crews or job functions), a railroad may not use its scheduling discretion to deliberately target or protect a particular employee or work crew. Unless otherwise approved in a random testing plan, railroad field supervisors or field management personnel may not use discretion to choose or to change collection dates or times if that choice could intentionally alter who is to be tested.

(e) *Notification requirements.* (1) A railroad may not notify a regulated employee that he or she has been selected for random testing until the duty tour in which the collection is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the scheduled collection time and place.

(2) Collections must be conducted as soon as possible and commence no later than two hours after notification (unless there is an acceptable reason for the delay). An employee should be monitored after notification of selection for random testing and, whenever possible, immediately escorted by supervisory or management personnel to the collection location.

(3) Each time a regulated employee is notified that he or she has been selected for random testing, the employee must be informed that the selection was made on a random basis. Completion of the Federal Drug Testing Custody and Control Form (CCF) or the DOT Alcohol Testing Form (ATF) indicating the basis of the test satisfies this requirement, so long as the employee has been shown and directed to sign the CCF or ATF as required by §§ 40.73 and 40.241 of this title.

(f) *Incomplete collections.* A railroad must use due diligence to ensure that a random testing collection is completed for each selected pool entry, unless it has an acceptable explanation for not conducting the collection. All reasons for incomplete collections must be fully documented and are subject to inspection by FRA upon request.

(g) *Hours-of-service limitations.* (1) Except as provided by paragraph (g)(2) of this section, if a random testing collection is not completed within a covered employee's hours-of-service limitations, a railroad must immediately terminate the collection and may not reschedule it.

(2) When something during a random collection triggers a mandatory direct observation collection under § 40.67 of this title, a directly observed collection must immediately proceed until completed. A railroad must submit an excess service report, as required by part 228 of this chapter, if completion of the directly observed collection causes the covered employee to exceed his or her hours-of-service limitations.

§ 219.617 Participation in random alcohol and drug testing.

(a) *Railroad responsibility.* (1) A railroad must, under the conditions specified in this subpart and subpart H of this part, require a regulated employee selected for random testing to cooperate in alcohol and/or drug testing.

(2) A railroad must ensure that an employee who is performing regulated service at the time of the notification of selection for random testing shall, as soon as possible without adversely affecting safety, cease to perform regulated service and proceed to the testing site. A railroad must also ensure that the absence of an employee from his or her assigned duties to report for testing does not adversely affect safety.

(3) Once an employee has been notified that he or she has been selected for random testing, only a substantiated medical emergency involving the employee or an immediate family member (e.g. birth, death, or medical emergency) may excuse the selected employee from completing the collection or test. A medical emergency is defined in this part as an acute medical condition requiring immediate emergency care. To be eligible for exclusion from random testing, the selected employee must provide verifiable documentation from a credible outside professional (e.g. doctor, dentist, hospital, law enforcement officer, or school authority) substantiating the emergency situation within a reasonable period of time. A selected employee who has been excused from testing may not later be tested by the railroad under the same selection.

(b) *Employee responsibility.* (1) A regulated employee subject to the random testing requirements of this subpart must cooperate with the selection and testing process, and must proceed to the testing site upon notification that he or she has been selected for random testing.

(2) A notified employee must fully cooperate and comply with the urine drug collection and/or breath alcohol testing procedure required by subpart H of this part, provide the required specimen(s), and must, upon request, complete the required paperwork and certifications.

§ 219.619 Positive alcohol and drug test results and refusals; procedures.

Section 219.104 contains the procedures for administrative handling

by the railroad or contractor in the event a urine specimen provided under this subpart is reported as a verified positive by the Medical Review Officer, a breath alcohol specimen is reported at 0.04 or greater by the Breath Alcohol Technician, or there has been a refusal to test. The responsive action required in § 219.104 is not stayed pending the result of the testing of a split urine specimen or a challenge to any part of the testing process or procedure.

§ 219.621 Use of service agents.

(a) A railroad may use a service agent (such as a consortium/third party administrator (C/TPA)) to act as its agent to carry out any role in random testing specifically permitted under subpart Q of part 40 of this title, such as maintaining random pools, conducting random selections, and performing random urine drug collections and breath alcohol tests.

(b) A railroad may not use a service agent to notify regulated employees that they have been selected for random testing, unless that service agent is an authorized representative of the railroad approved by FRA in the railroad's random testing plan. A regulated employee who has been selected for random testing must otherwise be notified of the selection by his or her employer. Service agents may also not perform roles that are specifically reserved for an employer under § 40.355 of this title. For purposes of this subpart, only a railroad or a contractor performing railroad-accepted testing can be considered employers under § 40.355 of this title.

(c) Primary responsibility for compliance with random alcohol and drug testing rests with the railroad, but FRA reserves the right to bring an enforcement action for noncompliance against the railroad, its service agents, its contractors, and/or its employees.

(d) If a railroad conducts random drug and/or alcohol testing through a C/TPA, the number of employees required to be tested may be calculated for each individual railroad belonging to the C/TPA or may be based on the total number of regulated employees covered by the C/TPA in a larger combined railroad or DOT agency random pool. Selections from combined railroad random pools must meet or exceed the highest minimum annual percentage rate established under this subpart or any DOT agency drug testing rule that applies to any member of that pool.

§ 219.623 Records.

(a) As provided by § 219.901, railroads are required to maintain records related to random testing for a minimum of two years.

(b) Contractors and service agents performing random testing responsibilities under this subpart must provide records required by this subpart whenever requested by the contracting railroad or by FRA. A railroad remains responsible for maintaining records demonstrating that it is in compliance with the requirements of this subpart.

§ 219.625 FRA Administrator's determination of random alcohol and drug testing rates.

(a) *Notice.* Each year, the FRA Administrator publishes a **Federal Register** notice announcing the minimum annual random alcohol and drug testing rates which take effect on January 1 of the following calendar year. These rates are based on the railroad industry's random testing violation rates for the preceding two consecutive calendar years, which are determined using annual railroad alcohol and drug program data required to be submitted to the FRA's Management Information System (MIS) under § 219.800.

(b) *Information.* Information used for this determination is drawn from the MIS reports required by § 219.800. In order to ensure reliability of the data, the Administrator may consider the quality and completeness of the reported data, obtain additional information or reports from railroads, or make appropriate modifications in calculating the industry positive rate.

(c) *Initial minimum annual random testing rates.* The Administrator has established an initial minimum annual random testing rate of 50 percent for drugs and 25 percent for alcohol for any new category of regulated employees added to those already being tested under this part.

(1) These initial testing rates are subject to amendment by the Administrator in accordance with paragraphs (d) and (e) of this section after at least 18 months of MIS data have been compiled for the new category of regulated employees.

(2) The Administrator will determine separate minimum annual random testing rates for each added category of regulated employees for a minimum of three calendar years after that category is incorporated into random testing under this part.

(3) The Administrator may move to combine categories of regulated employees requiring separate determinations into a single determination once the categories' testing rates are identical for two consecutive years.

(d) *Drug testing rate.* The Administrator may set the minimum annual random drug testing rate for the railroad industry at either 50 percent or 25 percent.

(1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower the rate to 25 percent if the Administrator determines that the MIS data for two consecutive calendar years show that the reported random testing positive rate is less than 1.0 percent.

(2) When the minimum annual percentage rate for random drug testing is 25 percent, and the MIS data for any calendar year show that the reported random testing positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent.

(e) *Alcohol testing rate.* The Administrator may set the minimum annual random alcohol testing rate for the railroad industry at 50 percent, 25 percent, or 10 percent.

(1) When the minimum annual percentage rate for random alcohol testing is 50 percent or 25 percent, the Administrator may lower this rate to 10 percent if the Administrator determines that the MIS data for two consecutive calendar years show that the random testing violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower the rate to 25 percent if the Administrator determines that the MIS data for two consecutive calendar years show that the random testing violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(3) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the MIS data for that calendar year show that the random testing violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent.

(4) When the minimum annual percentage rate for random alcohol testing is 10 percent or 25 percent, and the MIS data for any calendar year show that the random testing violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent.

Subpart H—Drug and Alcohol Testing Procedures

§ 219.701 [Amended]

■ 31. Amend § 219.701 by:
■ a. In paragraphs (a) and (b), removing the phrase ''B, D, F, and G'' wherever it appears and adding, in its place, ''B, D, E, F, G, and K (but only for co-worker or non-peer referrals that involve a violation of the prohibitions of this subpart)''; and
■ b. Removing paragraph (c).

Subpart I—Annual Report

■ 32. In § 219.800, revise the last sentence of paragraph (b) and the first sentence of paragraph (d) and add paragraph (f) to read as follows:

§ 219.800 Annual reports.

* * * * *

(b) * * * For information on where to submit MIS forms and for the electronic version of the form, see: *http://www.fra.dot.gov/eLib/details/L02639*.

* * * * *

(d) As a railroad, if you have a regulated employee who performs multi-DOT agency functions (*e.g.,* an employee drives a commercial motor vehicle and performs switchman duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested.

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(f) A railroad required to submit an MIS report under this section must submit separate reports for covered employees and MOW employees.

Subpart J—Recordkeeping Requirements

■ 33. Revise § 219.901 to read as follows:

§ 219.901 Retention of alcohol and drug testing records.

(a) *General requirement.* (1) In addition to the records required to be kept by part 40 of this title, each railroad must maintain alcohol and drug misuse prevention program records in a secure location with controlled access as set out in this section.

(2) FRA requires certain records to be maintained for two years, rather than one year as provided for by § 40.333(a)(4) of this title. Railroads may maintain legible and accessible scanned or electronic copies of these records for the second year that they are required to be maintained by FRA.

(b) *Records maintained for a minimum of five years.* Each railroad must maintain the following records for a minimum of five years:

(1) A summary record or the individual files of each regulated employee's test results; and

(2) A copy of the annual report summarizing the results of its alcohol and drug misuse prevention program (if required to submit the report under § 219.801(a)).

(c) *Records maintained for a minimum of two years.* Each railroad must maintain the following records for a minimum of two years:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process, including the railroad's approved random testing plan and FRA's approval letter for that plan.

(iii) Documents generated in connection with decisions to administer Federal reasonable suspicion or reasonable cause alcohol or drug tests.

(iv) Documents generated in connection with decisions on post-accident testing.

(v) Documents verifying the existence of a medical explanation for the inability of a regulated employee to provide an adequate specimen.

(2) Records related to test results:

(i) The railroad's copy of the alcohol test form, including the results of the test.

(ii) The railroad's copy of the drug test custody and control form, including the results of the test.

(iii) Documents related to the refusal of any regulated employee to submit to an alcohol or drug test required by this part.

(iv) Documents presented by a regulated employee to dispute the result of an alcohol or drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training:

(i) Materials on alcohol and drug abuse awareness, including a copy of the railroad's policy on alcohol and drug abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training (including attendance records and training materials) provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for reasonable suspicion or post-accident alcohol and drug testing.

(iv) Documentation of training (including attendance records and training materials), required under § 219.103(b)(2) and (b)(3), provided to regulated employees regarding the use of prescription and over-the-counter drugs.

■ 34. Revise § 219.903 to read as follows:

§ 219.903 Access to facilities and records.

(a) Release of regulated employee information contained in records required to be maintained under § 219.901 must be in accordance with part 40 of this title and with this section. (For purposes of this section only, urine drug testing records are considered equivalent to breath alcohol testing records.)

(b) Each railroad must permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, United States Department of Transportation, or any DOT agency with regulatory authority over the railroad or any of its regulated employees.

(c) Each railroad must make available copies of all results for its alcohol and drug testing programs conducted under this part and any other information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or regulated employee.

§ 219.905 [Removed and Reserved]

■ 35. Remove and reserve § 219.905.
■ 36. Add subpart K to read as follows:

Subpart K—Peer Support Programs

Sec.

219.1001 Requirement for peer support programs.
219.1003 Peer support program requirements.
219.1005 Optional provisions.
219.1007 Alternate peer support programs.

Subpart K—Peer Support Programs

§ 219.1001 Requirement for peer support programs.

(a) The purpose of this subpart is to help prevent the adverse effects of alcohol misuse and drug use in connection with regulated employees through the implementation of peer referral and support programs.

(b) Each railroad must adopt, publish, and implement a peer support program policy that meets the requirements of this subpart. The policy must be designed to encourage and facilitate the referral and rehabilitative support of regulated employees who abuse alcohol or drugs. The policy must also support and augment this part, as well as parts 40, 240, and 242 of this title.

(c) A railroad may comply with this subpart by adopting, publishing, and implementing policies meeting the specific requirements of § 219.1003 and/or by complying with § 219.1007.

(d) Nothing in this subpart may be construed to:

(1) Require payment of compensation for any period a regulated employee is restricted from regulated service under a railroad's peer support programs;

(2) Require a railroad to adhere to a peer support program policy when the referral is made for the purpose, or with the effect, of anticipating or avoiding the imminent and probable detection of a rule violation by a supervising employee;

(3) Interfere with the subpart D requirement for Federal reasonable suspicion testing when a regulated employee is on-duty and a supervisor trained in accordance § 219.11(g) determines that the employee is exhibiting signs and symptoms of alcohol and/or drug use;

(4) Interfere with the requirements in § 219.104(d) for responsive action when a violation of §§ 219.101 or 219.102 is substantiated; or

(5) Limit the discretion of a railroad to dismiss or otherwise discipline a regulated employee for specific rule violations or criminal offenses, except as specifically provided by this subpart.

§ 219.1003 Peer support program requirements.

(a) *Scope.* This section prescribes the minimum requirements and standards for peer support programs required under this subpart. Individuals involved in the implementation of any program subject to this subpart must comply with the program's policies and implementation procedures.

(b) *Referral policies.* Except as provided in § 219.1007, each railroad must publish and implement a peer support program that meets the requirements of this section and which contains, at a minimum, the following types of policies:

(1) A self-referral policy that must provide regulated employees with an opportunity to obtain referral, education, counseling, and/or treatment through a qualified Employee Assistance Program (EAP) Counselor or Drug and Alcohol Counselor (DAC) before an employee's alcohol or substance use problem manifests itself in an accident, injury, or is otherwise detected as a violation of this part;

(2) A co-worker referral policy that must be designed to encourage and facilitate employee participation in preventing violations of this part; and

(3) As negotiated between a railroad and its collective bargaining organizations (if applicable), a non-peer referral policy that must specify whether the program permits referrals from non-peers, such as supervisors, representatives of an employee's collective bargaining organization, or family members.

(c) *Referral conditions.* The referral policies required by paragraph (b) of this section must specify the conditions under which a self-referral, co-worker referral, or non-peer referral can occur, including:

(1) For a self-referral that does not involve a violation of this part, identification of a designated EAP Counselor or DAC (including telephone number and email (if available)) and any expectations regarding when the referral is allowed to take place (e.g., only during non-duty hours and/or while the employee is unimpaired, as permitted by § 219.1005);

(2) Whether non-peer referrals (e.g., referrals from supervisors, labor organizations, or family members) are permitted and what the allowances, conditions, and procedures of such referrals are;

(3) For a co-worker referral or a non-peer referral (as permitted by the railroad's policy), a railroad may accept a referral under this subpart only if the referral is based on an allegation that the regulated employee was apparently unsafe to work with or appeared to be in violation of this part or the railroad's alcohol and drug rules; and

(4) For a co-worker referral or a non-peer referral (as permitted by the railroad's policy), a railroad may remove a regulated employee from service only if a railroad representative who has been trained in accordance with the requirements of § 219.11(g) confirms that the employee is unsafe to work with or in violation of this part or the railroad's alcohol and drug rules.

(d) *Employment maintained.* A regulated employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if:

(1) The employee seeks assistance through a railroad's peer support program for the employee's alcohol or drug use problem or is referred for such assistance by either a co-worker or a non-peer (as permitted by the railroad's policy); and

(2) The employee successfully completes the education, counseling, or treatment program specified by a Counselor under this section.

(e) *Employment action.* If the employee does not choose to seek assistance through a peer support program, or fails to cooperate with the prescribed program, the disposition of the employee's relationship with the railroad is subject to normal employment action.

(f) *Evaluation by a qualified EAP Counselor, DAC, or SAP.* (1)(i) A regulated employee entering a peer support program through a self-referral must be evaluated by an EAP Counselor or DAC acceptable to the railroad.

(ii) A regulated employee entering a peer support program through a co-worker or non-peer referral must be evaluated by a SAP acceptable to the railroad (according to the standards of part 40 of this title) if the co-worker or non-peer referral involves a substantiated violation of § 219.101 or § 219.102.

(iii) If a co-worker or non-peer referral involves a situation where the regulated employee was not in violation of § 219.101 or § 219.102, but was determined to be unsafe to work with or in violation of only the railroad's alcohol and drug rules, the referred individual must be evaluated by an EAP or DAC.

(2) Organizations employing Counselors and personnel supporting peer programs under this subpart must meet any applicable state standards and comply with this subpart.

(3) The Counselor (defined by § 219.5 to include an EAP Counselor, DAC, or SAP) must determine the appropriate level of care (including, but not limited to, education, counseling, and/or treatment) necessary to resolve any identified substance abuse problem involving a regulated employee. If the evaluation establishes that the employee has an active substance abuse disorder (such as, but not limited to, substance dependency) requiring education, counseling and/or treatment education, the Counselor must refer the employee to an appropriately qualified rehabilitation program in the community when possible. An employee's failure to fully cooperate with the evaluation, referral process, or aftercare is grounds for dismissal from the railroad's peer support program, and will subject the employee to the railroad's normal employment action.

(g) *Removal from regulated service.* A peer support program policy must stipulate that a regulated employee who has been evaluated by a Counselor and found to have an active substance abuse disorder must be removed from regulated service until the Counselor reports that the employee's identified problem is no longer reasonably expected to adversely affect the safety of railroad operations.

(h) *Confidentiality maintained.* Except as provided under paragraph (l) of this section, the railroad's peer support program policy must treat an employee's referral and subsequent handling (including evaluation,

education, counseling, and/or treatment) as confidential. Only personnel who administer the railroad's peer support program may have access to the identities of the individuals in the program.

(i) *Leave of absence.* The railroad must grant a regulated employee a leave of absence for the period necessary to complete at least the primary education/counseling/treatment program recommended by the Counselor. The leave of absence must also cover a period sufficient for the employee to establish control over his or her alcohol or drug problem to the extent that the evaluating Counselor determines that he or she is now at a low risk to return to substance abuse.

(j) *Return to regulated service.* (1) Except as may be provided under §§ 219.1001(d)(4) and 219.1005, a railroad must return a regulated employee to regulated service on the recommendation of the Counselor when the employee has established control over his or her substance abuse problem, is assessed by the Counselor as being a low risk to return to substance abuse, and has complied with any return-to-service requirements recommended by the Counselor (such as a negative alcohol and/or drug test performed under Federal or company authority, whichever is appropriate).

(2) The Counselor determines the appropriate number and frequency of required follow-up tests. The railroad determines the dates of testing.

(3) An employee's return to regulated service may be conditioned upon successful completion of a return-to-service medical evaluation, as directed by the railroad.

(4) Approval to return to regulated service may not be unreasonably withheld. The railroad must return an employee to regulated service within five working days of the Counselor's notification to the railroad that the employee is fit to return to regulated service (i.e., the employee is at a low risk to return to substance abuse).

(k) *Rehabilitation plan.* No person or entity—whether an employing railroad, managed care provider, service agent, or any entity other than the Counselor who conducted the initial evaluation—may change in any way the Counselor's evaluation or recommendation for assistance. The Counselor who made the initial evaluation may modify his or her initial evaluation and follow-up recommendations based on new or additional information.

(l) *Locomotive engineers and conductors.* As provided by § 240.119(e) or § 242.115(g) of this chapter, with respect to a certified locomotive engineer, certified conductor, or a candidate for engineer or conductor certification, the peer support program policy must state that confidentiality is waived (to the extent that the railroad receives official notice of the active substance abuse disorder from a Counselor, and suspends or revokes the certification, as appropriate) if an employee at any time refuses to cooperate in a recommended course of counseling or treatment. The treating Counselor is not required to provide this notice if the locomotive engineer or conductor is medically restricted from regulated service and the Counselor is working with the locomotive engineer or conductor to correct a reoccurring active substance abuse disorder. If a locomotive engineer or conductor with an active substance abuse disorder fails to make the needed rehabilitative progress during a period of medical restriction, the Counselor must provide official notice to the railroad.

(m) *Contacting a SAP.* If the identification of the regulated employee was due to co-worker or non-peer referral for a substantiated violation of § 219.101 or § 219.102, the regulated employee must contact the SAP in a reasonable time (as specified by the railroad's policy). If the employee does not contact the SAP within the railroad's specified time limit, the railroad may begin an investigation to assess the employee's cooperation and compliance with its peer support policy.

(n) *Time requirements for Counselor evaluations.* Once a regulated employee has contacted the designated Counselor, the evaluation must be completed within 10 working days. If the employee needs more than one evaluation, the evaluations must be completed within 20 working days.

(o) *Regulated employee agreement.* A railroad's peer support policy must require a regulated employee to agree to undertake and successfully complete a course of prescribed care and any follow-up care (including appropriate railroad-administered follow-up testing) deemed appropriate by the Counselor. Any follow-up treatment, care, and/or testing established for this program cannot exceed 24 months beyond the regulated employee's initial removal from regulated service, unless the regulated employee entered the peer prevention program through a co-worker or non-peer referral that involved a substantiated part 219 violation.

§ 219.1005 Optional provisions.

A railroad's peer support program policy may include any of the following provisions at the option of the railroad and with the approval of the labor organization(s) affected:

(a) The policy may provide for a mark-off provision under which a regulated employee who is concerned that he or she may not be safe to work due to alcohol or prescription medication use may choose to refuse an assignment.

(b) The policy may provide that the rule of confidentiality is waived if:

(1) The regulated employee at any time refuses to cooperate in a course of education, counseling, or treatment recommended by an Counselor; or

(2) The regulated employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(c) The policy may require successful completion of a return-to-service medical examination as a further condition of reinstatement in regulated service.

(d) The policy may provide that it does not apply to a regulated employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section.

(e) The policy may provide that, in order to invoke its benefits, the regulated employee must report to the contact designated by the railroad either:

(i) During non-duty hours (i.e., at a time when the regulated employee is off duty); or

(ii) While unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

§ 219.1007 Alternate peer support programs.

(a) In lieu of peer support programs under § 219.1003, railroads are permitted to develop, publish, and implement an alternate program or policy which meets the standards established in § 219.1003. Such programs or policies must have the written concurrence of the recognized representatives of the regulated employees. Nothing in this subpart restricts a railroad or labor organization from adopting, publishing and implementing peer support policies that afford more favorable conditions to regulated employees troubled by alcohol or drug abuse problems, consistent with a railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

(b) The concurrence of the recognized representatives of the regulated employees in an alternate program may be evidenced by a collective bargaining agreement or any other document

describing the class or craft of employees to which the alternate program applies. The agreement or other document must make express reference to this subpart and to the intention of the railroad and employee representatives that the alternate program applies in lieu of the program required by this subpart.

(c) The railroad must file the agreement or other document described in paragraph (b) of this section along with the requested alternate program being submitted for approval with the FRA Drug and Alcohol Program Manager. Approval will be based on FRA review to ascertain whether the alternative program meets the § 219.1003 objectives. The alternative program does not have to include each § 219.1003 component, but must meet the general standards and intent of § 219.1003. If an approved alternate policy is amended or revoked, the railroad must file a notice with FRA of such

Issued in Washington, DC, on July 15, 2014.

Joseph C. Szabo,

Administrator.

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